



## TERMS AND CONDITIONS

### 1. ACTIVITY

- 1.1 The Recipient must carry out the Activity:
  - a. at the times and in the manner specified in the Letter of Offer; and
  - b. in accordance with this Agreement, diligently, effectively and to a high professional standard.
- 1.2 The Recipient must complete the Activity by the Completion Date specified in the Letter of Offer. If the Recipient is unable to complete the Activity by the date specified in the Letter of Offer, the Recipient must notify the Department of Education, Employment and Workplace Relations (the Department) at least 10 business days before the date specified in the Letter of Offer. The Department may, at its absolute discretion, agree to an extension of time for the completion of the Activity. If the Department agrees to an extension of time, the Recipient must complete the Activity within 12 months of the date the Department paid the first instalment of Funding to the Recipient.
- 1.3 The Recipient must provide the Department with the documents referred to in clause 2.3(a) within 20 business days of receiving the endorsement page of the Letter of Offer as signed by both Parties.
- 1.4 The Recipient must provide the Department with the documents referred to in clause 2.3(b) within 30 business days of completion of the Activity.

### 2. PAYMENT

- 2.1 Subject to sufficient funds being available for the Program, and compliance by the Recipient with this Agreement (including the invoicing requirements specified in this clause 2), the Department will provide the Funding to the Recipient at the times and in the manner specified in clause 2.3 below.
- 2.2 Without limiting the Department's rights, the Department may withhold or suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 2.3 The total funding for the Activity is the amount specified in the Department's Letter of Offer. Subject to the Recipient providing the Department with the signed endorsement page of the Letter of Offer together with the signed Terms and Conditions, and subject to the Recipient complying with the timeframes specified in clauses 1.3 and 1.4, the Funding will be paid as follows:
  - a. 75% of the Funding will be paid within 30 days of the Department receiving from the Recipient:
    - i. a completed Vendor Request Form containing details of a bank account held in the Recipient's name; and
    - ii. an invoice for the first instalment of Funding.
  - b. The remaining 25% of the Funding will be paid following the completion of the Activity and within 30 days of receipt by the Department of:
    - i. the Completion Report as required by clause 8.3;
    - ii. copies of any paid invoices, receipts or other documents verifying expenditure of the first instalment of Funding; and
    - iii. any other Evidence demonstrating that the Family Friendly Work Arrangement has been completed; and
    - iv. an invoice for the second instalment of Funding.

- 2.4 Within 60 days of the final instalment of Funding being paid by the Department, the Recipient must provide the Department with a statutory declaration in the form provided by the Department together with any receipts or other documents verifying expenditure of the second instalment of Funding.
- 2.5 Invoices forwarded by the Recipient must be correctly addressed and include the:
  - a. title of the Activity;
  - b. Recipient's name and ABN;
  - c. date of execution of the Agreement;
  - d. fees and expenses to be invoiced (including a description of the deliverables that the invoice relates to); and
  - e. bank account details for payment of the invoice by electronic funds transfer.
- 2.6 Where the invoice relates to a Taxable Supply made under this Agreement, the invoice must comply with the requirements for a tax invoice as defined in the *GST Act*.
- 2.7 Subject to acceptance by the Department, the date for payment is 30 business days after delivery of a correctly rendered invoice to the Department and after delivery of the Activity or part of the Activity to which the payment relates.

### 3. MANAGEMENT OF FUNDING

- 3.1 The Recipient must:
  - a. ensure that the Funds are held in an account in the Recipient's name, and which the Recipient solely controls, with a bank or credit union carrying on business in Australia;
  - b. on request from the Department, provide the Department and the authorised deposit-taking institution with an authority for the Department to obtain all details relating to any use of the Funding; and
  - c. identify the receipt and expenditure of the Funds separately within the Recipient's accounting Records so that at all times the Funds are identifiable and ascertainable.
- 3.2 The Recipient must keep financial Records relating to the Activity and receipt and expenditure of the Funding to enable the Recipient to comply with its obligations under this Agreement.
- 3.3 The Recipient must use the Funds for the Activity and in particular, must not use the Funds:
  - 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.

### 4. REPAYMENT OF FUNDING

- 4.1 If:
  - a. at any time, an overpayment occurs, including where an invoice is found to have been incorrectly rendered after payment; or
  - b. at the Completion Date (or if this Agreement is terminated earlier, the date of termination), some or all of the Funding has not been:
    - i. spent in accordance with this Agreement; or
    - ii. acquitted to the Department's satisfaction,

then this amount must be repaid to the Department within 20 business days of a written notice from the Department, or dealt with as directed in writing by the Department.
- 4.2 An overpayment may be recovered from the Recipient, including by offsetting that overpayment against any amount subsequently due to the Recipient under this Agreement or any other arrangement between the Recipient and the Department or between the Recipient and the Commonwealth generally.



- 4.3 Funding will not be provided to applicants who have failed to engage in good work practices. To determine whether an applicant has engaged in good work practices, the Department may have regard for the applicant's compliance with the *Workplace Relations Act 1996* and any relevant State or Territory Legislation, awards or any other industrial instrument. If at any time during the term of this Agreement the Recipient is found to have breached good work practices, this funding agreement may be terminated in accordance with clause 19.1(c) and any Funding provided by the Department to the Recipient must be repaid to the Department within 20 business days of a written notice from the Department, or otherwise dealt with as directed in writing by the Department.
- 4.4 Any amount owed to the Department under clause 4.1 or 4.3 is recoverable by the Department as a debt due to the Department by the Recipient without further proof of the debt by the Department.
- 4.5 An adjustment note must be provided to the Department if required by the *GST Act*, including where the Recipient repays some or all of the Funding to the Department.

## 5. ACKNOWLEDGMENT AND PUBLICITY

- 5.1 The Recipient must, in all publications, promotional and advertising materials and public announcements in relation to the Activity, or any products, processes or inventions developed as a result of the Activity, acknowledge the financial and other support the Recipient has received from the Department, in the following manner:

*'This project/publication was funded/sponsored/supported under the Fresh Ideas for Work and Family program administered by the Australian Government Department of Education, Employment and Workplace Relations.'*

## 6. SUBCONTRACTING

- 6.1 The Recipient must not, without the Department's written approval, subcontract the performance of any obligations under this Agreement. In giving approval, the Department may impose terms and conditions as the Department thinks fit.
- 6.2 The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement, even if the Recipient may subcontract some or all of its obligations.
- 6.3 Despite any approval given by the Department under clause 6.1, the Recipient is 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.
- 6.4 The Department may revoke its approval of a subcontractor on any reasonable ground by giving written notice to the Recipient. On receipt of the notice the Recipient must, at its own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to the Department.
- 6.5 If the Department withdraws its approval of a subcontractor, the Recipient remains liable under this agreement for the past acts or omissions of its subcontractors as if they were current subcontractors.
- 6.6 The Recipient must not enter into a subcontract under this agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.



## 7. INSURANCE

- 7.1 The Recipient must, for as long as any obligations remain in connection with the Activity, have the following insurance:
- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement; and
  - b. public liability insurance for \$10,000,000 (ten million dollars) or more per claim.
- 7.2 Whenever requested, the Recipient must provide the Department, within 10 business days of the request, with evidence satisfactory to the Department that the Recipient has complied with its obligation to insure.

## 8. RECORDS AND REPORTING

- 8.1 The Recipient must make full and accurate Records of the conduct of the Activity, including the receipt and use of Funding (in accordance with Australian Accounting Standards) and retain them for a period of no less than 7 years from the Completion Date.
- 8.2 The Recipient must provide to the Department reports at the times and in the manner stated in clause 8.3 below of receipt and expenditure of the Funding and the Recipient's progress in undertaking the Activity.
- 8.3 The Recipient must:
- a. Provide a Completion Report to the Department within 30 business days of the completion of the Activity. The Completion Report must be submitted using the template provided by the Department.
  - b. Participate in a survey conducted by the Department following the completion of the Activity, and encourage its staff to participate in any surveys conducted by the Department, in relation to the implementation and effectiveness of the Activity.

## 9. COMMONWEALTH MATERIAL

- 9.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Department but the Department grants the Recipient a licence to use, copy and reproduce Commonwealth Material only for the purposes of this Agreement.

## 10. ACTIVITY MATERIAL

- 10.1 Subject to this clause 10, the Recipient owns the Activity Material and the Intellectual Property Rights in Activity Material immediately on their creation.
- 10.2 The Recipient grants to the Department a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce and adapt the Intellectual Property Rights in Activity Material for any purpose.

## 11. DISCLOSURE OF INFORMATION

- 11.1 The Recipient acknowledges that the Department may be required to provide information in relation to the funding or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly the Department can give no undertakings to treat any of the Recipient's information or this Agreement as confidential information.



## 12. PROTECTION OF PERSONAL INFORMATION

- 12.1 The Recipient agrees to comply with the Information Privacy Principles contained in section 14 of the *Privacy Act 1988* when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Agreement, as if the Recipient were an agency as defined in that Act.
- 12.2 The Recipient agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Recipient has under this clause.

## 13. ACCESS TO PREMISES AND RECORDS

- 13.1 The Department may conduct inspections of the premises where the Activity has been implemented and/or at the Recipient's premises with reasonable prior notice. These inspections may be used by the Department as opportunities for the Department to demonstrate the effectiveness of the Fresh Ideas for Work and Family program to other businesses.
- 13.2 The Recipient must at all times give the Commonwealth Auditor-General, the Office of the Privacy Commissioner established by the *Privacy Act 1988* and any persons authorised by the Department (referred to in this clause 13 collectively as 'those permitted') access to premises at which Material and Records associated with the Agreement is stored or work under the Activity is undertaken at all reasonable times and the right to inspect and copy Material and Records, in the Recipient's possession or control, for purposes associated with this Agreement or any review of performance under this Agreement.
- 13.3 The Recipient must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 13.2.
- 13.4 The rights referred to in subclause 13.2 are subject to:
  - a. the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
  - b. the Recipient's reasonable security procedures.
- 13.5 The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause permitting the Department, and other persons authorised by the Department, to have access as specified in this clause 13.

## 14. INDEMNITY

- 14.1 The Recipient agrees to indemnify the Department against any:
  - a. loss or liability incurred by the Department;
  - b. loss of or damage to the Department's property; or
  - c. loss or expense incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by the Department;arising from:
  - d. any act or omission by the Recipient, or any of the Recipient's employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
  - e. any breach by the Recipient, or any of the Recipient's employees, agents, volunteers, or subcontractors of the obligations or warranties under this Agreement;



- f. any use or disclosure by the Recipient, or any of the Recipient's employees, agents, volunteers, or subcontractors of Personal Information held or controlled in connection with this Agreement; or
  - g. the use by the Department of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.
- 14.2 The Recipient's liability to indemnify the Department under this clause 14 will be reduced proportionally to the extent that any fault on the Department's part contributed to the relevant loss, damage, expense, or liability.
- 14.3 The Department's right to be indemnified under this clause 14 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.
- 14.4 In this clause 14, "fault" means any negligent or unlawful act or omission or wilful misconduct.

## 15. CONFLICT OF INTEREST

- 15.1 The Recipient warrants that, to the best of its knowledge after making reasonable inquiries, at the Date of this Agreement, no Conflict exists or is likely to arise in the performance of the Recipient's obligations under this Agreement.
- 15.2 If during the term of this Agreement, a Conflict arises, or is likely to arise, the Recipient must:
- a. immediately notify the Department in writing of that Conflict and of the steps the Recipient proposes to take to resolve or otherwise deal with the Conflict;
  - b. make full disclosure to the Department of all relevant information relating to the Conflict; and
  - c. take such steps as the Department may, if the Department chooses to, reasonably require to resolve or otherwise deal with that Conflict.
- 15.3 If the Recipient fails to notify the Department under this clause 15, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Agreement under clause 19.

## 16. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 16.1 The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be employees, partners or agents of the Department.
- 16.2 The Recipient must not represent itself, and must ensure that its employees, partners, agents or sub-contractors do not represent themselves, as being employees, partners or agents of the Department.

## 17. WAIVER

- 17.1 If either Party does not exercise (or delays in exercising) any rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- 17.2 A waiver by either Party of any rights does not prevent the further exercise of any right.
- 17.3 Waiver of any provision of, or right under, this Agreement:
- a. must be in writing signed by the Party entitled to the benefit of that provision or right; and
  - b. is effective only to the extent set out in the written waiver.
- 17.4 In this clause 17, "rights" means rights or remedies provided by this Agreement or at law.



## 18. ASSIGNMENT

- 18.1 The Recipient must not assign its rights under this Agreement without prior written approval from the Department.

## 19. TERMINATION

- 19.1 The Department may immediately terminate this Agreement by giving written notice to the Recipient of the termination if:
- a. The Department is satisfied that any statement made by the Recipient in its application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
    - i. the original decision to approve the Funding;
    - ii. the terms and conditions of this Agreement; and
    - iii. action taken by the Department under this Agreement.
  - b. the Recipient fails to fulfil, or is in breach of any of the Recipient's obligations under this Agreement, and does not rectify the omission or breach within 10 business days of receiving a notice in writing from the Department to do so;
  - c. the Recipient is found to have breached its obligations under the *Workplace Relations Act 1996* and any relevant State or Territory Legislation, awards or any other industrial instrument;
  - d. the Recipient is unable to pay all its debts when they become due;
  - e. the Recipient becomes subject to receivership, voluntary administration, liquidation or a deed of company, or an order has been made for the purpose of placing the Recipient under external administration arrangement or any other form of insolvency administration;
  - f. The Department considers it appropriate in the circumstances to do so;
  - g. being an individual, the Recipient becomes bankrupt or enter into a scheme of arrangement with creditors; or
  - h. the Recipient ceases to carry on a business relevant to the performance of the Activity.
- 19.2 The Recipient must comply with any requirements in the Department's notice of termination.
- 19.3 If the Department terminates this Agreement under subclause 19.1 the Department will only be liable for:
- a. payments under the payment provisions of this Agreement that were due before the effective date of termination; and
  - b. subject to clause 19.4, any reasonable costs incurred by the Recipient and directly attributable to the termination or partial termination of this Agreement.
- 19.4 The Department will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 19 or loss of any benefits that would have been conferred on the Recipient had the termination or reduction not occurred.

## 20. COMPLIANCE WITH LAWS AND THE DEPARTMENT'S POLICIES

- 20.1 The Recipient must, in carrying out the Recipient's obligations under this Agreement, comply with all relevant legislation and government requirements, including those notified in clause 20.2 below. The Recipient should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.
- 20.2 The Recipient must comply with the following laws in carrying out the Activity:
- *Equal Opportunity for Women in the Workplace Act 1999*
  - *Workplace Relations Act 1996*
  - *Racial Discrimination Act 1984*
  - *Sex Discrimination Act 1984*
  - *Disability Discrimination Act 1992*
  - *Crimes Act 1914*
  - *Criminal Code Act 1995*



## 21. APPLICABLE LAW AND JURISDICTION

- 21.1 The laws of the Australian Capital Territory apply to the interpretation of this Agreement.
- 21.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

## 22. NOTICES

- 22.1 A Party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:
- directed to the Recipient's address as specified in the Application Form (unless the Recipient's address has been varied by written notice); and
  - hand delivered or sent by pre-paid post or Electronic Communication to that address.
- 22.2 The Department's address details are as follows:  
Fresh Ideas for Work and Family (10M33)  
Department of Education, Employment and Workplace Relations  
GPO Box 9880  
Canberra ACT 2601  
Fax: 02 6123 5413
- 22.3 A notice given in accordance with subclause 22.1 is taken to be received:
- if hand delivered, on delivery;
  - if sent by pre-paid post, 5 business days after the date of posting unless it has been received earlier;
  - if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

## 23. INTERPRETATION

- 23.1 In this Agreement, unless the contrary intention appears:

**'ABN'** has the same meaning as it has in section 40 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

**'Activity'** means the activity described in the Recipient's Application;

**'Activity Material'** means all Material:

- brought into existence for the purpose of performing the Activity;
- incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (i); or
- copied or derived from Material referred to in paragraphs (i) or (ii);

**'Adjustment Note'** has the same meaning as it has in section 195-1 of the *GST Act*;

**'Agreement'** refers to the Letter of Offer from the Department as signed and dated by the Recipient and the Department, the completed Application, and these Terms and Conditions as initialled;

**'Application'** means the application submitted by the Recipient for funding under the Program as initialled;

**'Auditor-General'** means the office established under section 7 of the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office;



**‘Australian Accounting Standards’** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001;

**‘Commonwealth Material’** means any Material provided by the Department to the Recipient for the purposes of this Agreement or which is copied from that Material, except for Activity Material;

**‘Completion Date’** means the day on which the Recipient has done all that it is required to do under this Agreement to the Department’s satisfaction;

**‘Conflict’** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Recipient engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Recipient in providing the Activity to Commonwealth fairly and independently;

**‘Date of this Agreement’** means the date on which the Agreement is signed by the Department (after signature by the Recipient);

**‘The Department’** means The Department of Education, Employment and Workplace Relations;

**‘Electronic Communication’** has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999* (Cth);

**‘Evidence’** means any documents, photographs, statutory declarations, invoices and/or signed statements which can be used to demonstrate that the Family Friendly Work Arrangement has been successfully implemented.

**‘Existing Material’** means all Material in existence prior to the Date of this Agreement:

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

**‘Funding’ or ‘Funds’** means the amount or amounts (in cash or kind) payable by the Department under this Agreement, including interest earned on that amount;

**‘GST’** has the meaning as given in section 195-1 of the *GST Act*;

**‘GST Act’** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**‘Information System’** has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

**‘Intellectual Property Rights’** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**‘Letter of Offer’** means the letter from the Department to the Recipient offering the Recipient the Funding;

**‘Material’** includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

**‘Party’** means a party to this Agreement;

**‘Personal Information’** has the same meaning as under the *Privacy Act 1988* (Cth), which currently is information or an opinion (including information or an opinion forming part of a data base), 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 Commissioner'** means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) and includes any other entity that may, from time to time, perform the functions of that Office;

**'Program'** means the Fresh Ideas for Work and Family program;

**'Recipient'** includes, where the context admits, the Recipient's officers, employees, agents and subcontractors, and the Recipient's successors;

**'Records'** includes documents, information and data stored by any means, and all copies and extracts of the same;

**'Taxable Supply'** has the same meaning as it has in the *GST Act*.

Further information on the Fresh Ideas for Work and Family program may be obtained from [www.deewr.gov.au/freshideas](http://www.deewr.gov.au/freshideas), by calling the Workplace Infoline on **1300 363 264** or by **emailing FIWF@deewr.gov.au**.



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For more information on Fresh Ideas for Work and Family  
visit [www.deewr.gov.au/freshideas](http://www.deewr.gov.au/freshideas)  
call 1300 363 264  
email [FIWF@deewr.gov.au](mailto:FIWF@deewr.gov.au)  
or fax 02 6123 5413