

**Australian Government**

Terms and Conditions *Stronger Relationships* trial Grant Agreement

For the2014-2015 financial year

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# DEFINITIONS, DURATION AND ELIGIBILITY

1. Structure of this Agreement and Definitions
   1. This Agreement comprises:
      * 1. this document, being the Terms and Conditions;
        2. the Schedule, which is the separate document signed by you and us, including any Additional Requirements or other annexures; and
        3. any documents it incorporates by reference, including the Guidelines.
   2. 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.
   3. 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 38.
2. Duration of the Agreement and Activity
   1. This Agreement starts on the Commencement Date and ends on the Completion Date, unless it is terminated earlier.
   2. The Activity starts and ends on the dates specified in Item B of the Schedule, unless the Agreement is terminated earlier.
3. Eligibility
   1. You warrant that, at the Commencement Date, you are an Eligible Provider.
   2. At any time during the Term of this Agreement, we may request you to provide us with evidence that you remain an Eligible Provider and you agree to provide that evidence within 5 Business Days after your receive our request.
   3. You agree to immediately advise us if you cease to be an Eligible Provider at any time during the Term of this Agreement.
   4. If you cease to meet any of the Eligible Provider requirements, you will cease to be eligible for any further Grant payments under this Agreement.

# ACTIVITY

1. Your obligations in carrying out the Activity
   1. You must carry out the Activity in accordance with this Agreement and in a manner that meets all of the objectives of the Programme and the Activity.
   2. In carrying out the Activity, you must:
      * 1. comply with the Guidelines;
        2. use all proper care and undertake the Activity to a high professional standard;
        3. have and maintain all license, certification and registration requirements that apply to the performance of the Activity and comply with any codes of ethics, regulations or other industry standards relevant to the Activity;
        4. comply with all relevant laws which includes taking all reasonable actions to ensure that no fraud or unlawful discrimination occurs in your performance of the Activity and ensuring that the health and safety of all individuals at the premises at which the Activity is performed is protected;
        5. pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement;
        6. comply with any Commonwealth policy notified to you in writing;
        7. 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;
        8. communicate with us, especially if there is an issue that may delay, stop or adversely affect you performing the Activity; and
        9. provide any information we reasonably require.
   3. You must notify us in writing at least 20 Business Days prior to you ceasing to perform all or part of the Activity.
   4. You must also comply with any Additional Requirements set out in Annexure A to the Schedule.
   5. You must establish and publicise the existence of a documented and transparent complaints policy and process which you must use to deal with any complaints by or on behalf of an Eligible Person and which must comply with the following requirements:
      * 1. it must be consistent with the Australian Standard on Complaint Handling (AS/NZS ISO 10002 – 2006 amended in 2011) and meet the other complaint handling requirements specified in the Guidelines.
        2. if the complainant is dissatisfied with the results following their complaint/s you must refer them to our complaints service for further investigation of the complaint and you must assist us in the investigation of the complaint.
        3. you must maintain a complaints register and, on our request, give us access to or copies of your complaints register in accordance with clause 6.4.
        4. copies of all correspondence and other Material received or created by you in connection with any of the above must be kept in accordance with clause 6.2.
   6. Before you commence providing a Funded Service to an Eligible Couple, you must have the following policies in place and provide those policies to us within 10 Business Days after a request from us to do so:
      * 1. a policy regarding privacy and confidentiality which is consistent with clauses 15 and 16;
        2. a policy on mandatory reporting (if you are legally required to comply with mandatory reporting) and Police Checks, which is consistent with clause 18; and
        3. a policy to ensure the protection of individuals' health and safety at your premises and provide staff with adequate support, training and resources to comply with those policies and procedures.
   7. You agree to participate in, and provide all reasonable assistance for, any review or evaluation that we conduct, or engage another entity to conduct, regarding your performance of the Activity or the operation of the Programme.
2. Your obligation to acknowledge our support
   1. In all Material that you provide to the public about the Activity or the Programme, you must acknowledge our financial and other support. When doing so, you must use any form of acknowledgment we reasonably specify.
   2. You agree to take reasonable steps to promote the Programme and to obtain our approval of any Material you prepare for this purpose prior to you using or distributing that Material.
3. Your obligation to keep records
   1. You must keep accurate records regarding your performance of the Activity including client records for each Eligible Couple that contain the following:
      * 1. the names of each member of the Eligible Couple;
        2. the date(s) on which the Funded Service is booked and provided;
        3. the type of Funded Service provided to the Eligible Couple and the number of sessions and the number of hours for which the Funded Service was provided to them;
        4. the location (outlet) where the Funded Service was provided to the Eligible Couple;
        5. the Total Value of the Funded Service as well as the Service Fee and any Reduced Fee that the Eligible Couple were charged for the Funded Service; and
        6. a written Consent from each member of the Eligible Couple.
   2. You must keep these records in their original form for at least 5 years after the Activity Period or other period as required by legislation.
   3. If we request you to do so, you must provide us with copies of the records referred to in clause 6.1.
   4. You must also at all reasonable times allow access to all records, documents and papers relating to your carrying out of this Agreement including those relating to the Activity and your Claims for Grant payments and allow copies of this Material to be taken by the following:
      * 1. us, or persons authorised by us; or
        2. the Commonwealth Auditor-General (including his or her delegate); or
        3. an information officer appointed under the *Australian Information Commissioner Act 2010* (Cth) who is performing ‘privacy functions’ as defined in that Act.
   5. For the purpose of clause 6.4 the parties agree that:
      * 1. **access** includes access to your premises (which means premises occupied by you or the location where any part of the Activity is undertaken) but will not require you to provide detailed case notes that you created about either member of an Eligible Couple during a Funded Service; and
        2. you must provide such assistance as may be needed to allow access to all records, documents and papers relating to your performance of the Activity.
   6. You must take reasonable steps to ensure that the information that you provide to us and/or upload to FOFMS is true, accurate, complete and not misleading.
   7. You acknowledge that giving false or misleading information to us is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).
4. Grant payments
   1. Subject to parliamentary appropriation, and your compliance with this Agreement, we will make Grant payments to you in instalments and in arrears in accordance with this clause 7 and Item C of the Schedule.
   2. You acknowledge and agree that:
      * 1. you are not guaranteed any Grant payment(s) under this Agreement; and
        2. you will only receive a Grant payment when you are requested by an Eligible Couple to provide a Funded Service to that Eligible Couple and you do so in accordance with all of the terms of this Agreement.
   3. A Grant payment may not be paid for a Claim that is submitted more than 30 Business Days, or shorter period as notified by us, after you provided the Funded Services to the Eligible Couple.
   4. The Grant will not be paid for a Funded Service that you provide, or are required to provide, to an Eligible Couple free of charge under a separate agreement with the Commonwealth.
   5. Notwithstanding any other provision of this Agreement, if we notify you that you must not commence providing any new Funded Services to Eligible Couples after a certain date, we will not be obliged to make a Grant payment to you in respect of any Funded Services you commence to provide after that date.
5. When can we withhold payment?
   1. We can withhold any or all of a Grant payment if we consider that you:
      * 1. were not an Eligible Provider at the time you provided any part of the Funded Service to which the Grant payment relates;
        2. have not carried out the Activity in accordance with this Agreement and/or have breached this Agreement;
        3. have not Claimed the Grant payment in accordance with this Agreement; or
        4. are in serious breach of any other agreement under which you receive funding from the Commonwealth (a serious breach is one which would entitle the Commonwealth to terminate the other agreement).
   2. Subject to the expiry of the Activity Period or termination of this Agreement, we will pay you a Grant payment that was withheld under clause 8.1.b when you have carried out the part of the Activity to which the payment relates in accordance with the requirements of this Agreement.
   3. If we withhold a Grant payment under this clause 8, you cannot claim an additional amount from an Eligible Couple in place of the withheld Grant payment.
6. Repaying the Grant
   1. If:
      * 1. we overpay you an amount; or
        2. we pay you an amount that you have incorrectly Claimed;

then at our discretion:

* + - 1. we may off-set that amount against any other Grant payment that would otherwise be paid to you under this Agreement or any other arrangement or agreement we have with you; or
      2. we may give you a written notice requiring you to repay some or all of the amount to us and you must pay us that amount within 20 Business Days after we give you that notice.
  1. If you must repay an amount under clause 9.1:
     + 1. 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
       2. we may recover the amount and any interest as a debt due to the Commonwealth.

1. GST
   1. This clause 10 applies if you are registered or required to be registered, for GST and the Grant is a payment for a Taxable Supply.
   2. Any Grant payment amount specified in this Agreement is a GST exclusive amount.
   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.
   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.
   5. In this clause 10, 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.
2. Total Value of the Funded Services
   1. The Total Value of each Funded Service must be $200 or more including GST.
   2. At:
      * 1. the time an Eligible Couple books into a Funded Service you must advise the member of the Eligible Couple who is making the booking; and
        2. your first meeting with an Eligible Couple you must advise each member of the Eligible Couple,

of:

* + - 1. the Total Value of the Funded Service you will provide to them;
      2. the Service Fee that is payable for the Funded Service; and
      3. any Reduced Fee that the Eligible Couple is required to pay you for the Funded Service.
  1. You must reduce the Total Value of each Funded Service you provide to an Eligible Couple by $200 including GST. Unless the Eligible Couple advises you otherwise, you must apply the Reduction to the first payment that the Eligible Couple is required to pay you for the Funded Service you provide to them.

1. Our additional rights under this Agreement
   1. If you do not comply with a requirement in this Agreement we may at our discretion and in addition to our other rights under this Agreement:
      * 1. notify you in writing of our concerns and require you to provide information about your performance of this Agreement, including an explanation for that non-compliance, within 10 Business Days of the date of that notice;
        2. provide you with a written notice requiring you to take certain action to address that non-compliance and improve your performance of this Agreement within the time period specified in that notice;
        3. provide you with a written notice directing you not to include any new Eligible Couples in the Activity; and/or
        4. notify you in writing that we are suspending or cancelling an Eligible Couple's Reference Number.
   2. You must comply with any direction or requirement that we issue under clause 12.1.
2. Agreement Material
   1. Subject to clause 13.6, you own the Intellectual Property Rights in all Agreement Material.
   2. Subject to clause 13.6, you grant (or must procure for) us a licence to use, reproduce, communicate, publish, modify, adapt, perform and exploit the Intellectual Property Rights in Agreement Material and Existing Material, for any Commonwealth purpose. This licence must be permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sublicence.
   3. We license you to use the Commonwealth Material (including copying it and supplying it to others), but only for the purposes of this Agreement. You must ensure that your Personnel only access Commonwealth Material contained in FOFMS to the extent they need to do so to perform the Funded Services.
   4. 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 in accordance with this clause 13.
   5. 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 13.
   6. We own all Commonwealth Material, including any Intellectual Property Rights in that Material. Clauses 13.1 and 13.2 do not apply to any Agreement Material that is also Commonwealth Material.
   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.
3. Commonwealth Material
   1. You must keep safe and maintain all Commonwealth Material. You accept all risk relating to that Material.
   2. Except to the extent you need to access FOFMS to satisfy your obligations under another Commonwealth agreement, you must cease, and ensure all your Personnel cease, to access FOFMS at the expiry of the Activity Period or earlier termination of this Agreement.
   3. If we direct you to do so, you must promptly return to us any Commonwealth Material in your possession.
4. Privacy issues
   1. In this clause 15, “Australian Privacy Principle” and ''Personal Information'' have the same meaning as in the *Privacy Act 1988* (Cth).
   2. You acknowledge that information that you obtain in the course of performing the Activity, including information about an Eligible Person may be Personal Information.
   3. You agree:
      * 1. not to do anything which, if done by the Commonwealth, would be a breach of the Australian Privacy Principles in the *Privacy Act 1988* (Cth); and
        2. 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 15.3.a.
   4. If you become aware of any breach or possible breach of this clause 15, you must notify us immediately.
   5. You must ensure that before you provide any Funded Service to an Eligible Couple, you inform the Eligible Couple that their Personal Information will be used by you to:
      * 1. verify their Reference Number;
        2. provide the Funded Service to them;
        3. Claim a Grant payment from us for those Funded Service; and
        4. inform us, or our nominee, about your provision of those Funded Service, including for the purpose of our management of this Agreement and our involvement in dealing with any complaints regarding a Funded Service,

and that you obtain their consent to these uses of their Personal Information.

* 1. You acknowledge that the Commonwealth, including us, may disclose or publish details about this Agreement or the Activity. The details may include (but are not limited to) your name, the value of the Grant, and the location where the Activity is being delivered or performed.
  2. 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) to us. 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.
  3. You must:
     + 1. obtain the consent of each of your Personnel who performs Funded Services to their personal information being used:
          1. by us for the purpose of managing the Activity, this Agreement and the Programme, including the resolution of any complaints about the provision of the Funded Services; and
          2. by the person evaluating the Activity or the Programme, including the provision of the contact details of members of your Personnel to the evaluator so that they may be contacted as part of that evaluation; and
       2. advise each such individual that our privacy policy is available on our website.

1. Confidential Information
   1. In this clause 16, **Confidential Information** means information that:
      * 1. is described in Item F of the Schedule; or
        2. the parties agree in writing after the date of this Agreement is confidential information of a party for the purposes of this Agreement,

but excludes information about your Funded Services, including their Total Value and the Service Fees you may charge for them.

* 1. Subject to clause 16.3, a party must not disclose Confidential Information of the other party to anyone, without the prior written consent of that other party.
  2. A party can disclose Confidential Information to the extent that it:
     + 1. is disclosed to its internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
       2. is information about an Eligible Person and is disclosed by us or you to that Eligible Person;
       3. is disclosed by us to the responsible Minister;
       4. is disclosed by us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
       5. is shared by us within the Commonwealth, where this serves the Commonwealth's legitimate interests;
       6. is authorised or required by law to be disclosed; or
       7. is in the public domain otherwise than due to a breach of this clause 16.
  3. Where a party discloses Confidential Information to another person under clause 16.3 they must:
     + 1. for all disclosures covered by clause 16.3 other than clauses 16.3(b) and 16.3(g) - notify the receiving party that the information is confidential; and
       2. for disclosures covered by clauses 16.3(a) and 16.3(e) - not provide the information unless the receiving person agrees to keep the information confidential.
  4. You agree to secure all of our Confidential Information against loss and unauthorised access, use, modification or disclosure.
  5. 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.
  6. You must use the form of confidentiality deed we provide to you.

1. Access to documents
   1. In this clause 17, document and Commonwealth contract have the same meaning as in the *Freedom of Information Act 1982* (Cth).
   2. You acknowledge that this Agreement is a Commonwealth contract.
   3. Where we have received a request for access to a document created by you or a Subcontractor, or in your or a Subcontractor's possession, 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.
   4. You must include provisions in all of your Activity Subcontracts that will enable you to comply with your obligations under this clause 17.
2. Vulnerable Persons, Police Checks and Criminal Offences
   1. Before engaging or deploying any Person (whether as an officer, employee, contractor, or volunteer) in relation to any part of the Activity where the Person may have contact with Vulnerable Persons, you must:
      * 1. conduct a Police Check for that Person or where relevant, confirm a similar check by appropriate authorities has occurred;
        2. 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
        3. comply with all other legal requirements of the place where the Activity, or any 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.
   2. For the purposes of clause 18.1.a you do not have to conduct a Police Check for a person where they have a Working with Children (NSW) check or an equivalent check in another jurisdiction has been undertaken.
   3. You warrant that you have complied with clause 18.1 and this warranty is repeated each time you engage or deploy a Person in relation to any part of the Activity where the Person may have contact with Vulnerable Persons.
   4. You must not engage or deploy a Person in relation to any part of the Activity that may involve contact with Vulnerable Persons where the Police Check for that Person states that they have a Serious Record.
   5. You agree if a Police Check or other relevant check by authorities indicates that a Person has a Criminal or Court Record, not to engage or deploy the Person in relation to any part of the Activity that may involve the Person having contact with Vulnerable Persons unless you have conducted and documented a risk assessment of that Person.
   6. You will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Person with a Criminal or Court Record, or a Person who has been charged with a Serious Offence, to work on any part of the Activity that may involve the Person having contact with Vulnerable Persons.
   7. If following the engagement or deployment of a Person in relation to any part of the Activity that may involve the Person having contact with Vulnerable Persons, that Person is charged with a Serious Offence, you must comply with all applicable laws in the State or Territory in which the Activity or part of the Activity is being conducted in relation to Persons working in or acting in any capacity where they may have contact with a Vulnerable Person. If the Person is not prevented from those laws from working on the Activity, then you agree to:
      * 1. conduct and document a risk assessment of that Person within 24 hours of becoming aware of that Person being charged with the Serious Offence in accordance with clauses 18.5 and 18.6 to determine whether to allow that Person to continue performing any part of the Activity; and
        2. document the actions you will take as a result of conducting that risk assessment.
   8. If following the engagement or deployment of a Person in relation to any part of the Activity that may involve the Person having contact with Vulnerable Persons, the Person is convicted of a Serious Offence, you must remove the Person from working in any capacity in relation to any part of the Activity that may involve contact with Vulnerable Persons.
   9. If, following the engagement or deployment of a Person in relation to the Activity, that Person is either charged or convicted of any Other Offence, you must:
      * 1. conduct and document a risk assessment of that Person within 24 hours of becoming aware of that Person being charged or convicted of any Other Offence in accordance with clauses 18.5 and 18.6 to determine whether to allow that Person to continue performing any part of the Activity; and
        2. document the actions you will take as a result of conducting that risk assessment.
   10. If we require you must promptly provide evidence, in a form we require, that you have complied with the requirements of this clause 18.
   11. You agree to reflect your obligations under this clause 18 in all Subcontracts you enter into in relation to any part of the Activity that involves contact with Vulnerable Persons.
   12. In this clause 18:
       * 1. **Child** means an individual under the age of 18.
         2. **Criminal or Court Record** means any record of any Other Offence.
         3. **Other Offence** means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
            1. an apprehended violence or protection order made against the Person;
            2. one or more traffic offences involving speeding more than 30 kilometers over the speed limit, injury to a person or damage to property;
            3. a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or
            4. a crime or offence involving violence against or the injury, but excluding the death of a person.
         4. **Person** means each of your officers, employees, Subcontractors and volunteers.
         5. **Serious Offence** means:
            1. a crime or offence involving the death of a person;
            2. 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; or
            3. a crime or offence involving dishonesty, 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.
         6. **Serious Record** means a conviction or any finding of guilt for a Serious Offence.
         7. **Vulnerable Person** means:
            1. a Child; or
            2. 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.
3. Indemnity
   1. You indemnify us against the following:
      * 1. cost and liability incurred by us;
        2. loss of or damage to our property, including as a result of a virus or harmful code damaging FOFMS or our information technology system; and
        3. loss or expense we incur 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),

arising from:

* + - 1. your act or omission in carrying out this Agreement, but only where you were at fault;
      2. your breach of this Agreement; or
      3. our use of the Agreement Material or Existing Material (including a third party claim against us in relation to our use of Intellectual Property Rights in the Agreement Material or Existing Material or our performance of the Specified Acts).
  1. Your liability to indemnify us under this clause 19 is reduced proportionately to the extent that our own fault caused our liability, loss, cost or expense.
  2. Our right to be indemnified under this clause 19 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.

1. Insurance
   1. You agree to have current and adequate insurance appropriate to the Activity.
   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.
   3. This clause 20 continues to operate for as long as any obligations remain in connection with this Agreement.
2. Advocacy
   1. This clause 21 applies if you are a “not-for-profit entity” as defined in the *Not-for-profit Sector Freedom to Advocate Act 2013*.
   2. Subject to clause 21.3:
      * 1. no right or obligation arising under this Agreement should be interpreted as restricting or preventing you or your employees from commenting on, advocating support for or opposing change to any matter established by law, policy or practice of the Commonwealth; and
        2. we do not require you to obtain our advance approval of any involvement by you or your employees in any of the activities referred to in clause 21.2.a.
   3. This clause 21 does not limit or derogate from your obligation, arising under this Agreement or otherwise, not to disclose confidential information as defined in the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth) or personal information as defined in the *Privacy Act 1988* (Cth).

# TERMINATING THE AGREEMENT

1. Our right to terminate, or reduce the scope of, the Agreement
   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.
   2. If, under clause 22.1, we terminate this Agreement, we are only liable to pay you:
      * 1. a Grant payment for a Funded Service that you had Claimed, provided or commenced to provide to an Eligible Couple in accordance with this Agreement before the date of termination; and
        2. subject to clauses 22.5 and 22.6, reasonable costs you incur as a direct result of the termination.
   3. If we terminate this Agreement under clause 22.1, you must:
      * 1. except to the extent this Agreement provides otherwise, immediately stop carrying out your obligations under this Agreement;
        2. immediately do everything you can to lessen all losses, costs and expenses that you may suffer as a result of the termination including advising Eligible Couples that services that you commence to provide after the date of termination will not be provided as part of the *Stronger Relationships* trial;
        3. ensure that you have submitted a Claim for all of the Funded Services you have provided in accordance with this Agreement within 30 Business Days after we give you the notice of termination; and
        4. repay us any Grant amount that is required to be repaid under clause 9 in accordance with that clause.
   4. If we reduce the scope of this Agreement, our requirement to pay you the Grant under this Agreement will reduce in accordance with the reduction in the Agreement.
   5. We need only pay you the reasonable costs in clause 22.2.b if you:
      * 1. comply strictly with this clause 22; and
        2. provide written evidence to satisfy us of the amounts claimed.
   6. 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.
2. Our right to terminate for your default
   1. We can terminate this Agreement immediately by notice to you if any of the following occur:
      * 1. you breach any of your obligations under this Agreement and we consider that the breach cannot be rectified;
        2. 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;
        3. you cease to be an Eligible Provider;
        4. we consider that an act or omission by you or your Personnel:
           1. is likely to pose, or has posed, a threat to the physical or mental health of a person (including an Eligible Person); or
           2. is likely to adversely affect, or has adversely affected, the reputation of you, the Activity, the Program or the Commonwealth (including us);
        5. we consider that your purposes and activities are no longer compatible with the aim of the Activity or the Programme’s objectives;
        6. another agreement (including a Family Support Programme agreement) between you and the Commonwealth is terminated due to your breach of that agreement;
        7. in relation to this Agreement or the Activity, you breach a law of the Commonwealth, or of a State or Territory or an investigation commences into alleged illegal action by, or charges are laid against, you or your Personnel (including a Subcontractor);
        8. we consider that our decision to appoint you as a member of the Provider Panel was affected by a statement in your application to become a member of the Provider Panel that was incorrect, incomplete, false or misleading;
        9. we are satisfied on reasonable grounds that you are unable or unwilling to satisfy the terms of this Agreement; or
        10. we have a right of termination under another clause of this Agreement.
   2. If we terminate this Agreement under this clause 23, we will only be required to make a further Grant payment to you in relation to a Funded Service that you have Claimed, but not received payment for, prior to the termination date and you must repay any Grant amount that is required to be repaid to us under clause 9.
   3. This clause 23 does not affect our other rights under this Agreement or at law.
3. Dispute Resolution
   1. The parties agree not to initiate legal proceedings in relation to a dispute relating to this Agreement unless they have tried and failed to resolve the dispute by negotiation.
   2. The parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.
   3. The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

# OTHER LEGAL MATTERS

1. Relationship between the parties
   1. This Agreement does not make you our partner, agent or employee.
   2. You must not misrepresent your relationship with us.
   3. Neither party is authorised to legally commit or represent the other party in any way.
   4. Neither party may attempt to bind or represent the other in any way.
2. Subcontractors
   1. You agree not to Subcontract any of your obligations under this Agreement without first getting our written consent. If we give our consent, we may impose any conditions we consider appropriate, and you must comply with them.
   2. We consent to you Subcontracting part of the Activity to the Subcontractors specified in Item D of the Schedule.
   3. 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.
   4. You agree to ensure that you have a written contract in place with each Subcontractor that is consistent with your obligations under this Agreement and requires the Subcontractor to perform the Activity consistently with the requirements of this Agreement.
   5. You must notify us in writing prior to any Subcontractor ceasing to perform the part of the Activity which we have approved that Subcontractor to perform.
   6. If we give you written notice, you must remove a Subcontractor, and replace such person with another Subcontractor who is satisfactory to us.
   7. If we terminate or reduce the scope of this Agreement under either clause 22 or 23, you must exercise any corresponding right of termination or reduction you have against any of your Subcontractors.
3. Personnel
   1. You must ensure that each member of your Personnel who provides Funded Services to an Eligible Couple under this Agreement is at all times during his or her provision of the Funded Services:
      * 1. highly trained and experienced in providing those Funded Services;
        2. a member of a professional body relevant to the performance of those Funded Services; and
        3. compliant with all other Personnel requirements in the Guidelines.
   2. We may request you to provide us with evidence that a member of your Personnel meets the requirements in clause 27.1 and you must comply with any such request within 10 Business Days of us notifying you of that request.
   3. If we give you written notice, you must remove any Personnel (including Specified Personnel) specified in that notice, and replace that person with other Personnel satisfactory to us.
   4. You must notify us in writing within 5 Business Days after a member of your Specified Personnel becomes unavailable or unable to provide the Funded Services. You may replace that member of your Specified Personnel with another Specified Personnel agreed to by us.
4. Entire agreement
   1. 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.
5. Governing law
   1. This Agreement is governed by the law of the Australian Capital Territory.
6. Variation of this Agreement
   1. This Agreement may only be varied in writing, signed by both parties.
7. Enforcement of part does not prevent enforcement of another part
   1. We are not prevented from enforcing any part of this Agreement merely because:
      * 1. we did not enforce that part on an earlier occasion; or
        2. we do not enforce another part.
8. You must not assign your rights
   1. You must not assign your rights under this Agreement without first getting our written consent.
9. Effect of invalidity of part
   1. 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.
10. Certain clauses continue after this Agreement ends
    1. The termination or expiry of this Agreement, for any reason, does not affect:
       * 1. the continued operation of the following clauses:
            1. clause 6 (Your obligation to keep records);
            2. clause 9 (Repaying the Grant);
            3. clause 10 (GST);
            4. clause 12 (Agreement Material);
            5. clause 14 (Commonwealth Material);
            6. clause 15 (Privacy issues);
            7. clause 16 (Confidential Information);
            8. clause 17 (Access to documents)
            9. clause 19 (Indemnity); or
            10. clause 20 (Insurance); or
         2. the continued operation of any other clauses that by their nature, survive termination or expiry.
11. Priority of documents
    1. If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:
       * 1. the Terms and Conditions;
         2. the Schedule (excluding its annexures);
         3. the Operational Guidelines;
         4. the Additional Requirements in Annexure A to the Schedule;
         5. the Programme Guidelines; and
         6. any other annexures to the Schedule.
12. Notices
    1. A notice under this Agreement is ineffective unless it is in writing.
    2. Also, a notice under this Agreement is ineffective unless it meets the following requirements:
       * 1. where you give it to us - you address it, and forward it, to the address specified in Item G of the Schedule, or as we otherwise direct;
         2. where we give it to you - we address it, and forward it, as specified in Item G of the Schedule, or as you otherwise direct; and
         3. in either case, it is signed by or on behalf of the person giving it.
    3. A notice may be given:
       * 1. by hand delivery; or
         2. by prepaid post; or
         3. by electronic transmission, including by email or by facsimile.
    4. A notice is treated as having been given:
       * 1. if delivered by hand - on delivery to the relevant address;
         2. if sent by post - on delivery to the relevant address, or 5 Business Days after it was posted, whichever is earlier;
         3. if transmitted electronically - when received by the addressee.
    5. You must notify us within 5 Business Days after any change to the details of your contact person specified in the Schedule or the person you have previously notified to us under this clause 36.5.
13. Interpretation: General
    1. In this Agreement:
       * 1. headings are for convenience only and have no effect on interpretation; and
         2. footnotes are for information only and are not part of the Agreement; and
         3. a provision is not to be interpreted against a party merely because that party proposed it.
    2. Also in this Agreement, unless the contrary appears:
       * 1. where a word or phrase has a defined meaning, any grammatical form of that word has a corresponding meaning; and
         2. a reference to any legislation or a legislative provision (whether primary or subordinate) includes a reference to any amendment, substitution or re-enactment of that legislation or provision;
         3. 'includes' in any of its forms is not a word of limitation;
         4. a reference to **$** or **dollars** is a reference to Australian currency;
         5. words importing a gender include any other gender; and
         6. the singular included plural and vice versa.
14. Defined terms
    1. In this Agreement, unless the contrary appears:
       * 1. **we or us** (and grammatical variations such as ours) means the Commonwealth of Australia represented by the department(s) or agency(ies) specified in the Schedule to this Agreement, or any other Commonwealth department or agency who has responsibility for this Agreement from time to time, and includes our officers, delegates, employees, other contractors and agents;
         2. **you** (and grammatical variations such as your) means the legal entity set out in the Schedule, and where the context permits includes your officers, employees, agents, volunteers, Subcontractors, and successors.
    2. Also in this Agreement, unless the contrary appears:

**Activity** means the provision of the Funded Services to an Eligible Couple in accordance with the requirements in this Agreement and the Guidelines.

**Activity Period** means the period specified in Item B of a Schedule during which the Activity must be completed.

**Additional Requirements** mean any additional requirements specified in Annexure A to the Schedule.

**Agreement** has the meaning given in clause 1.1.

**Agreement Material** means:

* + - 1. all Material that you bring into existence in performing this Agreement; and
      2. all Material that is copied or derived from Material referred to in paragraph a,

which you provide, or are required to provide, to the Commonwealth, including us, under this Agreement or by law.

**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.

**Claim** means a claim by you for a Grant payment for a Funded Service that you have provided to an Eligible Couple in accordance with this Agreement.

**Commonwealth Material** means:

* + - 1. any Material that we give you for the purposes of this Agreement; and
      2. all Material uploaded to and/or contained in FOFMS.

**Commencement Date** means the date on which the Agreement was signed by the last party to do so.

**Completion Date** means the date that occurs three months after the Activity End Date.

**Consent** means a written consent from both members of an Eligible Couple to you:

* + - 1. providing the Funded Service under the *Stronger Relationships* trial;
      2. using information about one or both of them in accordance with clause 15.5;
      3. accessing or entering any data about one or both of them in FOFMS; and
      4. making a Claim in respect of the Funded Service that you have provided to one or both of them.

**Eligible Couple** means two people who are in a committed intimate relationship (including engaged, married, de facto and same sex couples) who have registered and received a Reference Number and who meet the eligibility requirements specified in the Guidelines.

**Eligible Provider** means a service provider who meets all of the eligibility requirements specified in the Guidelines to become a member of the Provider Panel.

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

* + - 1. incorporated in the Agreement Material; or
      2. supplied with, or as part of, the Agreement Material; or
      3. required to be supplied with, or as part of, the Agreement Material.

**FOFMS** means our electronic grant management system, which you use to record your performance of, and Claim Grant payments for, the Funded Services.

**Funded Service** means a Service specified in Item B of the Schedule that we have approved you to provide to Eligible Couples as part of the *Stronger Relationships* trial.

**Grant** means all money paid by us to you for your provision of Funded Services to Eligible Couples in accordance with this Agreement.

**Guidelines** means the Programme Guidelines and the Operational Guidelines.

**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:

* + - 1. the right of attribution of authorship; and
      2. the right of integrity of authorship; and
      3. the right not to have authorship falsely attributed.

**Operational Guidelines** means the document entitled ’*Stronger Relationships* trial Operational Guidelines’, as amended by us from time to time.

**Personnel** means your officers, employees, Subcontractors or volunteers.

**Police Check** means a formal inquiry made to the relevant police authority in each Australian State or Territory where you know a 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).

**Programme** meansthe programme, including its objectives, referred to in Item A of the Schedule.

**Programme Guidelines** means the document entitled ‘*Families and Communities: Families and Children Programme Guidelines April 2014*’, as amended by us from time to time.

**Provider Panel** means the panel of providers established by us to facilitate the provision of the Services to Eligible Couples as part of the *Stronger Relationships* trial.

**Reduce** means to reduce the amount of the Service Fee for a Funded Service by $200 including GST. **Reduction** has a corresponding meaning.

**Reduced Fee** means the GST inclusive amount that an Eligible Couple is required to pay you for a Funded Service after the Service Fee for that Funded Service is Reduced.

**Reference Number** means the reference number that an Eligible Couple receives when it registers with us to receive a Service at a Reduced Fee as part of the *Stronger Relationships* trial.

**Schedule** means the schedule to this Agreement that is signed by us and you. It may include annexures and incorporate other documents by reference.

**Service Fee** means the GST inclusive fee you charge for, and to recover costs associated with, the provision of each Funded Service as specified in your Provider Panel application and before any Reduction is applied.

**Service** means a high quality relationship education and relationship counselling service that is able to be Funded as part of the *Stronger Relationships* trial as described in this Agreement and the Guidelines.

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

* + - 1. using, reproducing, adapting or exploiting all or any part of the Agreement Material, with or without attribution or authorship;
      2. supplementing Agreement Material with any other Material; or
      3. using the Agreement Material in a different context to that originally envisaged, but does not include false attribution of authorship.

**Specified Personnel** means any of your Personnel who are required to undertake the Activity or any part of the Activity and are set out in Item E of the Schedule or any Personnel who replace them in accordance with clause 27.

**Subcontractor** means any contractor or organisation who is engaged by you (whether as a member of your consortium or otherwise) to undertake the relevant Activity (and any of that contractor's, person's or organisation's employees, agents and subcontractors). '**Subcontracts**' has a corresponding meaning.

***Stronger Relationships* trial** means the one year trial described in Item B of the Schedule.

**Term of this Agreement** means the period specified in clause 2.1.

**Terms and Conditions** means all clauses of this document.

**Total Value** means, in relation to a Funded Service, the GST inclusive total value of the Funded Service taking account of the Service Fee and the GST inclusive monetary value of any other tangible item you provide to one or both members of an Eligible Couple as part of the Funded Service.