

# Long Day Care Services – Service Agreement: Standard Terms

**Version 1.2**

17 December 2024

**PLEASE NOTE:**

The Service Agreement comprises two parts:

1. **Funding and Service Details**
2. **Standard Terms**

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## BACKGROUND

- A. The Queensland Government administers various funding programs across a range of social service areas.
- B. These terms are standard terms upon which funding is granted under social service programs administered by the Queensland Government.
- C. The relationship between You and Us is one of mutual respect. The parties have a shared goal to ensure the delivery of quality and effective services, to work collaboratively and constructively and in a spirit of goodwill, while acknowledging the requirement for accountable, responsible and effective expenditure of public monies.

## 1. Service Agreement – general provisions

### 1.1 Terminology

- (a) In the Service Agreement, certain words and phrases have defined meanings. They are indicated by capital letters (e.g. Funding).
- (b) Definitions of words or phrases used in the Service Agreement, including these Standard Terms, are in clause 31.
- (c) Some words or phrases that are used only in the Funding and Service Details are defined in that document.

### 1.2 Service Agreement terms

- (a) The Service Agreement sets out the terms and conditions on which We will provide Funding to You and on which You must deliver Services. The Service Agreement is comprised of:
  - (i) the Funding and Service Details, which:
    - A. contain terms about Funding and Services that relate to the type of Funding and Services; and
    - B. incorporate Funding Schedules, which contain some specific terms about particular Funding and Services; and
  - (ii) these Standard Terms, which contain general terms that apply to Funding and Services.
- (b) The Funding and Service Details may also specify or refer to documents, specifications, guidelines, policies or standards that You must comply with, meet or have regard to in relation to particular Funding or Services.
- (c) The Service Agreement also includes any document that the parties may sign from time to time, varying or extending it, including any variation agreement referred to in clause 2.2.
- (d) New versions of these Standard Terms may be issued from time to time. You will be notified in writing about any such new version and the date that it is to take effect from and, from the date stated in the notice, the new version will apply to all Funding and Services under the Service Agreement, including Funding already provided, or agreed to be provided, to You as at that date. This will not limit or affect any right of action or remedy that has accrued as at the date the new version of these Standard Terms takes effect.

### 1.3 Order of precedence

If, in relation to any Funding or Services, there is any ambiguity in or inconsistency between the documents comprising the Service Agreement, the following order of precedence will apply to resolve the ambiguity or inconsistency:

- (a) the Funding and Service Details, excluding the relevant Funding Schedule;
- (b) the Special Conditions (if any);
- (c) these Standard Terms; and
- (d) the Funding Schedule.

### 1.4 Term of Service Agreement

The Service Agreement will commence on the Agreement Commencement Date and, unless terminated earlier, will continue until the Agreement Expiry Date.

## WHAT WE MUST DO

### 2. Our obligations

#### 2.1 General

- (a) We will pay the Funding to You in a timely and accountable manner consistent with any relevant Funding Schedule.
- (b) Our obligation to provide the Funding to You will start at the Schedule Start Date and will stop at the earlier of:
  - (i) the Schedule End Date or the Agreement Expiry Date;
  - (ii) termination of the Funding Schedule, or relevant part of the Funding Schedule; or
  - (iii) termination of the Service Agreement.
- (c) When a Funding Schedule expires, then, subject to clause 2.1(d), the Funding Schedule will automatically be severed from the Service Agreement. To the extent that there are any unspent Funds after expiration of any Funding Schedule, if We exercise Our discretion not to request return of those Funds pursuant to clause 7.3, You must use those Funds for the Funded Purpose and Accepted Use as specified in the relevant Funding Schedule, whether or not the term of that Funding Schedule has expired.
- (d) The expiry or termination of a Funding Schedule or the Service Agreement will not affect any right of action or remedy that has accrued as at the date of expiry or termination.

#### 2.2 Additional Funding

- (a) During the Term, We may provide additional Funding to You. Additional Funding may be provided under an additional or replacement Funding Schedule added to the Service Agreement by, or a variation to a Funding Schedule described in, a variation agreement signed by both parties in accordance with clause 8.1(a).

## 2.3 Our conduct

- (a) We will liaise and work collaboratively with You to:
  - (i) improve Our knowledge base of service delivery practice and outcomes;
  - (ii) ensure effective expenditure of public monies; and
  - (iii) monitor, review and evaluate the Services.
- (b) We will provide You with current information, including relevant government policies, procedures and guidelines, applicable to the use of the Funding and delivery of the Services.
- (c) We are subject to the *Information Privacy Act 2009 and the Right to Information Act 2009*.

# WHAT YOU MUST DO

## 3. Use of Funding and delivery of Services

### 3.1 General

- (a) You must:
  - (i) use the Funding and deliver the Services strictly in accordance with the Service Agreement;
  - (ii) comply with any policies notified to You by Us;
  - (iii) promptly notify Us of any relevant matters that You reasonably think might affect Your ability to deliver any of the Services or meet Your obligations under the Service Agreement;
  - (iv) comply with any legislation and requirements of any Commonwealth, State, Territory or local authority in relation to the Funding, the Services and the Service Agreement, including a Governing Act; and
  - (v) obtain and maintain all permits, registrations and licences required to be taken out in connection with Your performance of the Services.
- (b) You are responsible for ensuring compliance with Your obligations under the Service Agreement, despite:
  - (i) any assistance We may provide, including under clause 4.2;
  - (ii) any payment to You, or withholding of payment, by Us;
  - (iii) any arrangement under which any of the Services are delivered under Your auspices; or
  - (iv) any subcontracting of the Services.
- (c) Where You receive the Funds on behalf of another entity as specified in a Funding Schedule, including a LDC Service or LDC Services, You must use those gross funds for an Accepted Use and Funded Purpose for the exclusive benefit and use of that particular LDC Service. Any retention or use of Funds by You for some other purpose, or application of Funds that is inconsistent with the Funded Purpose or Accepted Use, will be a breach of the Service Agreement.

### 3.2 Service commencement and delivery

- (a) You must:
  - (i) start delivering the Services by no later than the Schedule Start Date or, if an Establishment Date is specified, by the Establishment Date, except where otherwise agreed or notified by Us;
  - (ii) continue delivering the Services until the Schedule End Date;
  - (iii) comply with the Service Delivery Requirements;
  - (iv) deliver or achieve the Deliverables; and
  - (v) advise Us if a LDC Service for which You have received the Funding on behalf of or the benefit of ceases to operate or otherwise meet any eligibility requirements or conditions upon which the Funding was granted for.
- (b) If any of the Services are to cease to be delivered, including because a Funding Schedule expires or is terminated or the Funding is suspended, You must:
  - (i) cooperate with Us, if We require, in relation to:
    - A. the process that You will employ to cease those Services;
    - B. the continuity of those Services to the Service Users; and
    - C. handling of records and information in relation to those Services; and
  - (ii) comply with any notice that We give You about the transfer or disposal of any Funded Assets; and
  - (iii) comply with any notice or direction We give You about any unspent Funds,
- (c) You must not cease or change any of the Services without Our prior written approval.

### 3.3 Your conduct

- (a) You must conduct all activities that comprise the Services diligently, effectively and in a professional manner, including by:
  - (i) delivering the Services without coercion and in a manner that promotes the privacy, dignity, self-esteem and independence of Service Users;
  - (ii) providing Service Users with access to and assistance with the Services on the basis of need, but otherwise on a non-discriminatory basis, except where the Services are delivered to meet the needs of specific Service Users; and
  - (iii) ensuring that Funds are used and applied for a Funded Purpose and for an Accepted Use of those Funds as contained within the relevant Funding Schedule.
- (b) You must collaborate and coordinate with other community organisations and government agencies within the service system in which Your organisation is operating with a view to delivering the most effective Services for the overall benefit of Service Users.

### 3.4 Your dispute resolution and complaints

- (a) You must:
  - (i) have and comply with a dispute resolution procedure for disputes between You and Service Users concerning any of the Services and You must make the procedure available to all Service Users;
  - (ii) keep and implement a document outlining Your procedure for dealing with complaints that any person may make about any of the Services and make it available for viewing by any person on request; and
  - (iii) advise any person who makes a complaint about any of the Services that they may complain to Us or a complaints agency if they are not satisfied with the outcome of the complaint.
- (b) You must not discontinue or reduce any of the Services, or otherwise take retaliatory action, because a person makes a complaint to You about any of the Services, provided that this does not preclude You from taking action as necessary to ensure safety and prevent harm to Service Users and others that may come to Your notice through the lodgement of the complaint.

## 4. Other obligations

### 4.1 Liaison with Our Contact Officer

You must:

- (a) communicate with and provide information to Us as We may require; and
- (b) comply with all of Our requests, directions, and monitoring requirements to Our satisfaction.

### 4.2 Monitoring of the delivery of Services

- (a) Both parties agree to meet or make contact during the Term for the purposes of monitoring the delivery of the Services and assisting You to perform Your obligations under the Service Agreement, which may include visits by Us to Your premises or the premises of LDC Services, and access by Us to Your records or the records of the LDC Service, wherever they are located.
- (b) We can, at any time, conduct a review of any of the Services, including services provided by the LDC Services for which they receive Funding, to assess service or program effectiveness or supporting improvements in the delivery of those Services. The review may include gathering and analysing information about the Services, including services provided by the LDC Services for which they receive Funding, for the purpose of assessing the functioning and effectiveness of the Services or any system or program associated with the Services.
- (c) You must make available to Us all information and documents that We request for the purpose of clauses 4.2(a) or (b) and warrant that such information and documents are true and correct to the best of Your knowledge.

*Note: A review under clause 4.2 is separate from a Performance Review conducted under clause 12.1*

### 4.3 Your employees

All personnel that You employ in any capacity are Your responsibility. You will be responsible for payment of all wages and entitlements to Your employees.

#### 4.4 Your financial viability

During the Term, You must not incur a level of financial indebtedness or financial difficulty such that, in Our opinion, You will not be able to comply with Your obligations under the Service Agreement.

#### 4.5 Notifications

##### *Changes*

- (a) You must notify Us of any changes to Your details in the Funding and Service Details in the way We require.

##### *Other funding received by You*

- (b) If You receive other funds from either the Commonwealth Government, another State Government department or authority or any other entity providing funds for meeting the costs of:
  - (i) any of the Services; or
  - (ii) other services or activities that are of a similar nature to any of the Services,

You must notify Us of the amount and purpose of the additional funds received, unless We state otherwise.

##### *Notifying alleged misconduct*

- (c) If You are, or become, aware of an allegation that raises a reasonable suspicion of misconduct or dishonesty of a serious nature relating to the use of the Funding or the operation of the Services, including an allegation of an offence liable to imprisonment against You or Your Related Bodies Corporate of employees, volunteers, agents or subcontractors or a LDC Service then You must immediately notify Us if:
  - (i) the allegation involves misconduct or dishonesty concerning You or the LDC Service; and
  - (ii) in all cases, report the allegation to a relevant authority such as the Queensland Police Service and notify Us when You have reported it.

##### *Notifying major incidents*

- (d) You must notify Us within 1 Business Day after You become aware of:
  - (i) an incident that affects or is likely to affect the delivery of any of the Services;
  - (ii) an incident that relates to any of the Services or Service Users and that requires an emergency response including fire, natural disaster, bomb threat, hostage situation, death or serious injury, or threat of death or serious injury, of any person or any criminal activity;
  - (iii) an incident that may relate to any Service Users subject to interventions by Us, staff and carers; or
  - (iv) a matter where significant media attention has occurred or is likely to occur.

##### *Notification of amendment*

- (e) You must notify Us of any amendment to Your Constitution within 20 Business Days after the amendment is made.



#### 4.6 Cultural accessibility

- (a) You must ensure that the Services are culturally accessible to Aboriginal and Torres Strait Islander peoples and to people from culturally and linguistically diverse backgrounds, recognising the diversity of needs of people, including specific needs, from urban, regional and remote areas.
- (b) Where the target group for the Services is Aboriginal and Torres Strait Islander peoples, You must, if We request, provide evidence to Our satisfaction that individuals, families, cultural custodians, clan and language groups, community organisations, communities or representatives deemed appropriate by the community to which the Services are being delivered, are engaged in the design, delivery and evaluation of programs and the Services to ensure they are appropriate to local community and cultural needs.

### 5. Your reporting obligations

#### 5.1 Reporting Requirements and other information

- (a) You must comply with the Reporting Requirements, including data required to be submitted through the Application Programming Interface (API) via any applicable software programs.
- (b) You must participate in any Australian Early Development Census and the Early Childhood Education and Care Services Census issued to You. A failure to participate will be treated as a failure to comply with a Reporting Requirement.
- (c) You must promptly:
  - (i) respond to any of Our requests for information on fee information and fee structure in relation to any LDC Service; and
  - (ii) advise Us in writing of any changes (whether an increase or decrease to the fee structure),
- (d) A failure to comply with clause 5.1(c) will be a failure to comply with a Reporting Requirement and will be a breach of the Service Agreement and will entitle Us to:
  - (i) transition You from Free Kindy Funding to Per Capita Subsidy Funding as the case may be; and
  - (ii) enforce any other rights for the breach in connection with the Service Agreement.
- (e) We may, by giving You notice, require that You provide some or all of the reports specified in the Reporting Requirements more or less regularly than stated in the Reporting Requirements.
- (f) You must keep proper records and provide such records, reports or other information to the Us in compliance with the Reporting Requirements and any Funding Schedule as requested by Us. You must:
  - (i) make available to, or provide Us with access to, copies of any records or other information relating to the Service Agreement, Funding or the Reporting Requirements which may be required by Us within a reasonable time of any request; and
  - (ii) participate promptly and cooperatively in any external or internal review or audits conducted or instigated by the Us, another Queensland government department or agency, the Queensland parliament or any other review or audits conducted or instigated by government.

- (g) A notice that We give You under clauses 5.1(b) or (c) need not be in any specified form but must state:
  - (i) in the case of a notice under clause 5.1(b), the relevant reports and how regularly You must give them to Us; and
  - (ii) in the case of a notice under clause 5.1(c):
    - A. the information We require;
    - B. the way that We require You to provide the information; and
    - C. the time within which You are required to provide the information.
- (h) If We require information under clause 5.1(c), You must provide that information to us within the timeframe specified in the notice.

## **5.2 Standard of reporting and method of lodging**

All reports and information provided by You under the Service Agreement, including under the Reporting Requirements, must be:

- (a) true and accurate in all respects;
- (b) of a standard and in a format acceptable to Us; and
- (c) provided to Us electronically via the reporting system specified as part of the Reporting Requirements or by such other method as specified in any notice given to You under clause 5.1(c) or as otherwise notified to You by Us from time to time.

## **5.3 Failure to comply with Reporting Requirements or provide information**

Without limiting any other provision of the Service Agreement, if You fail to comply with any Reporting Requirement or to provide information required under clause 5.1(c):

- (a) We may withhold any further Funding due and payable to You until you comply with a Reporting Requirement;
- (b) We may recover any Funds paid to You in accordance with a Funding Schedule which relate to that Reporting Requirement; and
- (c) We are entitled to exercise our discretion to consider a failure to comply with Reporting Requirements as an adverse reason not to provide additional funding or future Funding to You.

# **ABOUT THE FUNDING**

## **6. Payment of Funding**

### **6.1 Mechanism for payment**

- (a) We will provide the Funding to You in accordance with the Funding Schedule.
- (b) We may withhold any instalment or payment of the Funding if You have not complied with any obligation under the Service Agreement, whether or not that non-compliance amounts to a breach of the Service Agreement, including Your obligation to comply with the Reporting Requirements.

## 6.2 Changes to the amount and timing of instalments

- (a) We may vary:
  - (i) the timing of instalments in relation to the Funding (and therefore the timing and amount of each subsequent instalment of the Funding); or
  - (ii) the periods and dates stated in the Service Agreement, either generally or in relation to particular Funding.
- (b) We will give You 7 Business Days notice of any such variation.

## 6.3 Applying for an emergency advance of Funding

- (a) In the case of an emergency, You may make a written request for an instalment of the Funding in advance.
- (b) We may request any additional information from You before deciding whether to advance an instalment of the Funding to You under clause 6.3(a).
- (c) We have discretion to determine whether We will grant an advance of Funding under this clause, and nothing in this Service Agreement requires Us to provide any advance of Funding.
- (d) For the avoidance of doubt, an application for an emergency advance of Funding should be applied for as a last resort and only after You have exhausted all other available funds and measures.

## 6.4 Future Funding

You acknowledge and agree that We are under no obligation to provide the Funding to You beyond the expiration or termination of the Funding Schedule or the Service Agreement.

# 7. Administration and expenditure of Funding

## 7.1 Your use of Funding

- (a) You must use the Funding only:
  - (i) to deliver the Services specified in the Funding Schedule, unless otherwise approved by Us in writing;
  - (ii) in accordance with the Funding Schedule and the requirements of a Governing Act;
  - (iii) within any time period stipulated in the Funding Schedule, or elsewhere in the Service Agreement, for expenditure of the Funding; and
  - (iv) for a Funded Purpose and an Accepted Use.
- (b) You must not, without Our prior written approval, use the Funding to:
  - (i) provide security for any purpose;
  - (ii) make a loan or gift for any purpose;
  - (iii) pay sitting fees to directors, management committee members, members of Your organisation or any other person;

- (iv) make payments that are inconsistent with the Services specified in the Funding Schedule; or
- (v) make payments for the benefit of another person including You or Your Related Bodies Corporate, unless expressly authorised by the Funding Schedule.
- (c) If You use the Funding for a purpose or use other than those permitted under the Service Agreement, or as otherwise approved by Us, then, without limiting any other rights We may have, We may notify You that You are required to repay the Funding that has been so spent, used or applied, within the period stated in the notice, which will be not less than 10 Business Days. This amount will be a debt due and owing to Us by You.
- (d) If You use the Funding to provide cash cheques or cash advances then You must keep a record of the date, amount, recipient and purpose of any cash cheque that You issue or cash advance that You make.
- (e) You must ensure the Funding is held in an account (being an interest- bearing 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 identify the receipt and expenditure of the Funding separately within Your accounts and records so that the Funding is identifiable at all times.
- (f) Where You receive the Funding, wholly or partly, to employ staff and are bound by a registered industrial instrument requiring the payment of termination or redundancy payments in appropriate circumstances, the Funding may only be used for termination or redundancy payments if:
  - (i) the Funding is stopped due to circumstances stated in clause 15.1; or
  - (ii) You have obtained Our prior written approval.
- (g) The Funding may be used to obtain and maintain permits, registrations and licenses required to be taken out in connection with Your performance of the Services specified in the Funding Schedule if this is consistent with the Funded Purpose and the Accepted Use of the Funding.

## 7.2 Earnings and Indexation

- (a) You must use and deal with any money earned by You from:
  - (i) interest on the Funding; or
  - (i) the operation of the Services (for example fees, rent, board, service charges), as if the money earned was part of the Funding provided to You,

such that these monies must be applied for an Accepted Use and a Funded Purpose under the relevant Funding Schedule and not otherwise retained by You or Your Related Bodies Corporate unless expressly authorised by a Funding Schedule or Us.

- (b) Subject to this clause 7.2, the Fund amounts are subject to periodic indexation at Our discretion. We may adjust the Fund amount by notice to You once per year. A notice under this clause must be given no later than 15 June in any year, and the adjustment will take effect from the next 1 July of that year.
- (c) The maximum increase to the Fund amount by the Queensland Government approved indexation rate for payments to non-Government Organisations is:
  - (i) the percentage change in the CPI since the last adjustment under clause 7.2(b); or

- (ii) in the case of the first adjustment under this clause, since the date of this Service Agreement.
- (d) Where the Fund amount is increased by the effect of clause 7.2(b):
  - (i) any increase to the Fund amount must be used for the Funded Purpose and Accepted Use; and
  - (ii) the benefit of the increase is not to be retained by You or Your Related Bodies Corporate unless expressly authorised; and
  - (iii) where the Funded Purpose or Accepted Use is for the Funds to reduce the Out of Pocket Costs of Eligible Children, You must pass on the benefit of the increase to proportionally further reduce such Out of Pocket Costs.

### **7.3 Unspent amounts**

If You provide a report or other information in accordance with clause 5 which shows that any part of the Funding for the previous period is unspent by You, then We may:

- (a) authorise You in writing to retain the unspent Funding and to expend some or all of it for the Funded Purpose and Accepted Use pursuant to the Funding Schedule under which the Funds were provided, or otherwise at Our discretion and by Our written consent for some other approved purpose, on terms and conditions specified by Us;
- (b) reduce a future payment or instalment of the Funding to take account of the unspent Funding; or
- (c) notify You that You are required to repay the unspent Funding to Us, which will constitute a debt due and owing to Us in accordance with clause 7.6.

### **7.4 Remaining part of Funding held by You**

- (a) If, at the expiration of the Funding Schedule or the Service Agreement, any of the Funding has not been spent by You, We may:
  - (i) otherwise exercise our rights and entitlements under clause 7.6; or
  - (ii) authorise You to retain the unspent Funding and to expend some or all of it for the Funded Purpose and Accepted Use pursuant to the Funding Schedule under which the Funds were provided to You, or otherwise at Our discretion and by Our written consent for some other approved purpose on terms and conditions specified by Us.
- (b) We will only require You to repay the unspent Funding under clause 7.4(a)(i) after following any applicable show cause process required under a Governing Act.

### **7.5 Accountability for Funding**

You must maintain separate and readily identifiable ledger accounts to record Your receipt and expenditure of the Funding.

### **7.6 Recovery of Funding**

- (a) If:
  - (i) You commit any breach of the Service Agreement; or

- (ii) there is unspent Funding at the earlier of the Service Agreement Expiry Date or termination; or
- (iii) You use the Funding for a purpose other than the Funded Purpose under the Service Agreement and the relevant Funding Schedule; or
- (iv) You use, apply or otherwise spent the Funding other than for an Accepted Use under the Service Agreement and the relevant Funding Schedule; or
- (v) Funding is otherwise terminated or suspended with notice in accordance with the Service Agreement,

We are entitled to terminate the Service Agreement and recover the Funding amount paid to You as a debt due and immediately payable to Us from the date of such termination (including under the CSA).

- (b) We will issue You with written notice of Our intention to recover the Funding as a debt due and immediately payable.
- (c) Where You delay payment of a debt due and immediately payable under the Service Agreement to Us, You will be liable to pay Us interest on the debt at the interest rate as calculated in accordance with this clause.
- (d) The interest rate payable under this clause:
  - (i) is calculated as 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia;
  - (ii) accrued from day to day from and including the date that the Service Agreement is terminated up to the actual date of payment of the debt, as an additional and independent obligation;
  - (iii) may be accrued at monthly intervals; and
  - (iv) becomes payable on Us making written demands to that effect.
- (e) The right to recover Funding as a debt or the right to charge interest on the debt does not affect or prejudice any other rights or remedies that We may have in relation to a default by You, including our right to terminate the Service Agreement or seek damages at common law or statute.
- (f) In addition to the above, We are entitled and authorised to deduct or set-off from any payment or future Funding due to You and pay a reduced amount in respect of any claim under the Service Agreement or any amount owed to Us by You including for unspent Funds or money owing pursuant to the Service Agreement.

## 8. Varying the Services or Funding

### 8.1 Variation to Services or Funding

The parties acknowledge that:

- (a) The Service Agreement, or any part of it, may be varied by a variation agreement signed by an authorised representative of Ours and Yours. For the avoidance of doubt, emails between the parties are not an authorised variation; and

- (b) a variation which reduces or increases the scope of the Services may result in a reduction of or increase in (as the case may be) the amount of, or any future instalment of, the Funding.

## 8.2 Increase in Funding

We may increase the Funding from time to time without a variation to the Service Agreement, provided that:

- (a) We will notify You about any such increase and the relevant Funding Schedule will be deemed varied in accordance with the notice; and
- (b) a formal variation to the Service Agreement will be required where new or expanded Services are to be provided by You in connection with the increase in the Funding.

## 9. GST

### 9.1 Definitions

- (a) "GST" means a goods and services tax imposed by or through the GST Legislation;
- (b) "GST Amount" means the amount of GST payable in respect of any taxable supply under the Service Agreement, calculated at the rate of GST applicable at the time; and
- (c) "GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition law (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any such laws.

### 9.2 GST

- (a) Unless expressly included, the consideration for any supply made under or in connection with the Service Agreement does not include an amount of GST in respect of the supply ("GST Exclusive Consideration") except as provided under this clause.
- (b) Any amount referred to in this Service Agreement which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (c) To the extent that GST is payable in respect of any supply made by a party ("Supplier") under or in connection with the Service Agreement, the consideration to be provided under this Service Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market rate if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (d) The recipient must pay the additional GST amount payable to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (e) The recipient and the supplier declare that this agreement relates to the supplies outlined in clause 3 and 6.
- (f) The recipient can issue tax invoices in respect of these supplies and issue adjustment notes in respect of recovery of funding. The supplier will not issue tax invoices in respect of these supplies.
- (g) The supplier acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered.

- (h) The recipient acknowledges that it is registered for GST and that it will notify the supplier if it ceases to be registered.
- (i) Acceptance of a recipient created tax invoice ("RCTI") constitutes an acceptance of the terms of this written agreement.

## 10. Your acknowledgment of Funding

- (a) You must ensure that the Funding is acknowledged in Your annual report (if You produce an annual report) and promotional materials relating to the Services.
- (b) Any acknowledgement in promotional material about the Services must use an acknowledgement logo which You must obtain from Us.

# ASSETS

## 11. Assets

### 11.1 Purchase of Assets

- (a) Where a Funding Schedule specifies that one-off Funding is provided for the purchase of a specific Asset, the Funding may only be used for the purchase of that Asset.
- (b) The Funding may not be used in any circumstances for the purchase of major capital assets, like land or buildings.
- (c) Where a Funding Schedule specifies that an Accepted Use of the Funding includes the purchase of an Asset, the Funding may be used for the purchase of that Asset and this clause 11 applies in addition to any other obligations imposed for the purchase of that Asset by any other term of the Service Agreement.

### 11.2 Ownership of Funded Assets

You must be the legal and beneficial owner of any Funded Asset.

### 11.3 Your obligations regarding all Funded Assets

In relation to any Funded Asset, You must:

- (a) only use the Funded Asset for delivering the Services specified in the Funding Schedule and for a Funded Purpose, unless We approve otherwise in writing;
- (b) keep the receipts evidencing the expenditure of the Funding to purchase the Funded Asset and provide a copy of any such receipts to Us upon request;
- (c) not encumber, use as a security or deal with the Funded Asset other than in accordance with the Service Agreement, unless We approve otherwise in writing;
- (d) hold the Funded Asset securely and put in place reasonable safeguards against theft, loss, damage or unauthorised use;
- (e) maintain the Funded Asset in good working order;
- (f) if required, maintain registration and licensing of the Funded Asset;



- (g) comply with any request from Us concerning the Funded Asset, including in relation to any registration of Our interest in it under a Specific Security Agreement, if required by Us;
- (h) comply with any direction that We give You about the transfer or disposal of the Funded Asset under clause 3.2(b)(ii);
- (i) be fully responsible for, and bear all risks relating to, the purchase, use or disposal of the Funded Asset; and
- (j) if applicable, adequately insure the Funded Asset.

#### 11.4 Specific Security Agreements

- (a) In relation to any Funded Asset, We may require a Specific Security Agreement to be signed by You.
- (b) If We require a Specific Security Agreement to be signed:
  - (i) We will provide to You two copies of the Specific Security Agreement;
  - (ii) You must sign the Specific Security Agreement that We provide and return a signed original copy of it to Us; and
  - (iii) We will be entitled to register the Specific Security Agreement and, if We do so, We will pay any registration fees.

#### 11.5 Requirements about certain Funded Assets

- (a) In relation to any Funded Asset that has a purchase price or market value of more than \$5,000 and a useful life greater than one year:
  - (i) You must record the following information about the Funded Asset in a register:
    - A. the Services it will be used to deliver;
    - B. a description of it, including model and engine number (if a vehicle);
    - C. the date of purchase and the name of the supplier;
    - D. the purchase or acquisition price;
    - E. the depreciation rate (prime cost or diminishing value) as provided under relevant sections of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
    - F. its effective or useful life; and
    - G. its written down or book value; and
  - (ii) You must not sell, lease, mortgage, destroy, part with possession of or give it away, without Our prior consent, before the Schedule End Date, provided that this clause 11.5(a)(ii) will not apply to any Funded Asset that is the subject of a Specific Security Agreement.
- (b) If You breach clause 11.5(a)(ii), then the greater of:

- (i) the amount of any proceeds that You receive; and (ii) the value of the Funded Asset at the time of the breach, will be a debt due and owing to Us.
- (c) If a Funded Asset is sold during the Term, You must use Your best endeavours to achieve a fair market value for the sale and, if directed by Us, either:
  - (i) apply sale proceeds only for the Services that the Funded Asset was used to deliver; or
  - (ii) pay the proceeds of the sale to Us.

## PERFORMANCE REVIEW AND AUDIT ACCESS

### 12. Performance review and audit access

#### 12.1 Performance review

- (a) We can, at any time, conduct a Performance Review. Where We consider it appropriate, We will involve You in any Performance Review.
- (b) A Performance Review may include gathering and analysing information about the Services or LDC Services or Your use of the Funding, for the purpose of Us:
  - (i) assessing the extent to which terms of the Service Agreement can be, or are being, met by You; and
  - (ii) considering or recommending a course of action to ensure compliance or to seek a remedy of any non-compliance.
- (b) We will give You notice prior to conducting a Performance Review, which need not be in any particular form but will specify the Funding and Services that We wish to review and any premises to which We require access.

#### 12.2 Auditors

We can, by notice to You, nominate auditors to conduct a Performance Review for Us or to conduct any financial and compliance audit of You.

#### 12.3 Compliance with notice

If We give You a notice under clauses 12.1(c) or 12.2, You must:

- (a) comply with the notice;
- (b) give Our officers or employees or Our Auditors full and free access to:
  - (i) Your employees;
  - (ii) any premises where the Services are delivered or from which You conduct Your business; and
  - (iii) Your accounts, records, documents and papers that relate directly or indirectly to the receipt, expenditure, or payment of the Funding or the conduct of the Services; and

- (c) cooperate with Our officers or employees or Our Auditors, including by giving any assistance required to:
  - (i) meet with Your employees;
  - (ii) inspect the performance of the Services and the LDC Services; and
  - (iii) locate and make copies of any of Your accounts, records, documents and papers that relate directly or indirectly to the receipt, expenditure, or payment of the Funding or the conduct of the Services and the LDC Services.

#### **12.4 Minimum interference**

When conducting a Performance Review or audit under this clause 12, We will, and will procure Our Auditors to, use best endeavours to minimise interference to Your employees and the conduct of the Services.

#### **12.5 Information to be provided**

You must provide any information or documents that We or Our Auditors may request in relation to a Performance Review or audit and You warrant that such information and documents are true and correct to the best of Your knowledge.

#### **12.6 Subcontracts**

You must ensure that, where any of the Services are delivered under a subcontract, any subcontract contains equivalent clauses permitting Us and Our Auditors to have access to the employees, premises, accounts, records, documents and papers of the subcontractor to the same extent provided for in this clause 12.

#### **12.7 Services delivered under Your auspices**

You must ensure that, where any of the Services are delivered under Your auspices, the entity delivering those Services under Your auspices will permit Us and Our Auditors to have access to its employees, premises, accounts, records, documents, papers to the same extent provided for in this clause 12.

#### **12.8 Access to LDC Services**

You must use Your best endeavours to ensure that We can access, audit or otherwise directly obtain information from Your LDC Services pursuant to this clause 12.

#### **12.8 Application of this clause**

Our rights under this clause 12 are in addition to any other rights We have under the Service Agreement or a Governing Act.

## **REDUCING, SUSPENDING OR STOPPING FUNDING**

### **13. Suspending or stopping Funding**

#### **13.1 Suspension or termination by Us**

- (a) We can take any Specified Action by giving You notice if:

- (i) You breach any term of the Service Agreement;
- (ii) an amendment to Your Constitution or operations means that You are no longer:
  - A. eligible for the Funding; or
  - B. able, in Our opinion, to comply with the Service Agreement;
- (iii) You become insolvent; or
- (iv) an actual Conflict of Interest arises.

with the exception of clause 13.1(a)(ii), We will only do this after following the show cause process in clause 14.

- (b) We can immediately take any Specified Action by giving You notice if:
    - (i) We have terminated any other service agreement with You because of an event or occurrence of the same type as specified in clause 13.1(a);
    - (ii) You become subject to any form of external administration;
    - (iii) You enter into an arrangement with Your creditors or otherwise take advantage of any laws in force in connection with insolvent debtors; or
    - (iv) any:
      - A. steps or proceedings are commenced, and not withdrawn or dismissed within 5 Business Days; or B. order made,
- in relation to Your winding up, voluntarily or involuntarily.

We can do this without following the show cause process in clause 14, but Our notice to You will contain the reasons for Our decision.

Our rights under this clause 13.1 are in addition to any other rights or remedies available to Us.

### **13.2 Termination by You**

You may terminate:

- (a) a Funding Schedule, in which case the Funding under that Funding Schedule will stop; or
- (b) the Service Agreement, in which case all Funding payable under the Service Agreement will stop, by giving Us at least 3 months notice.

### **13.3 Consequences of termination**

- (a) If a Funding Schedule is terminated:
  - (i) the Funding provided under that Funding Schedule will immediately stop as at the date of termination;
  - (ii) the Funding Schedule will be severed from the Service Agreement;
  - (iii) You must:

- A. comply with the requirements specified in the notice of termination, including about the transfer or disposal of Funded Assets;
  - B. do everything possible to mitigate all losses, costs and expenses that You may incur as a result of the termination; and
  - C. comply with clause 3.2(b) in relation to the Services; and
  - D. repay to Us any part of the Funding, whether unexpended or otherwise, that We notify You is required to be repaid (which notice may be in the notice of termination), within the period stated in the notice, which will be not less than 10 Business Days. That amount will be a debt due and owing to Us by You; and
- (iv) provided that You have complied with clause 3.2(b) in relation to the Services, including providing all required information in relation to the Services under the terminated Funding Schedule, the remaining Funding Schedules will not be affected unless, having regard to clause 1.4, the termination of a Funding Schedule means that the Term expires, in which case the Service Agreement will automatically terminate and clause 13.3(b) will apply.
- (b) If the Service Agreement is terminated, all Funding provided under the Service Agreement will immediately stop as at the date of termination and clause 13.3(a)(iii) will apply to all Funding and Funding Schedules.
- (c) If a Funding Schedule or the Service Agreement is terminated for any reason:
- (i) We will not be liable to pay You compensation for any loss of profit or benefits that You would have received had the termination not occurred; and
  - (ii) the termination will not limit, or adversely affect, any other right or remedy that may be available to Us or accrued as at the date of termination.

#### 13.4 Relationship to Governing Act

We may take action under this clause 13 without having to give a compliance notice under a Governing Act or take any other compliance or enforcement action under a Governing Act, except if expressly required by a Governing Act (including under the CSA).

### 14. Show cause process

- (a) If We reasonably suspect that any of the grounds or circumstances specified in clauses 13.1(a)(i), (iii) or (iv) apply, We may give You a show cause notice stating:
- (i) The Specified Action We propose to take under clause 13.1(a)(i), (iii) or (iv);
  - (ii) the grounds for the Specified Action;
  - (iii) an outline of the facts and circumstances forming the basis for the grounds; and
  - (iv) an invitation to You to show, within a stated period, why the Specified Action should not be taken.
- (b) The Show Cause Period will be a period ending at least 7 days, or such longer period as required under a Governing Act, after the Show Cause Notice is given to You.
- (c) During the Show Cause Period, You may make written representations to Us, stating why the Specified Action should not be taken and We must consider all Representations You make.

- (d) If, after considering the Representations, We no longer believe the grounds exist to take the Specified Action, We will not take further action about the Show Cause Notice and will, as soon as practicable, give notice to that effect.
- (e) If You do not make any Representations or, after considering the Representations You make, We still believe the grounds exist to take the Specified Action and that the Specified Action is warranted, We may take the Specified Action and will notify You of Our decision.

## 15. Reduction of Funding or termination for other reasons

### 15.1 Reduction of Funding or termination in particular circumstances

- (a) We can reduce the amount of the Funding or terminate any Funding Schedule:
  - (i) by giving You at least 3 months prior notice if We determine that:
    - A. changes to the State budget or any guidelines or policies of the State or Commonwealth government impact on the continued provision of the Funding to You or recipients of similar funding generally; or
    - B. the needs of the Service Users no longer justify the Funding, or that other persons are in greater need than those Service Users; or
    - C. it is otherwise necessary, in Our absolute discretion.
  - (ii) by giving You at least 6 months prior notice if We determine that it is appropriate for Us to re-test the market for the delivery of the Services.
- (b) If We determine, that any of the circumstances described in subclauses 15.1(a)(i) or (ii) apply to a substantial portion of all Funding or Services under the Service Agreement, We may reduce all Funding under the Service Agreement or terminate the Service Agreement.
- (c) We can take action under clauses 15.1(a) or 15.1(b) without following the show cause process set out in clause 14, but Our notice to You will contain the reasons for Our decision.

### 15.2 Consequences of reduction or termination

- (a) If We reduce the Funding under clauses 15.1(a) or (b):
  - (i) We will review the scope of the Services;
  - (ii) You must:
    - A. do everything You can to mitigate and lessen all losses, costs and expenses that You may suffer in relation to the reduction;
    - B. repay to Us any unspent part of the Funding that We notify You is required to be repaid as a result of the reduction, within the period stated in the notice, which will be not less than 20 Business Days. That amount will be a debt due and owing to Us by You; and
    - C. comply with any reasonable request made by Us in relation to the reduction of the Funding; and
  - (iii) We will notify You about the reduced amount of the Funding and any changed scope of the Services and the Service Agreement will be deemed varied in accordance with the notice.

- (b) If:
  - (i) a Funding Schedule is terminated under clause 15.1(a), clauses 13.3(a) and 13.3(c) will apply; or
  - (ii) the Service Agreement is terminated under clause 15.1(b), clauses 13.3(b) and 13.3(c) will apply.
- (c) If We reduce any Funding, terminate a Funding Schedule or terminate the Service Agreement under clauses 15.1(a) or (b), We will consider paying You reasonable costs, including transitional arrangement costs for affected Service Users, that You incur as a direct result of the reduction or termination, subject to You providing Us with written evidence of the costs claimed and Us approving those costs.

## MATERIAL AND INFORMATION

### 16. Intellectual Property Rights

#### 16.1 Ownership of Intellectual Property Rights

- (a) Intellectual Property Rights in Your Material vest in You.
- (b) Intellectual Property Rights in Our Material vest in Us.
- (c) For the avoidance of doubt, all Intellectual Property Rights of the parties existing before the date of this Service Agreement are to be retained by the relevant party.

#### 16.2 Licence of Intellectual Property Rights to the State

- (a) You grant to the State of Queensland a perpetual, irrevocable, royalty-free, worldwide and non-exclusive licence (including a right to sub-licence) to use, communicate, reproduce, publish, adapt and modify Your Material and any Existing Material.
- (b) We licence You to use Our Material (including copying it and supplying it to others) but only for the purposes and duration You perform the Services.

#### 16.3 Documentation

If requested by Us, You will sign, execute, or otherwise complete any document that may be necessary or desirable to give effect to this clause 16.

#### 16.4 Use of Intellectual Property Rights

- (a) You warrant that You are entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in Your Material and any Existing Material in the manner provided for in this clause 16.
- (b) We warrant that We are entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in Our Material in the manner provided for in this clause 16.

#### 16.5 Protection of Intellectual Property and Moral Rights

- (a) You agree to take all reasonable steps to protect the Intellectual Property Rights in Your Material and to comply with the warranties in clause 16.4(a).

- (b) You will ensure that, in delivering the Services and performing Your obligations under the Service Agreement, You (including Your employees, agents, volunteers and subcontractors) do not:
  - (i) infringe any person's Intellectual Property Rights or an individual's Moral Rights; or
  - (ii) authorise the infringement of any such rights.

## **16.6 Aboriginal and Torres Strait Islander cultural sensitivity**

In addition to clause 16.5, You agree that, in delivering all Services You will:

- (a) respect the cultural and spiritual significance of Aboriginal and Torres Strait Islander people;
- (b) refrain from incorporating any elements derived from Aboriginal and Torres Strait Islander cultural heritage into any material created under the Service Agreement without the informed and written consent of the cultural custodians, clan or language groups and community representatives deemed acceptable by each community; and

inform Us in writing about any elements derived from Aboriginal and Torres Strait Islander cultural heritage which You incorporate into any material which You create and deliver to Us under the Service Agreement, and of any consent which You have obtained relating to the use of such elements.

## **17. Disclosure of Confidential Information**

### **17.1 Approval to disclose**

- (a) You must not disclose Confidential Information belonging to Us except where You have obtained Our prior written approval (which may be subject to conditions) or where required by law.
- (b) We reserve the right, without any liability to account to You or any third person, to make available, disclose, and allow the disclosure of, to the extent that it is not prohibited or regulated by any legislation, any information received from You or otherwise relating to the Service Agreement to:
  - (i) any department, agency, authority, or Minister of the Queensland or Commonwealth governments;
  - (ii) the Queensland parliament; or
  - (iii) any third person, including any court, tribunal, government committee or other person within government, where such disclosure would be permitted or required by law, or otherwise would be consistent with established government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances.
- (c) We may give information about You to:
  - (i) an entity that provides other funding or other assistance to You; or
  - (ii) another entity if We consider the entity has an interest in the proper and efficient delivery of any of the Services by You.



## 17.2 Your undertaking

- (a) You must make every reasonable effort to ensure that Your employees, volunteers, agents and subcontractors are aware of and comply with the obligations of confidentiality in this clause 17.
- (b) We may, at any time, require You to give, and for You to arrange for Your subcontractors, employees, and volunteers engaged in the performance of any Services to give, written undertakings in a form reasonably required by Us relating to the non-disclosure of Confidential Information under this clause 17.
- (c) You must notify Us immediately if You know or suspect that Confidential Information has been disclosed without Our authorisation.

## 18. Protection of Personal Information

### 18.1 Your privacy obligations

If You collect or have access to Personal Information for the purposes of the Service Agreement, You must:

- (a) comply with Parts 1 and 3 or, in relation to Funding provided by a Health Agency, Parts 2 and 3, of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of Your obligations under the Service Agreement as if You were Us;
- (b) not use Personal Information other than for the purposes of the Service Agreement, unless required or authorised by law;
- (c) not disclose Personal Information without Our prior written consent, unless required or authorised by law;
- (d) not transfer Personal Information outside of Australia without Our prior written consent;
- (e) ensure that access to Personal Information is restricted to those of Your employees, volunteer workers and officers who require access in order to perform their duties;
- (f) ensure that Your employees, volunteer workers and officers do not access, use or disclose Personal Information other than in the performance of their duties;
- (g) ensure that Your contractors and Your auspices who have access to Personal Information comply with the obligations the same as those imposed on You under this clause;
- (h) fully co-operate with Us to enable Us to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (i) comply with such other privacy and security measures as We reasonably notify You about from time to time.

### 18.2 Privacy deed

On Our request, You must obtain from Your employees, volunteer workers, officers and contractors engaged for the purposes of the Service Agreement, an executed deed of privacy in a form acceptable to Us.

### 18.3 Your Privacy Notice

- (a) If You collect, record or otherwise deal with Personal Information, You must make available a copy of Your Privacy Notice to the person giving You the Personal Information.

- (b) Your Privacy Notice must be of a standard reasonably acceptable to Us and must state that information You collect may be provided to Us to ensure that You are delivering quality services.

#### **18.4 Disclosure by Us**

- (a) You acknowledge that in the course of Us administering the Funding, We may be required to disclose data or information that may contain Personal Information to third parties.
- (b) You consent to Us disclosing such data or information that may contain Personal Information if We are required to make such disclosure as part of Our administration of the Funding.
- (c) You must, if We require You to do so, obtain proper and valid consent, including consent from parents or families of Eligible Children, to permit us to disclose data or information that may contain Personal Information as part of our administration of the Funding.

#### **18.5 You will notify Us**

- (a) You must make every reasonable effort to notify Us immediately upon becoming aware of any breach of this clause 18.
- (b) You must notify Us immediately in the event that You become aware that disclosure of Personal Information, in relation to any child subject to the *Child Protection Act 1999* or the *Youth Justice Act 1992*, is made or may be required by law.

### **19. Recordkeeping**

#### **19.1 Your records and files**

- (a) You must store all records and files regarding Your use of the Funding and the delivery of the Services under a Funding Schedule in secure storage for at least 7 years from the date of expiry or termination of the Funding Schedule.
- (b) You must maintain complete and adequate data and financial and other records to ensure that We are able to validate the accuracy and completeness of all reports and other information that You provide to Us, including under the Reporting Requirements.

#### **19.2 Our Material**

- (a) You must ensure that Our Material is only used, copied, supplied or reproduced for the purposes of delivering the Services.
- (b) On the expiration or termination of the Service Agreement, You must return to Us all of Our Material that We require You to return.

## **DEALING WITH RISK**

### **20. Insurance and indemnity**

#### **20.1 You must obtain insurance**

- (a) You must effect and maintain the following insurances for the term of the Service Agreement:
  - (i) public liability insurance policy for a sum of not less than \$10 million for any one event in respect of accidental death or of accidental bodily injury to persons, or accidental damage to property, arising out of or in the course of delivering the Services;

- (ii) contents insurance for any Funded Assets, other than motor vehicles, for the full replacement value of the Funded Assets;
  - (iii) comprehensive motor vehicle insurance for all Funded Assets that are motor vehicles; and
  - (iv) any other insurance required by Us by notice to You.
- (b) All insurance policies must be effected with an insurer authorised to carry on insurance business by the Australian Prudential Regulation Authority.
- (c) Upon Our request, You must provide Us with a copy of any insurance policy obtained in accordance with clause 20.1(a) and a certificate of currency.
- (d) If You fail to take out or maintain any insurance required under clause 20.1(a) or to provide to Us a copy of any such insurance policy or certificate of currency as required under clause 20.1(c), then, without limiting any other right that We may have, We may take out the relevant insurance and pay the required premiums on Your behalf and any such amount that We pay will be a debt due and owing to Us by You.

## **20.2 Use of insurance proceeds**

Any proceeds or other amount that may be paid to You under a policy of insurance described in clauses 20.1(a)(ii) or (iii) must be applied by You towards the repair or replacement of the Funded Asset, except to the extent that We may otherwise require You to pay that amount to Us in payment of any amount owing to Us by You under clause 20.1(d).

## **20.3 Indemnity**

You release, discharge, indemnify and keep indemnified Us, Our officers, employees and agents from and against any Claim that may be made or brought by any person against Us in connection with:

- (a) You failing to observe or perform any of Your obligations under the Service Agreement;
- (b) any negligent or unlawful act or omission of You, Your officers, employees, volunteer workers or subcontractors; or
- (c) contravention of any legislative requirement by You, Your officers, employees, volunteer workers or subcontractors,

but Your liability to indemnify Us under this clause will be reduced proportionally to the extent that an act or omission of Ours contributed to the Claim.

# **21. Conflict of Interest and compromising relationship**

## **21.1 Warranty**

You warrant that, to the best of Your knowledge and belief, after making diligent inquiries at the date of signing the Service Agreement, no Conflict of Interest exists in the performance of Your obligations under the Service Agreement.

## **21.2 Resolution of Conflict of Interest**

If, during the Term, a Conflict of Interest arises, or appears likely to arise, You undertake to notify Us immediately in writing and to take such steps to resolve or otherwise deal with the conflict to Our satisfaction.

### 21.3 Policy

You must keep and implement a policy about Conflicts of Interest of Your executive officers, employees and volunteers. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.

### 21.4 Record

You must keep a record of each instance of a Conflict of Interest arising in the delivery of the Services and how the matter was dealt with.

## OTHER LEGAL MATTERS

### 22. Subcontracting

#### 22.1 Consent for subcontracting

- (a) You must not, without Our prior written consent, subcontract the whole, or any part, of Your obligations under the Service Agreement.
- (b) We may impose any terms and conditions We think fit when giving approval under clause 22.1(a).
- (c) If requested by Us, You must provide a copy of any subcontract to Us.

#### 22.2 Your obligations

- (a) You are responsible for ensuring the suitability of any subcontractor and for ensuring that the Services performed by the subcontractor meet the requirements of the Service Agreement.
- (b) Our consent to any subcontract will not relieve You from any liability or obligation under the Service Agreement.
- (c) You remain liable under the Service Agreement for the acts or omissions of any past subcontractors as if they were current subcontractors.
- (d) You must ensure that:
  - (i) any subcontract entered into is consistent with the Service Agreement; and
  - (ii) all subcontractors comply with their subcontracts and the terms of the Service Agreement as if they were a party to it.

#### 22.3 Our rights

We may revoke the approval of a subcontractor on any reasonable ground at any time.

#### 22.4 Procedure

Upon receipt of a written notice from Us revoking Our approval of a subcontractor, You must:

- (a) immediately replace the subcontractor; or
- (b) as soon as practicable, cease using that subcontractor to perform the Services and You must perform those Services,

and You agree to release and indemnify Us from and against any loss or damage suffered by You, or for any Claim made by You or any other person against Us, whether in respect of Your contract with a subcontractor or otherwise, arising out of Your compliance with this clause.

## 23. Governing law

The Service Agreement will be governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## 24. Right to information

You acknowledge that all documents held by Us are subject to the *Right to Information Act 2009* and may be subject to disclosure under that Act.

## 25. Publication of information

You agree that, despite any other provision of the Service Agreement, We may publish or require You to publish any or all of the following details:

- (a) Your name, website and address, including Your head office, premises where any of the Services are delivered and other business premises;
- (b) a description of the Services to be delivered under the Service Agreement;
- (c) the Agreement Commencement Date and Agreement Expiry Date and any Schedule Start Date, Schedule End Date or Establishment Date;
- (d) the total amount of the Funding to be provided under the Service Agreement or any Funding Schedule;
- (e) the procurement method used to award the Funding to You;
- (f) where the total value of the Funding is \$10 million or more:
  - (i) invitation details;
  - (ii) a Service Agreement overview; and
- (g) any reasons for non-disclosure of procurement results; and
- (h) a voluntary note in your annual financial statements (which must be included in such statements upon Our request for You to do so) that discloses total Funding provided by Us to You and the quantum of Funds provided by You to Your LDC Services (including, for clarity, any Funds provided to Your Related Body Corporates as approved by us and any other entities as expressly permitted by the Service Agreements) and appropriate commentary on the release of the Funds to Your LDC Services as applicable.

## 26. Waiver

- (a) A waiver by a party of any breach of a provision of the Service Agreement, including a failure to enforce an obligation, is not, and will not be deemed to be, a waiver of any other or subsequent breach.
- (b) Any waiver by Us to You must be in writing and signed by the Chief Executive or an authorised delegate.

## 27. Dispute resolution

### 27.1 Dispute resolution under the Service Agreement

- (a) Where You dispute a decision made by Us under a provision in the Service Agreement, You may elect to seek a review of the decision using the review process in clause 27.2.
- (b) Both parties agree to initiate discussions with the other to resolve concerns prior to seeking a review of the decision.
- (c) Whether or not a dispute exists, each party must continue to perform its obligations under the Service Agreement.

### 27.2 Review of decision

- (a) This review process is not a mechanism for suspending or ceasing any Funding to You.
- (b) Within 20 Business Days after You have been given notice of Our decision in relation to the matter under dispute You can seek a review of the decision by writing to Our Contact Officer.
- (c) Your request for a review of the decision must include:
  - (i) details about the decision to be reviewed;
  - (ii) a written statement outlining Your reasons why a decision should be reviewed;
  - (iii) any evidence to substantiate the request for a review; and
  - (iv) the signature of an authorised officer of Yours.
- (d) Following receipt of a request for a review of a decision from You, We may appoint a reviewing officer. The reviewing officer will be a staff member of Ours who is independent from the situation that gave rise to the dispute.
- (e) You will be provided written notification of the outcome of the review within 20 Business Days after Your written request for a review.
- (f) If You do not accept the outcome of the review, You may give written notification to Our Contact Officer:
  - (i) within 10 Business Days after receipt of the review outcomes;
  - (ii) providing a statement for further consideration including Your reasons why further consideration is required and any evidence to substantiate the request for further consideration; and
  - (iii) under the signature of an authorised officer of Yours.
- (g) The matter will be referred to an appointed officer for final decision. The appointed officer will be a staff member of Ours who is independent from the situation that gave rise to the dispute and who is senior to the reviewing officer.
- (h) You will be notified in writing of the outcome of the appointed officer's final decision.

### 27.3 Exceptions to review

- (a) A party does not need to follow the review procedures set out in clauses 27.1 or 27.2 if they are seeking urgent interlocutory relief from a court.

- (b) You cannot seek a review under clauses 27.1 or 27.2 in relation to action We take under clauses 13, 14 or 15, or if the disputed decision has been made under a Governing Act.
- (c) Use of the review process in clause 27.2 does not preclude other action being taken under a Governing Act or action being taken under a provision of the Service Agreement.

## 28. Notices, requests and other communications

### 28.1 Address for notices

Any notice, request, or other communication to be given or served under the Service Agreement must be in writing and dealt with as follows:

- (a) if given by You to Us, addressed and forwarded to Us to the attention of Our Contact Officer at the address stated in the Funding and Service Details, or as otherwise notified by Us; or
- (b) if given by Us to You, addressed and forwarded to Your Contact Officer at the address stated in the Funding and Service Details, or as otherwise notified by You.

### 28.2 Method of delivery

- (a) Any such notice, request, or other communication will be delivered by hand, sent by post, or electronic mail to the address of the party to which it is sent.
- (b) Subject to clause 28.3(b), the parties consent to providing information required under the Service Agreement by way of electronic communication.

### 28.3 Receipt of notice

- (a) Any notice, request, or other communication will be deemed to be received:
  - (i) if delivered by hand, on the date of delivery;
  - (ii) if sent by post within Australia, upon the expiry of two Business Days after the date on which it was sent;
  - (iii) if transmitted by electronic mail, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
- (b) A notice to be given or served under clauses 13, 14 or 15 must not be sent via electronic mail.

## 29. General provisions

### 29.1 Discretion

Where, under the Service Agreement:

- (a) Our consent or approval is required to any act, omission, matter or thing; or
- (b) a right or discretion is conferred on Us, including as denoted by the words 'We may' in any clause,

then, unless stated otherwise, the consent, approval, right or discretion may be granted, withheld or exercised (as the case may be) by Us at Our absolute discretion and may, in the case of a consent or approval, be subject to such conditions as We determine.

**29.2 Act not limited**

Nothing in the Service Agreement limits:

- (a) the information or material You may be required to provide under a Governing Act;
- (b) Our, the Chief Executive's or any other person's rights under a Governing Act; or
- (c) Your or any other person's obligations under a Governing Act.

**29.3 Entire agreement**

The terms of the agreement between You and Us are those set out in the Service Agreement, and no written or oral agreement, arrangement or understanding made or entered into prior to the Agreement Commencement Date will in any way be read or incorporated into the Service Agreement.

**29.4 No assignment**

You may not assign the Service Agreement or any of the benefits or obligations under the Service Agreement to another party without Our prior written consent.

**29.5 Relationship**

No agency or legal partnership exists between You and Us and You must not represent Yourself or allow Yourself to be represented as a partner, employee or agent of Us.

**29.6 Time**

Any act, matter or thing required under the Service Agreement to be done on a day which is not a Business Day must be done on the next Business Day.

**29.7 Survival**

The following clauses of these Standard Terms will survive termination or expiration of any Funding Schedule or the Service Agreement:

- (a) clause 3.2(b)(i) - cooperation if Services to cease;
- (b) clauses 3.2(b)(ii) and 11.3(h) - directions about Funded Assets;
- (c) clause 5 – Your reporting obligations;
- (d) clause 7 – Administration and expenditure of Funding;
- (e) clauses 13.3 and 15.2 – consequences of termination;
- (f) clause 16 – Intellectual Property Rights;
- (g) clause 17 – Disclosure of Confidential Information;
- (h) clause 18 – Protection of Personal Information;
- (i) clause 19 – Recordkeeping;
- (j) clause 20 – Insurance and indemnity;
- (k) clause 22 – Subcontracting;



- (l) clause 27 – dispute; and
- (m) clause 29.7 – survival.

## 29.8 Further Assurances

The parties agree to do any act and sign any document required to give effect to any provision in the Service Agreement.

## 29.9 Severability

If any part of the Service Agreement is determined to be invalid, unlawful or unenforceable in any jurisdiction and for any reason, then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Service Agreement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

## 29.10 Execution

For the avoidance of doubt, the Service Agreement including these Standard Terms become binding upon the parties when You complete and submit the declaration on QGrants.

# 30. Intervening Event

- (a) You must notify Us if You are unable to carry out wholly or in part, any of Your obligations to deliver the Services due to natural disasters, strikes, lockouts, or other industrial disturbances, acts of terror, unavoidable accident, fire, flood, or explosion.
- (b) Your notice to Us must provide the extent to which You expect to be unable to perform or will be delayed in performing the Services.
- (c) You must take all reasonable steps to reduce the effect of the Intervening Event. We acknowledge that the Services may be suspended to the extent that they are affected by the Intervening Event.
- (d) Once the Intervening Event has ended, You must as soon as possible recommence delivery of the Services and where possible, carry out all acts which You would have been liable to carry out had the Intervening Event not occurred.
- (e) You must provide Us with 20 Business Days' notice of any potential Change of Control Event. If We consider, acting reasonably, that the Change of Control Event will adversely impact Your ability to perform the Services or comply with the terms of the Service Agreement, then we are entitled to terminate the Service Agreement by written notice.

# 31. Definitions and interpretation

## 31.1 Definitions

Unless stated otherwise or a contrary intention appears the capitalised terms in this document have the below meaning or otherwise the meaning specified in the Funding and Service Details:

**"Agreement Commencement Date"** means the Agreement Commencement Date specified in the Funding and Service Details;

**"Agreement Expiry Date"** means the Agreement Expiry Date specified in, or determined in accordance with, the Funding and Service Details;

**"Approved Financial Institution"** means a financial institution registered in Australia and operating as a bank, credit union or building society;

**“Asset”** means a motor vehicle, item of plant or equipment;

**“Business Day”** means any day other than a Saturday, Sunday or public holiday in Queensland;

**“Change of Control Event”** means in relation to an entity, the occurrence of an event which has the effect that:

- (a) Controlled (within the meaning of the *Corporations Act 2001* (Cth)) the entity prior to the time the event occurred, the person ceased to Control the entity or another person obtained Control of the entity;
- (b) if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
- (c) if the entity is owned or Controlled by a group or a consortium of persons, or if the group or consortium could Control the entity were they to act collectively, there is any material change in the composition of the group or consortium.

**“Chief Executive”** means, for Funding given by:

- (a) a Department, the Director-General of the Department or other person from time to time holding the office of chief executive or having delegated responsibilities under relevant legislation; or
- (b) another body or agency, the chief executive officer or equivalent person;

**“Claim”** includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement;

**“Confidential Information”** means information that is by its nature confidential or, when it is received, is marked as confidential in nature, but does not include information which:

- (a) is or becomes public knowledge other than by:
  - (i) breach of the Service Agreement; or
  - (ii) any other unlawful means;
- (b) is in a party's possession without restriction in relation to disclosure before the date of receipt from the other;
- (c) has been independently developed or acquired by the party receiving or obtaining it; or
- (d) is disclosed by compulsion of law, including during testimony before any judicial or quasi-judicial court or tribunal, under court subpoena, parliamentary order or as part of discovery during legal proceedings;

**“Conflict of Interest”** includes:

- (a) having an interest (whether personal, financial, political or otherwise) that conflicts or which may reasonably be perceived as conflicting with Your ability to perform Your obligations under the Service Agreement fairly and objectively, including as a result of employment, procurement or service delivery arrangements that may exist or be put in place; and
- (b) for clause 21, a potential Conflict of Interest;

**“Constitution”** means:

- (a) a company's or incorporated association's constitution, or equivalent documents, which (where relevant) includes rules and any amendments that are part of the constitution; or
- (b) in relation to any other kind of body:
  - (i) the body's charter or memorandum; or
  - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

**"CSA"** means the *Community Services Act 2007*;

**"Deliverable"** means the deliverables, outputs, outcomes, results or quantities of, or for, the Services, specified in the Funding Schedule that relates to the Services;

**"Departures"** means a provision in the Funding and Service Details under which the application of a clause in these Standard Terms to some or all of the Funding is excluded or modified;

**"Establishment Date"** means the Establishment Date (if any) for the Services, specified in the Funding Schedule that relates to the Services;

**"Existing Material"** means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data that has been incorporated in, or supplied as part of, Your Material that was either:

- (a) in existence prior to the Agreement Commencement Date; or
- (b) produced after the Agreement Commencement Date independently of the Service Agreement.

**"Funded Asset"** means an Asset purchased wholly or partly with any Funding and includes an Asset purchased to replace such an Asset;

**"Funding"** means an amount of funding assistance that We will provide to You under the Service Agreement, as specified or included in a Funding Schedule. In an appropriate context, it also means all of the funding assistance payable under the Service Agreement;

**"Funding Category Guidelines"** means the funding category guidelines and its associated and incorporated documents as published from time to time for the purposes of the CSA, including the Queensland Kindergarten Funding Essentials;

**"Funding and Service Details"** means the document titled *Service Agreement – Funding and Service Details*, as signed by You and Us and includes the Funding Schedules attached to it;

**"Funding Schedule"** means a schedule to the Funding and Service Details;

**"Governing Act"** means any Act:

- (a) under which the Funding is provided to You, as specified in the Funding and Service Details; or
- (b) to which the Funding is, or becomes, subject, and includes any regulation  
from time to time made under it;

**"Health Agency"** means a "health agency" as defined in the *Information Privacy Act 2009* (Qld);

**"Intellectual Property Rights"** includes copyright, except for copyright in "artistic works" as that expression is defined in the *Copyright Act 1968 (Commonwealth)*, rights in relation to inventions

(including patent rights), registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how), and other rights resulting from the intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights;

**“Intervening Event”** means an event specified in clause 30 (a);

**“Moral Rights”** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Commonwealth)*, and the rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the Service Agreement;

**“Our Auditors”** means any auditors nominated by Us under clause 12.2;

**“Our Contact Officer”** means the person, being an officer or employee of Ours, who:

- (a) is specified as Our Officer; or
- (b) for the time being holds, occupies or performs the position specified, in the Funding and Service Details, or any other person notified by Us to You;

**“Our Material”** means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data stored by any means which is given to You by Us for the purposes of delivering Services, including all copies and extracts;

**“Performance Review”** means a review under clause 12 of any aspect of Your delivery of the Services or Your use of the Funding;

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**“Privacy Notice”** means the document which describes how You will deal with any Personal Information provided to You;

**“RCTI”** means a “recipient created tax invoice” within the meaning given in the GST Legislation;

**“Reporting Requirements”** means the reporting requirements for the Funding, specified in the Funding Schedule that relates to the Funding;

**“Representations”** means representations made under clause 14 (c);

**“Schedule End Date”** means the Schedule End Date for a Funding Schedule, specified in the Funding Schedule;

**“Schedule Start Date”** means the Schedule Start Date for a Funding Schedule, specified in the Funding Schedule;

**“Service Agreement”** means the agreement entered into by You and Us which details Funding that We will provide to You for the purpose of delivering Services and which is comprised of the documents specified in clause 1.2 of these Standard Terms;

**“Service Delivery Requirements”** means the service delivery requirements (if any) for the Services, specified in the Funding Schedule that relates to the Services;

**“Service Users”** means the service users (if any) for the Services, specified or described in the Funding Schedule that relates to the Services;

**“Services”** means services that You must deliver, as specified in a Funding Schedule and for which Funding is provided under the Funding Schedule. In an appropriate context, it also means all of the Services to be delivered under the Service Agreement;

**“Show Cause Notice”** means a show cause notice given under clause 14 (a);

**“Show Cause Period”** means the period described in clause 14 (a)(iv), as stated in a Show Cause Notice;

**“Special Conditions”** means the special conditions (if any) for the Funding or Services, specified in the Funding Schedule that relates to the Funding or Services;

**“Specified Action”** means any of the following:

- (a) suspending:
  - (i) the Funding under any Funding Schedule; or (ii) all Funding under the Service Agreement, for a period of time and on specified conditions as stated in the relevant notice;
- (b) terminating any Funding Schedule; or
- (c) terminating the Service Agreement;

**“Specific Security Agreement”** means a “security agreement” under the *Personal Properties Securities Act 2009* in relation to Our interest in a Funded Asset, as amended or replaced from time to time, in such form as We may notify You;

**“Standard Terms”** means this document titled *Service Agreement - Standard Terms*, as updated or replaced from time to time in accordance with clause 1.2(d);

**“Taxable Supply”** has the meaning given in the GST Legislation;

**“Term”** means the term of the Service Agreement, as determined under clause 1.4 of these Standard Terms;

**“Us, We or Our”** means the State of Queensland acting through the Department or other body, agency or person giving the Funding (including its Chief Executive), as specified in the Funding and Service Details, or any other department or agency of the Queensland Government responsible for the administration of the Service Agreement;

**“You”** and related parts of speech or other grammatical forms means the funded organisation that is a party to the Service Agreement, as specified in the Funding and Service Details;

**“Your Contact Officer”** means the person, being an employee or officers of Yours, who:

- (a) is specified as the Contact Officer; or
- (b) for the time being holds, occupies or performs the position specified, in the Funding and Service Details, or any other person notified by You to Us; and

**“Your Material”** means any information, document, electronic image, cinematographic film, video, equipment, software or data stored by any means which is created by You or on Your behalf in performing Services under the Service Agreement.

### 31.2 Interpretation

In the Service Agreement including all parts, unless stated otherwise or a contrary intention appears:

- (a) it is intended that the Service Agreement may cover more than one grant or allocation of Funding. Each grant or allocation of Funding may be the subject of a separate Funding Schedule. Where the Service Agreement incorporates more than one Funding Schedule, references to Funding, Services and Funding Schedules are to be read as references to the Funding Schedule under which the Services are to be delivered and the Funding to be paid. References to all or any Funding or Services are to be read as references to all or any of the Funding to be provided or the Services to be delivered under the Service Agreement;
- (b) words indicating the singular include the plural and words indicating gender include other genders;
- (c) where there is more than one organisation, the obligations of each organisation will be joint and several;
- (d) reference to a person includes an individual and a corporation;
- (e) reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (f) the headings in the Service Agreement are included for convenience only and do not affect the interpretation of the Service Agreement;
- (g) reference to a clause, paragraph or schedule is reference to a clause, paragraph or schedule of the document, forming part of the Service Agreement, in which the reference appears;
- (h) reference to a document or agreement includes reference to the document or agreement as amended, notated, supplemented, varied or replaced from time to time;
- (i) if the day on or by which anything is to be done under the Service Agreement is not a Business Day, that thing may be done on the next proceeding Business Day;
- (j) a reference to You includes Your administrators, successors and permitted assigns;
- (k) a reference to a “subcontractor” includes an agent, authorised representative or a person delivering any of the Services under Your auspices;
- (l) a reference to a government entity (as that term is defined in the *Public Service Act 2008*) in the event that entity is reconstituted or replaced, will be a reference to the entity then carrying out its powers or functions; and
- (m) if there is any inconsistency between these terms and conditions and a Governing Act, the Governing Act will prevail.