



Australian Government

Department of Education and Training

Note: These grant agreement terms and conditions are subject to change. Each grant agreement is accompanied by a Schedule that will be completed for each project funded under the Community Child Care Fund (Restricted Non-Competitive Grant Opportunity) program. The contents of the Schedule will vary for each project for which a grant is provided.

GRANT AGREEMENT

IN RELATION TO COMMUNITY CHILD CARE FUND

Commonwealth of Australia represented by the
Department of Education & Training

ABN 12 862 898 150

Funding recipient name

Funding recipient ABN, Funding recipient ACN

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SUBJECT TO CHANGE

AGREEMENT

Parties

This agreement is made between and binds the following parties:

1. **Commonwealth of Australia ('Commonwealth', 'Us', 'We' or 'Our')** represented by and acting through the Department of Education & Training, ABN 12 862 898 150 (**'Department'**)
2. **Funding recipient name, funding recipient ABN and ACN/ARBN, funding recipient address ('You', or 'Your')**

Context

- A. We operate the Programme.
- B. You are committed to helping achieve the Objectives of the Programme through Your conduct of the Project.
- C. As a result of this commitment, We agree to support the Project by providing the Funding to You, subject to the terms and conditions of this agreement.
- D. You agree to accept the Funding on the terms and conditions set out in this agreement.

OPERATIVE PROVISIONS

1. Interpretation

1.1. Definitions

1.1.1. In this agreement, unless the context indicates otherwise:

Asset	means any item or property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with the use of the Funding which has a value of over \$5,000 inclusive of GST but excludes any Intellectual Property rights;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Budget	means the budget, if any, set out in item C of Schedule 1;
Business Day	means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place;
CCBY Licence	means a Creative Commons Attribution 4.0 Australia (https://creativecommons.org/licenses/by/4.0/) licence;
Commonwealth Coat of Arms	means the Commonwealth Coat of Arms as set out at <i>It's an Honour – Commonwealth Coat of Arms</i> available at http://www.itsanhonour.gov.au/coat-arms/index.cfm ;
Commonwealth Material	means any Material: a. provided by Us to You for the purposes of this agreement; or b. derived at any time from the Material referred to in paragraph a; and does not include Project Material;
Completion Date	means the day after You have done all that You are required to do under this agreement to Our satisfaction;
Date of this Agreement	means the date written at the top of the signature page of this agreement, and if no date or more than one date is written there, then the date on which this agreement is signed by the last party to do so;
Department	means the Department of Education & Training and includes any

department, agency or authority of the Commonwealth which is from time to time responsible for administering this agreement;

- Depreciated** means the amount representing the same reduced value of an Asset as calculated for income tax purposes under, and in accordance with, the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
- Existing Material** means any Material, except Commonwealth Material, which was in existence before the Date of this Agreement or which is developed independently of this agreement and which is incorporated in, supplied with or as part of, or required to be supplied with or as part of, the Project Material and includes, but is not limited to, Material specified in item K of Schedule 1;
- Funds or Funding** means the amounts (in cash or kind) payable by Us under this agreement as specified in item B of Schedule 1 and includes interest earned on the Funding;
- Guidelines** refers to the guidelines for the Programme, if any, as described in item A of Schedule 1;

SUBJECT TO CHANGES

Intellectual Property	<p>includes:</p> <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, <p>but does not include:</p> <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to confidential information;
Interest	means interest calculated at the general interest charge rate for a day determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth), on a daily compounding basis;
Material	means any thing in relation to which Intellectual Property rights arise;
Milestone	means a stage of completion of the Project as set out in item A of Schedule 1;
Moral Rights	<p>means the following non-proprietary rights of authors of copyright Material:</p> <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
Objectives	means the objectives of the Programme described in item A of Schedule 1;
Our Confidential Information	<p>means Our information that:</p> <ul style="list-style-type: none"> a. is described in item M of Schedule 1; b. We identify, by notice in writing to You after the Date of this Agreement as confidential information for the purposes of this agreement; or c. You know or ought to know by its nature is confidential;
Personal Information	has the same meaning as it has in section 6 of the Privacy Act;
Personnel	means:

	<ul style="list-style-type: none"> a. in relation to You - any natural person who is an officer, employee, agent or professional advisor of You or Your subcontractors; and b. in relation to Us - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of Us;
Privacy Act	means <i>Privacy Act 1988</i> (Cth);
Project Officer	means the person specified (by name or position) in item D of Schedule 1 or any substitute notified to You;
Programme	means the programme specified in item A of Schedule 1;
Project	means the project described in item A of Schedule 1 and includes the provision to Us of the Project Material specified in item A of Schedule 1;
Project Material	<p>means any Material:</p> <ul style="list-style-type: none"> a. created for the purposes of this agreement; b. provided or required to be provided to Us under the agreement; or c. derived at any time from the Material referred to in paragraphs a. or b.; <p>and includes</p> <ul style="list-style-type: none"> d. any Existing Material incorporated in the Material referred to in paragraphs a. to c.; and e. any Reports.
Project Period	means the period specified in item A of Schedule 1 during which the Project must be completed;
Term	refers to the period described in clause 1.4;
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
Records	includes documents, information and data stored by any means and all copies and extracts of the same;
Report	means Project Material that is provided for reporting purposes under clause 8 and as stipulated in item I of Schedule 1;
Specified Personnel	means the Personnel, or people with specific skills, specified in item F of Schedule 1 as required to undertake all or part of the Project;

Term	refers to the period described in clause 1.4;
Undepreciated	means the value of an Asset which has not been Depreciated;
Working with Children Activities	<p>means the performance by You, or for You, or on Your behalf, of any of Your obligations under this Agreement which involves contact, regardless of whether that contact is: In this clause, 'Working with Children Activities' means the performance by You, or for You, or on Your behalf, of any of Your obligations under this Agreement which involves contact, regardless of whether that contact is:</p> <p>(a) supervised or not; and</p> <p>(b) physical or non-physical (including over the internet, via telephone or any other form of communication),</p> <p>with an individual or a group of individuals where the individual, or at least one member of the group, is:</p> <p>(c) under the age of 18 years; or</p> <p>(d) a person who may be unable to take care of themselves, or are unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.</p>
Your Confidential Information	<p>means Your information that:</p> <p>a) is described in item M of Schedule 1; or</p> <p>b) You identify, by notice in writing to Us after the Date of this Agreement as confidential information for the purposes of this agreement.</p>

1.2. Interpretation

- 1.2.1. In this agreement, unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and vice versa;
 - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - d. a reference to a person includes a partnership and a body whether corporate or otherwise;
 - e. a reference to dollars is a reference to Australian dollars;
 - f. a reference to any legislation or legislative provision includes any statutory modification, substitution, re-enactment, or successor of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an item is a reference to an item in a schedule; a reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to this agreement, including as amended or replaced from time to time by agreement in writing between the parties; and
- i. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.2.2. This agreement consists of:

- a. this document;
- b. any schedules;
- c. any annexure or other attachments; and
- d. any document incorporated by reference.

1.2.3. In the event of any conflict or inconsistency between any part of:

- a. the terms and conditions contained in the clauses of this agreement;
- b. the schedules;
- c. the annexure or other attachments, if any;
- d. documents incorporated by reference, if any;

then the material in any one of paragraphs a. to c. above has precedence over the material in a subsequent paragraph, to the extent of any conflict or inconsistency.

1.3. Construction of agreement

1.3.1. This agreement records the entire agreement between the parties in relation to its subject matter.

1.3.2. As far as possible all provisions of this agreement will be construed so as not to be void or otherwise unenforceable.

1.3.3. If anything in this agreement is void or otherwise unenforceable then it will be severed and the rest of the agreement remains in force.

1.3.4. A provision of this agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Term of Agreement

1.4.1. This agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

2. Project

2.1. Your principal obligations

- 2.1.1. You must carry out the Project:
- a. as specified in item A of Schedule 1;
 - b. to achieve the Objectives;
 - c. within the Project Period;
 - d. in accordance with this agreement and any Guidelines; and
 - e. diligently, effectively and to a high standard.
- 2.1.2. You must not act in a way that may bring the Project into disrepute.

3. Funding

3.1. Payment

- 3.1.1. Subject to sufficient funds being available for the Programme, and compliance by You with this agreement (including the requirements specified in item B of Schedule 1) We will provide You with the Funding at the times and in the manner specified in item B of Schedule 1.
- 3.1.2. Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this agreement.
- 3.1.3. We may reduce the amount of Funding payable under this agreement where You:
- a. owe money to Us; or
 - b. have money that You should have, but have not yet, acquitted, under any arrangement with Us (whether contractual, statutory or otherwise).
- 3.1.4. If We exercise Our rights under clauses 3.1.2 or 3.1.3, You must continue to perform any obligations under this agreement, unless We agree otherwise in writing.

3.2. Use of Funding

- 3.2.1. The Funding must be expended by You only for the Project.
- 3.2.2. You must do all things necessary to ensure that all payments from the Funding that You make to third parties (including subcontractors) are correctly made and properly authorised and that You maintain proper and diligent control over the incurring of all liabilities.
- 3.2.3. You must not use the Funds, the agreement or any of Our obligations under the agreement, the Assets or Intellectual Property rights in Project Material:
- a. as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - b. for the preparation of, or in the course of, any litigation.

3.3. Budget

3.3.1. You must only spend the Funding in accordance with the Budget and the conditions specified in item C of Schedule 1.

3.3.2. You must obtain prior written approval from Us for any changes to the Budget.

3.4. Keeping of Funding

3.4.1. You must:

a. ensure that the Funds are held in an account in Your name, and which You solely control, with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia; and

b. if specified in item B of Schedule 1, ensure the account is:

i. established solely to account for and administer, Funding provided by Us to You under this agreement; and

ii. separate from Your other operational accounts;

and

c. on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account.

3.5. Records

3.5.1. You must create and maintain full and accurate financial and other Records relating to the Project including:

a. progress against Milestones;

b. the creation, acquisition and disposal of Assets;

c. the creation of Intellectual Property rights in Project Material;

d. to enable all income and expenditure related to the Project and all interest earned on the Funding to be identifiable and ascertainable in Your accounts;

e. to enable the preparation of financial statements in accordance with Australian Accounting Standards; and

f. to enable the audit of those Records in accordance with Australian Auditing Standards.

3.5.2. You agree to retain the accounts and Records created under clause 3.5 for a period of no less than 7 years after the end of the Project Period.

3.6. Repayments

3.6.1. If, at any time, We determine that:

a. an overpayment has occurred for any reason, including where an invoice is found to have been incorrectly rendered after payment; or

- b. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the agreement to Our satisfaction and the period in which that Funding was expected to be spent or legally committed has passed; or
- c. Funding has not been spent in accordance with the agreement; or
- d. Funding has not been acquitted to Our satisfaction,

then at Our discretion You agree to repay this amount to Us. This amount must be repaid within 20 Business Days of a notice from Us, dealt with as notified by Us or We may offset that amount against any amount subsequently due to You under this agreement or any other arrangement between the parties.

3.7. Debt and Interest

- 3.7.1. You agree to pay any amount owed or payable to Us or which We are entitled to recover from You under this agreement, including any Interest, without prejudice to any other rights available to Us under the agreement, under statute, at law or in equity, at Our discretion, as a debt due to Us by You without further proof of the debt by Us being necessary.
- 3.7.2. If We notify You that an amount is to be refunded or repaid to Us and the amount is not refunded or repaid within 20 Business Days, or as otherwise notified by Us, You agree to pay Interest, unless We notify You otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 3.7.3. In respect to any obligation You may have under this agreement to pay Us Interest, You agree that the Interest represents a reasonable pre-estimate of the loss incurred by Us.

4. Taxes, duties and government charges

- 4.1.1. You agree to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.
- 4.1.2. You agree to allow Us, if in Our sole discretion We choose to do so, to issue You with a recipient created tax invoice for any taxable supply made under this agreement within 20 Business Days of determining the value of the taxable supply to which the recipient created tax invoice relates.
- 4.1.3. If We do not issue You with a recipient created tax invoice within the time period specified in clause 4.1.2, You must as soon as practicable provide us with a tax invoice in relation to that taxable supply.
- 4.1.4. Subject to clause 4.1.3, You must not use a tax invoice in relation to a taxable supply to which a recipient created tax invoice applies.

5. Subcontractors and Specified Personnel

5.1. Subcontractors

- 5.1.1. You must not subcontract the performance of any part of the Project without Our prior written approval.
- 5.1.2. We may impose any conditions We consider appropriate when giving Our approval under clause 5.1.
- 5.1.3. We have approved the subcontracting of the performance of the parts of the Project to the persons, and subject to the conditions (if any), specified in item E of Schedule 1.
- 5.1.4. You are fully responsible for the performance of Your obligations under this agreement, even if You subcontract some or all of Your obligations. Despite any approval given by Us, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this agreement.
- 5.1.5. You must make available to Us (if requested), details of all subcontractors engaged in the performance of the Project.
- 5.1.6. You acknowledge, and must inform all subcontractors that, We may publicly disclose the names of any subcontractors engaged in the performance of the Project.
- 5.1.7. We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with Personnel or another subcontractor acceptable to Us.
- 5.1.8. If we withdraw Our approval of a subcontractor, You remain liable under this agreement for past acts or omissions of Your subcontractors as if they were current subcontractors.
- 5.1.9. You agree, in any subcontract placed with a subcontractor, to reserve a right of termination to take account of Our rights of termination under clause 16 and You agree to make use of that right in the event of termination or revocation by Us.
- 5.1.10. You must not enter into a subcontract under this agreement with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

5.2. Specified Personnel

- 5.2.1. You must ensure that the Specified Personnel will perform work in relation to the Project in accordance with this agreement.
- 5.2.2. If Specified Personnel are unable to perform the work as required under clause 5.2.1, You must notify Us immediately.
- 5.2.3. You must, at Our request acting in Our absolute discretion, remove Personnel (including Specified Personnel) from work in relation to the Project.

- 5.2.4. If clause 5.2.2 or clause 5.2.3 applies, You must provide replacement Personnel acceptable to Us at no additional cost and at the earliest opportunity.
- 5.2.5. If You are unable to provide acceptable replacement Personnel, We may terminate this agreement under clause 16.2.

5.3. Your responsibility

- 5.3.1. You are fully responsible for the performance of the Project and for ensuring compliance with the requirements of this agreement, and will not be relieved of that responsibility because of any:
 - a. involvement by Us in the performance of the Project;
 - b. subcontracting of the Project;
 - c. acceptance by Us of Specified Personnel; or
 - d. payment of any amount of Funding to You.

6. Assets

6.1. Acquisition of Assets

- 6.1.1. You must not use the Funding to acquire or create any Asset, apart from those detailed in item G of Schedule 1, without obtaining Our prior written approval. Our approval may be subject to any conditions We may impose.
- 6.1.2. Unless it is specified in item G of Schedule 1 that We own the Asset then You must ensure that You own any Asset acquired with the Funding. If We own the Asset, clauses 6.3, 6.5.2 and 6.5.3 do not apply.

6.2. Your responsibilities for Assets

- 6.2.1. During the Project Period You must:
 - a. Use any Asset in accordance with this agreement and for the purposes of the Project;
 - b. not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 6 without Our prior written approval;
 - c. safeguard all Assets against theft, loss, damage, or unauthorised use;
 - d. maintain all Assets in good working order;
 - e. maintain all appropriate insurances for all Assets to their full replacement value, noting Our interest in the Asset under this agreement, and provide satisfactory evidence of this on request from Us;
 - f. if required by law, maintain registration and licensing of all Assets;
 - g. be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;

- h. if specified in item G of Schedule 1, maintain an Assets register in the form and containing the details as described in item G in Schedule 1; and
- i. when requested by Us, provide copies of the Assets register to Us.

6.3. Sale or Disposal of Assets

- 6.3.1. If You sell or otherwise dispose of an Asset during the Project Period (which must be with Our prior written consent and subject to any conditions We may impose), the greater of the following proportions forms part of the Funding and must be used for the Activity or is otherwise recoverable as Funding:
- a. the proportion of sale proceeds from the Asset; or
 - b. the proportion of the Undepreciated value of the Asset,
- that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

6.4. Loss, damage etc of Assets

- 6.4.1. If any of the Assets are lost, damaged or destroyed, You must reinstate the Assets including from the proceeds of the insurance and this clause 6 continues to apply to the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this agreement.

6.5. Dealing with Assets

- 6.5.1. On expiry of the Project Period or earlier termination of this agreement We may require You to deal with Assets as We may, at Our sole discretion, direct in writing.
- 6.5.2. Subject to clause 6.5.3, if on expiry of the Project Period or earlier termination of the agreement, an Asset has not been fully Depreciated, We may, by written notice, require You to:
- a. pay to Us within 20 Business Days of the expiry of the Project Period or earlier termination of this agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to Us within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable disposal costs incurred by You) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions notified by the Agency.
- 6.5.3. We may in our sole discretion decide that amounts payable to Us under clause 6.5.2 form part of the Funding.

7. Liaison, monitoring and review

7.1. Liaise and comply

- 7.1.1. You must:
- a. liaise with and provide information to Us as reasonably required and notified by Us; and
 - b. comply with all Our reasonable requests, directions or monitoring requirements.

7.2. Final Evaluation

- 7.2.1. If specified in item H of Schedule 1 You must:
- a. provide all reasonable assistance required by Us;
 - b. respond to all Our reasonable requests; and
 - c. provide any information We reasonably require, in relation to conducting a final evaluation of the Programme.

8. Reporting

8.1. Reporting

- 8.1.1. You must provide Us with Reports in relation to the Project at the times and in the manner specified in item I of Schedule 1.
- 8.1.2. Unless clause 8.1.4 applies, within 20 Business Days (or other period specified in item I of Schedule 1 or as otherwise notified) of the end of the Project Period You must provide Us with:
- a. an audited detailed statement of income and expenditure in respect of the Funding which must include a definitive statement as to whether the financial accounts are true and fair and a statement of the balance of Your account referred to in clause 3.4.1.b.;
 - b. an audit statement that the Funding was expended for the Project and in accordance with this agreement.
- 8.1.3. The audits referred to in clause 8.1.2 must:
- a. comply with the Australian Auditing Standards;
 - b. be carried out by a person who is:
 - i. registered as a company auditor under the *Corporations Act 2001* (Cth), or a member of the Institute of Chartered Accountants in Australia (who is entitled to use the letters CA or FCA), or of CPA Australia (who is entitled to use the letters CPA or FCPA) or the Institute of Public Accountants (IPA) (who is entitled to use the letters MIPA or FIPA); and
 - ii. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of You or of a related body corporate (the terms

'related entity' of You and 'related body corporate' have the same meaning as in section 9 of the *Corporations Act 2001* (Cth)); and

iii. not Your Qualified Accountant.

8.1.4. If You are audited by the Auditor-General or a State or Territory Auditor-General:

- a. for the Term; and
- b. the Funding is included in the income and expenditure which is subject to the audit,

then instead of the audits referred to in clause 8.1.2, You may provide Us with:

- i. a detailed statement of income and expenditure for the Funding which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of Your account referred to in clause 3.4.1.b.; and
- ii. a statement that the Funding was expended for the Project and in accordance with this agreement.

8.1.5. The statements referred to in clause 8.1.4(i) and (ii) must

- a. contain the details, if any, described in item I of Schedule 1;
- b. be certified by Your chief executive officer and the senior executive officer employed by You who has primary responsibility for managing Your audit function; and
- c. be provided to Us within 20 Business Days (or other period specified in item I of Schedule 1 or as otherwise notified) of the end of the Project Period.

9. Intellectual Property

9.1. Use of Commonwealth Material

- 9.1.1. Subject to clause 9.1.4, We grant (or will procure) a royalty-free, non-exclusive licence for You to use, reproduce and adapt the Commonwealth Material for the purposes of this agreement.
- 9.1.2. You must use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in item J of Schedule 1, and any direction from Us including under clause 13.2.
- 9.1.3. You must keep the Commonwealth Material safe.
- 9.1.4. You must not use the Commonwealth Coat of Arms for the purposes of this agreement.

9.2. Intellectual Property in Project Material

- 9.2.1. Subject to this clause 9.2, Intellectual Property in all Project Material vests or will immediately vest in You.
- 9.2.2. Clause 9.2.1 does not affect the ownership of Intellectual Property in:

- a. any Commonwealth Material incorporated into Project Material; or
 - b. any Existing Material.
- 9.2.3. You grant (or will procure for) Us a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Project Material for any Commonwealth purpose.
- 9.2.4. You grant to Us (or must arrange for the grant to Us of) a permanent, irrevocable, free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Intellectual Property rights in the Existing Material, with the exception of commercial off-the-shelf software, for any Commonwealth purpose.
- 9.2.5. If you become aware that We will require a licence for commercial off-the-shelf software in order to exercise our rights under the licences granted under this clause 9.2.5 You must notify Us immediately and provide Us with all the necessary details to obtain a licence over such software including the name, version and manufacturer of the software.
- 9.2.6. You agree that the licence granted in clause 9.2.3 and clause 9.2.4 includes a right for Us to licence the Project Material and Existing Material to the public under a CCBY Licence [see <https://creativecommons.org/licenses/by/4.0/>]. In accordance with the timeframe specified in item A of Schedule 1 for provision of the Project Material, You must provide Us with all author or licensor attribution details in order for Us to comply with the CCBY Licence conditions.
- 9.2.7. You must, on Our request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 9.2.
- 9.2.8. You warrant that:
- a. You are entitled; or
 - b. You will be entitled at the relevant time,
- to deal with the Intellectual Property in the Project Material in the manner provided for in this clause 9.2.
- 9.2.9. If requested by Us, You must provide to Us a copy of the Project Material in the form requested by Us.

9.3. Moral Rights

- 9.3.1. In this clause 9.3:

Permitted Acts means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution or authorship;
- b. supplementing the Project Material with any other Material;

- c. using the Project Material in a different context to that originally envisaged;
- d. releasing the Project Material to the public under a CC BY Licence; and
- e. the acts or omissions, specifically set out in item L of Schedule 1; but does not include false attribution of authorship.

9.3.2. Where You are a natural person and the author of the Project Material, You consent to the performance of the Permitted Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given).

9.3.3. Where clause 9.3.2 does not apply, You must obtain from each author of any Project Material a written consent which extends directly or indirectly to the performance of the Permitted Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to Us.

9.3.4. This clause 9.3 does not apply to any Commonwealth Material incorporated in the Project Material.

10. Disclosure of Information

10.1. Confidential Information not to be disclosed

10.1.1. Subject to clause 10.3:

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

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

10.2. Written undertakings

10.2.1. We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this agreement (including Personnel and subcontractors) to give a written undertaking in a form acceptable to Us relating to the use and non-disclosure of Our Confidential Information.

10.2.2. If You receive a request under clause 10.2 You must promptly arrange for all undertakings to be given.

10.3. Exceptions to obligations

10.3.1. The obligations on the parties under this clause 10 will not be breached if information:

- a. is disclosed by Us to the responsible Minister;

- b. is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- c. is shared by Us within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- d. is authorised or required by law to be disclosed; or
- e. is in the public domain otherwise than due to a breach of this clause 10.

10.4. Period of confidentiality

- 10.4.1. The obligations under this clause 10 continue:
- a. in relation to an item of information described in item M of Schedule 1 - for the period set out in that item;
 - b. in relation to any information identified in writing after the Date of this Agreement as confidential information for the purposes of this agreement - for the period agreed by the parties in writing; and
 - c. in relation to Our information that You know or ought to know by its nature is confidential - until the information is released into the public domain otherwise than by a breach of this agreement.

10.5. General

- 10.5.1. You agree to secure all Our Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 10.5.2. Nothing in this clause 10 limits Your obligations under clause 11 [Privacy], clause 13.3 [Access to Documents] or clause 19.1 [Audit and Access].

11. Privacy

11.1. Interpretation

- 11.1.1. In this clause 11:
- Australian Privacy Principles** has the same meaning as it has in section 6 of the Privacy Act.

11.2. Your obligations in relation to privacy

- 11.2.1. You agree, in providing the Project:
- a. not to do any act or engage in any practice which, if done or engaged in by Us, would be a breach of an Australian Privacy Principle; and
 - b. to comply with any conditions, restrictions or guidelines referred to in, or relating to the matters set out in item N of Schedule 1, to the extent that they are consistent with the Australian Privacy Principles.

- 11.2.2. You agree to notify Us immediately if You become aware of a breach or possible breach of any of Your obligations under this clause 11.

12. Acknowledgement and publicity

12.1. Acknowledgement of support

- 12.1.1. Unless or until notified by Us, You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project, or any products, processes or inventions developed as a result of the Project, acknowledge the financial and other support You have received from Us, in the manner set out in item O of Schedule 1 or as otherwise approved by Us prior to its use.
- 12.1.2. You must ensure that all advertisements, promotional activities and any other public relations matters in relation to this agreement are consistent with the requirements set out in item O of Schedule 1 (if any).

12.2. Right to publicise Funding

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

12.3. No restriction on advocacy

- 12.3.1. For the avoidance of doubt, except to the extent that You are restricted or prevented from disclosing Our Confidential Information or Personal Information, no right or obligation in this agreement is to be read or understood as restricting or preventing Your rights to:
- a. comment on;
 - b. advocate support for; or
 - c. oppose change to:
- any matter established by law, policy or practice of the Commonwealth.

13. Dealing with Copies and Access to Documents

13.1. Interpretation

- 13.1.1. In clause 13.2:

Copy	means any document, device, article or medium in which Commonwealth Material or Our Confidential Information is embodied.
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13.2. Actions at end of agreement

- 13.2.1. You will, on expiration or termination of this agreement, deal with all Copies as directed by Us, subject to any requirement of law binding on You.

13.3. Access to documents

13.3.1. This clause 13.3 applies if this agreement is a 'Commonwealth contract' as defined in the *Freedom of Information Act 1982* (Cth) and 'document' has the meaning given by that Act.

13.3.2. You agree that:

- a. Where We have received a request for access to a document created by, or in the possession of, You or any of Your subcontractors that relates to the performance of this agreement (and not to the entry into the 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; and
- b. You must assist Us in respect of Our obligations under the *Freedom of Information Act 1982* (Cth); and
- c. You must include in any subcontract relating to the performance of this agreement provisions that will enable You to comply with Your obligations under this clause 13.3.

14. Liability

14.1. Proportionate liability regimes excluded

14.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against You under or in connection with this agreement.

14.2. Indemnity

14.2.1. You indemnify Us from and against any:

- a. cost or liability incurred by Us;
- b. loss or damage to Our property; or
- c. loss or expense incurred by Us in dealing with any claim against Us including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by Us,

arising from either:

- d. a breach by You of this agreement; or
- e. an act or omission involving fault on the part of You or Your Personnel in connection with this agreement;
- f. use of the Assets; or

15.2. Costs

- 15.2.1. Each party must bear its own costs of complying with clause 15.1, and the parties must bear equally the cost of any third person engaged under clause 15.1.1.d.

15.3. Continued performance

- 15.3.1. Despite the existence of a dispute, You must (unless required in writing by Us not to do so) continue to perform Your obligations under this agreement.

15.4. Exemption

- 15.4.1. Clauses 15.1 and 15.2 do not apply:
- a. to action by Us under or purportedly under clauses 3, 16.1 or 19.1;
 - b. to action by either party under or purportedly under clause 16.2;
 - c. where an agency or authority of the Commonwealth of Australia, a State or Territory is investigating a breach or suspected breach of the law by You; or
 - d. to legal proceedings by either party seeking urgent interlocutory relief.

16. Termination or reduction in scope of Project

16.1. Termination or reduction with costs

- 16.1.1. We may by notice, at any time and in Our absolute discretion, terminate this agreement or reduce the scope of the agreement immediately.
- 16.1.2. You must, on receipt of a notice of termination or reduction:
- a. stop or reduce the performance of Your obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Project not affected by the notice; and
 - d. immediately return to Us any Funding in accordance with clause 16.1.3.d or deal with any such Funding as directed by Us.
- 16.1.3. In the event of termination or reduction in scope under clause 16.1.1, We will:
- a. be liable only to pay Funding due and owing to You under the payment provisions of the agreement as at the date of the notice of termination; and
 - b. be liable to reimburse any reasonable costs You unavoidably incur relating directly and entirely to the Project and not covered under clause 16.1.3.a;
 - c. not be liable to pay amounts under clause 16.1.3.a and 16.1.3.b which would, added to any payments already paid to You under this agreement, together exceed the Funding set out in item B of Schedule 1; or
 - d. be entitled to recover from You any part of the Funding which:

- i. has not been legally committed for expenditure by You in accordance with the agreement and payable by You as a current liability by the date that the notice of termination is received; or
 - ii. has not, in Our opinion been spent by You in accordance with the agreement.
- 16.1.4. In the event of a reduction in the scope of the agreement under clause 16.1.1, Our liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Project.
- 16.1.5. You will not be entitled to compensation for loss of prospective profits for a termination or reduction in scope under this clause 16 or loss of any benefits that would have been conferred on You.
- 16.1.6. Our liability to pay compensation under or in relation to clause 16.1 is subject to Your compliance with clause 16.1 and Your substantiation of any amount claimed under clause 16.1.3.b.

16.2. Termination for breach

- 16.2.1. If a party is in breach of any of its obligations under this agreement, then the other party - if it considers that the breach is:
 - a. not capable of remedy – may, by notice, terminate this agreement immediately; or
 - b. capable of remedy – may, by notice require that the breach be remedied within 10 Business Days of receiving the notice and, if the breach is not remedied within that time, may terminate this agreement immediately by giving a second notice.
- 16.2.2. We may also by notice terminate this agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if:
 - a. You repeatedly fail to comply with any timeframe under this agreement;
 - b. We are satisfied that, prior to entering into this agreement, You engaged in misleading or deceptive conduct or omitted to provide information to Us in connection with the performance or awarding of this agreement;
 - c. You are unable to pay all Your debts when they become due, or are presumed to be insolvent, or if You are:
 - i. a corporation - come under any form of external administration, or receive a notice, or proceedings are commenced, to dissolve You or cancel Your incorporation or registration, or to place You under any form of external administration;
 - ii. an individual - become bankrupt or enter into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth);
 - d. in relation to the agreement, You breach any law of the Commonwealth, or of a State or Territory; or

- e. You cease to carry on a business relevant to the performance of the Project.
- 16.2.3. Where We terminate this agreement under clauses 16.2.1 or 16.2.2 We:
- a. will only be liable to pay Funding due and owing to You under the payment provisions of the agreement as at the date of notice of termination; and
 - b. will be entitled to recover from You any part of the Funding which:
 - i. is not legally committed for expenditure by You in accordance with the agreement and payable by You by the date that the notice of termination is received; or
 - ii. has not, in Our opinion, been spent by You in accordance with the agreement.

16.3. Preservation of other rights

- 16.3.2. Clause 16.2 does not limit or exclude any of Our other rights under this agreement.

17. Notices

17.1. Format, addressing and delivery

- 17.1.1. A notice under this agreement is only effective if it is in writing, and dealt with as follows:
- a. *if given by You to Us*- addressed to the Project Officer at the address specified in item P of Schedule 1 or as otherwise notified by Us; or
 - b. *if given by Us to You* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in item Q of Schedule 1 or as otherwise notified by You.
- 17.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

17.2. When received

- 17.2.1. A notice is taken to have been received:
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by pre-paid post* - 5 Business Days after the date of posting to the relevant address; or
 - c. *if transmitted electronically* – at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.
- 17.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be received on the next Business Day in that place.

18. Corporate Governance

18.1. Constitution

- 18.1.1. If You are a body corporate, You warrant that Your constitution is not inconsistent with this agreement.
- 18.1.2. You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this agreement.
- 18.1.3. If You amend Your constitution in a way which affects Your ability to comply with this agreement, We may terminate this agreement under clause 16.2.

18.2. Notification

- 18.2.1. You must notify Us within 5 Business Days of the occurrence of any of the events specified in clause 16.2.2.

18.3. Management

- 18.3.1. Unless otherwise agreed by Us in writing at Our sole discretion, You must not employ, engage or elect any person who would have a role in Your management, financial administration, or if notified by Us the performance of the Project if:
 - a. the person is an undischarged bankrupt;
 - b. there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
 - c. the person has suffered final judgment for a debt and the judgment has not been satisfied; or
 - d. subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been convicted of any offence within the meaning of paragraph 85ZM(1) of that Act unless:
 - i. that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
 - ii. the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - iii. the person's conviction for the offence has been quashed.

19. General provisions

19.1. Audit and access

- 19.1.1. You must at all reasonable times give any employee of Us on production of photo identification, or any person authorised in writing by Us:
 - a. reasonable access to:
 - i. Your employees and equipment;
 - ii. premises occupied by You;

- iii. Material; and
 - b. Reasonable assistance to:
 - i. inspect the performance of the Project;
 - ii. locate and inspect Material;
 - iii. make copies of Material and remove those copies, relevant to the Project.
- 19.1.2. The rights referred to in clause 19.1.1 are subject to:
 - a. the provision of reasonable prior notice to You; and
 - b. Your reasonable security procedures.
- 19.1.3. If a matter is being investigated which, in Our opinion or in the opinion of any person authorised in writing by Us, may involve an actual or apprehended breach of the law, clause 19.1.2.a will not apply.
- 19.1.4. The requirement for access specified in clause 19.1.1 does not in any way reduce Your responsibility to perform Your obligations under this agreement.
- 19.1.5. A breach of Your obligations under clause 19.1.1 is, for the purposes of clause **Error! Reference source not found.** [Termination for breach], a breach which is not capable of remedy.

NOTE: There are additional rights of access under the Ombudsman Act 1976 (Cth), the Privacy Act, and the Auditor-General Act 1997 (Cth).

19.2. Insurance

- 19.2.1. You must:
 - a. effect and maintain the insurance specified in item R of Schedule 1; and
 - b. within 10 Business Days of a request by Us, provide proof of insurance acceptable to Us.
- 19.2.2. This clause 19.2 continues in operation for so long as any obligations remain in connection with this agreement.

19.3. Extension of provisions to subcontractors and Personnel

- 19.3.1. In this clause 19.3:
 - Requirement** means an obligation, condition, restriction or prohibition binding on You under this agreement.
- 19.3.2. You must ensure that:
 - a. Your subcontractors and Personnel comply with all relevant Requirements; and
 - b. any contract entered into in connection with this agreement imposes all relevant Requirements on the other party.

- 19.3.3. You must exercise any rights You may have against any of Your subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by Us.

19.4. Conflict of interest

- 19.4.1. In this clause 19.4:

Conflict means any matter, circumstance, interest, or activity affecting You, Your Personnel or subcontractors which may or may appear to impair Your ability to perform the Project diligently and independently.

- 19.4.2. You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Project.

- 19.4.3. If, during the period of this agreement a Conflict arises, or appears likely to arise, You must:

- a. notify Us immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps We reasonably require to resolve or otherwise deal with the Conflict.

- 19.4.4. If You fail to notify Us under clause 19.4.3, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 16.2 [Termination for breach].

19.5. Relationship of parties

- 19.5.1. You are not by virtue of this agreement an officer, employee, partner or agent of Ours, nor do You have any power or authority to bind or represent Us.

- 19.5.2. You must not:

- a. misrepresent Your relationship with Us; or
- b. engage in any misleading or deceptive conduct in relation to the Project.

- 19.5.3. You must ensure that Your officers, employees, partners and agents do not represent themselves as being an officer, employee, partner or agent of Ours.

19.6. Waiver

- 19.6.1. A failure or delay by a party to exercise any right or remedy it holds under this agreement or at law does not operate as a waiver of that right.

- 19.6.2. A single or partial exercise by a party of any right or remedy it holds under this agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

19.7. Variation

- 19.7.1. A variation of this agreement is binding only if agreed in writing and signed by the parties.

19.8. Assignment and Novation

- 19.8.1. You cannot assign Your obligations, and must not assign Your rights, under this agreement without Our prior written approval.
- 19.8.2. You must not negotiate with any other person to enter into an arrangement that will require novation of Your rights or obligations under this agreement without first consulting Us.

19.9. Survival

- 19.9.1. Unless the contrary intention appears, the expiry or earlier termination of this agreement will not affect the continued operation of any provision relating to:
- a. repayments;
 - b. reporting;
 - c. licensing of Intellectual Property;
 - d. confidentiality;
 - e. security;
 - f. privacy;
 - g. dealing with copies;
 - h. Records;
 - i. audit and access;
 - j. an indemnity;
 - k. acknowledgement and publicity;
 - l. rights or obligations following termination or expiry of the agreement;
- or any other provision which expressly or by implication from its nature is intended to continue.

19.10. Compliance with Laws and Our Policies

- 19.10.1. You must, in carrying out Your obligations under this agreement, comply with:
- a. any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
 - b. any of Our policies notified by Us to You in writing, including those listed in item S of Schedule 1.

19.11. Working with children checks

- 19.11.1. You must not involve a person in Working with Children Activities in connection with the Activity unless:
- (a) the person is not prohibited by law from being employed or otherwise involved in Working with Children Activities; and
 - (b) You and the person have complied with all legal requirements which apply to the person's employment or engagement in Working with Children Activities, and if the Activity, or any part of the Activity, takes place in a jurisdiction which does not have legislation in force that regulates the engagement of persons involved in Working with Children Activities, You must not involve a person in Working with Children Activities in connection with the Activity in that jurisdiction unless:
 - (c) You have undertaken a criminal record check of the person through the Australian Federal Police; and
 - (d) having regard to the criminal record check referred to in paragraph (c) and any other relevant information about the person of which You are aware, You are satisfied that the person is a suitable person to be involved in Working with Children Activities.
- 19.11.2. If You fail to comply with this clause, We may at Our sole discretion immediately terminate this Agreement in accordance with clause 16.

19.12. Applicable law

- 19.12.2. This agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 19.12.3. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.