



**Australian Government**

**Department of Finance**

# **Commonwealth Standard Grant Agreement Template**

## **User Guide**

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## Introduction

1. Similar to the Simple (previously known as Low Risk) user guide, this user guide is designed to assist you to use the Commonwealth Standard Grant Agreement Template (the template). This user guide must be read in conjunction with the template, which is available on the Department of Finance website <http://www.finance.gov.au/>.
2. Questions relating to the user guide or the template can be sent via email to [grants@finance.gov.au](mailto:grants@finance.gov.au).

## How the template works

3. This part explains the template section-by-section and provides guidance on how to use the template.
4. The template is designed to be used for a range of common grants administered across the Australian Government.
5. It has been drafted with interchangeable Standard Grant Conditions (SGCs), which can be substituted where an alternative option is offered, and includes a Clause Bank with additional optional Supplementary Terms. These Supplementary Terms can be included in the Agreement where necessary or appropriate.
6. To ensure consistency, only add, amend or substitute content where the template indicates.
7. Do not re-order or remove any sections of the template, except where indicated.
8. If other amendments to the template are required for a particular grant, you should consider whether the Standard Grant Agreement Template is appropriate.

### Structure of the Template

9. Once the template has been completed and signed by both Parties, five parts will form the Agreement between the Commonwealth and the Grantee:
10. **Part 1:** The **introductory information** sets out details of who is entering into the Agreement (the Parties involved) and explains the nature and structure of the Agreement.
11. **Part 2:** The **Grant Details** describe the purpose of the Grant, the details of the Activity to be undertaken and the payments to be made as well as other critical information that apply to the Activity.
12. You enter the specific details of the particular Grant into the Grant Details. The Grant Details comprise the following:
  - A. Purpose of the Grant
  - B. Activity
  - C. Duration of the Grant
  - D. Payment of the Grant
  - E. Reporting
  - F. Party Representatives and address for notices
  - G. Activity Material.

13. **Part 3:** The **Supplementary Terms** component is an optional component of the template which allows you to draw additional grant conditions from the accompanying Clause Bank. The Supplementary Terms address some of the more common issues which are not covered by the SGCs. For many Agreements, there may not be a need to include Supplementary Terms, but for some Agreements, it may be appropriate to include one or more of the Supplementary Terms. You should carefully consider whether to include a Supplementary Term and only include those terms that are essential to the management of the Grant. Other than as indicated, you cannot amend or insert your own Supplementary Terms.
14. **Part 4:** The **Signatures Page** is where the Commonwealth and the Grantee execute the Agreement.
15. **Part 5:** The **Standard Grant Conditions** (SGCs) define the standard rights and obligations that apply to the Agreement. These conditions cannot be changed. A number of the SGCs provide Alternative Options to the default Condition which allows the Commonwealth to impose more specific obligations on the Grantee. Note: if any Supplementary Terms have been included from the Clause Bank, these will take priority over the SGCs.

#### **Adding schedules**

16. For straightforward Grants, all the details of the Activity should be contained in the Grant Details section of the template. However, for larger or more complicated Grants, it may be necessary to include information, which does not readily fit within the Grant Details section of the template, as additional schedules. For example, where a Grant extends over a number of years and involves milestones or periodic reporting, you should include any reporting templates which the Grantee will be required to use as schedules.
17. Additional information relating to the Activity should be included as additional schedules at the end of the Agreement. You should be careful to ensure any schedules are properly referenced in the Grant Details (e.g. item 'B. Activity' and item 'E. Reporting') and update the contents page accordingly.

#### **Multiple Grants within an Agreement**

18. The template has been designed to accommodate more than one Grant under a single Agreement. This can be achieved by preparing a separate Grant Details page (with any Supplementary Terms if necessary) for each Grant.
19. Including multiple Grants in a single Agreement may affect the risk of the Agreement overall. Where multiple Grants are included under a single Agreement you should assess whether the template is the appropriate document to be used or whether a different agreement is appropriate.
20. Where multiple Grants are included under one Agreement, each Grant must be between the same Parties. The Grantee must be the same legal entity (e.g. the same ABN and ACN) and the same entity representing the Commonwealth, should be providing the Grants.
21. Where an additional Grant is added to an existing Agreement, the new Grant Details should be treated as a variation to the original Agreement.
22. Managing multiple Grants within a single Agreement will require additional oversight. Each Grant (and each Activity) should be actively managed, as there may be an increased

risk of issues being overlooked or 'merged' across separate Grants. The governance capacity of your entity and the Grantee should be considered before incorporating multiple Grants within a single Agreement.

## Part 1: Introductory Information

### 1.1 Parties to the Agreement

23. The 'Parties to the Agreement' section is where you enter the details of the Grantee and your entity (representing the Commonwealth) in the highlighted sections of the template.

#### The Grantee

21. You must include the full legal name of the Grantee, their registered address and Australian Business Number (ABN) (if applicable). You should confirm that this information is correct by searching the relevant databases. In particular, [www.business.gov.au](http://www.business.gov.au) for company and business names and [www.abr.business.gov.au](http://www.abr.business.gov.au) for ABNs.
22. It may not be necessary to include all the information provided for in the template. For example, individuals may not have a trading or business name or fax number. However, you should include enough information so that the Grantee is identifiable.

**IMPORTANT: If the Grantee is the Trustee of a Trust you should include Supplementary Term CB12. See [part 3](#) of the user guide for more information.**

#### The Commonwealth

23. This is where you provide the details of your entity. You should include all the information requested here.

### 1.2 Background

24. The background gives a short summary of what each Party to the Agreement is agreeing to. The Commonwealth (represented by your entity) is agreeing to assist the Grantee to undertake the Activity in accordance with the Agreement. The Grantee is agreeing to use the Grant and undertake the Activity in accordance with the Agreement.
25. When describing the Grant Activity, it is important that each Activity is drafted consistent with the terms of the Purpose of the Grant (Item A of the Grant Details). This will ensure that clause 13.4 (option 2) of the SGCs is able to be invoked if it is found that the Activity is failing to satisfy the purpose of the Grant.
26. Although the background describes 'the Grant' and 'the Activity', the template has been designed to accommodate multiple Grants to the same Grantee within the Agreement.

### 1.3 Scope of this Agreement

27. This section lists all the different documents that form the Agreement. Importantly, some documents may form part of the Agreement because you add them. Any documents that form part of the Agreement, for example, reporting templates, must be referred to, or incorporated, in the Grant Details.
28. The hierarchy of the documents tells you which document will take priority if there are inconsistencies or ambiguities between different parts of the Agreement. The Supplementary Terms take priority over the SGCs.

**IMPORTANT:** You should only add documents to the Agreement that are necessary to enable the Grantee to undertake the Activity. For example, any reporting templates that the Grantee is to use should be referred to in the Grant Details at item 'E. Reporting' and then attached to the Agreement as a schedule.

29. Only documents in the Agreement, or incorporated by reference, form part of the Agreement. This means that all other things, such as written proposals, email exchanges, or conversations before the Agreement was signed, may not form part of the Agreement. You should therefore ensure that the Grant Details are clear and contain all information necessary for the Activity to be undertaken.

## 2. Part 2: Grant Details

30. The Grant Details are where you include the information that relates to a particular Grant. This includes a description of the purpose of the Grant, details of the Activity/ies the Grantee must perform, and any related payment details and reporting requirements. It also includes the contact details of the Commonwealth's and the Grantee's representatives who will be responsible for managing the Grant on a day-to-day basis.
31. You can amend the details under the various item headings in the Grant Details to suit your particular Grant and the Activity. However, you must not amend or delete any of the item headings, as they relate to definitions in the SGCs and are referenced throughout the Agreement.

### 2.1 Item A. Purpose of the Grant

32. In this section you should include a brief description of the aims and/or objectives of the Grant. This provides context for the Grant and the Activity. You don't need to include details of the specific Activity here as this will be covered in the next section.
33. It is likely that any related grant opportunity or program guidelines will contain a description of the purpose of the Grant or grant opportunity or program. All Grants under a grant opportunity or program may have the same or similar detail in this section. Make sure that the description here is consistent with any published grant opportunity or program guidelines.

### 2.2 Item B. Activity

34. In this section you should provide a detailed description of the particular Activity/ies that the Grantee must undertake. You should be as comprehensive and precise as is necessary to ensure that both Parties have a clear and agreed understanding of the Activity. A useful test is to consider whether someone who is not familiar with the Grant, your entity or the Grantee could read this section and understand the Activity and what is required. This section will be the main reference tool if any issues arise as to whether or not the Activity has been properly undertaken and successfully completed.
35. Where necessary, you should also provide details of anything that is specifically **not** part of the Activity and therefore not covered by the Grant.
36. If the Activity involves preparing reports you should refer to them here. However, do not include the specific details of any reports. The actual content of reports should be included at Item E. Reporting.

### 2.3 Item C. Duration of the Grant

37. In this section you should indicate the date the Activity will start and end (the Activity Completion Date) and when the Agreement will end (the Agreement End Date). Note these could be specified events.
38. Be sure you leave enough time between the Activity Completion Date and the Agreement End Date to allow for anything the Grantee is required to do as part of the Activity, including the preparation and submission of any final reports required under Item B. Activity and Item E. Reporting.
39. This section also contains a schedule for relevant milestones. If the Grant is to be paid by way of progress payments which are tied to completion of milestones, these milestones should be reflected here and clearly described.

### 2.4 Item D. Payment of the Grant

40. In this section you should include all details regarding payment of the Grant. This includes the amount of the Grant and the form and timing of payments (such as instalments and linking payments to the achievement of milestones) and whether or not Goods and Services Tax (GST) is payable on the Grant. If applicable, you may wish to specify whether interest can or cannot be earned on the Grant. If you do allow interest to be earned on the Grant, you should also consider whether to include the optional text at the definition of 'Grant' at SGC 22 that the Grant includes interest earned by the Grantee on the money.
41. If possible, you should include the details of the bank account into which payments will be made to avoid any confusion when it comes time to make a payment. The Grantee does **not** need to open a separate bank account specifically for the Grant unless Alternative Option 2 to SGC 2 has been selected to require the Grantee to establish a bank account solely for the purposes of the Activity and separate from the Grantee's other operational accounts.
42. If you have selected the Alternative Option to SGC 9 that provides for the Commonwealth to issue the Grantee with a Recipient Created Tax Invoice (RCTI) for any taxable supply, you should specify any administrative requirements around RCTI here.
43. You should include any invoicing information required for the payment of the Grant. This includes all the requirements for an invoice to be a 'tax invoice' for the purposes of the GST legislation for taxable supplies made under the Agreement. Questions regarding the treatment of GST in relation to any payments being made under the Agreement should be directed to the chief financial officer unit within your entity or the Australian Taxation Office.

### 2.5 Item E. Reporting

44. In this section you should specify any reporting requirements in relation to the Grant. Reports should focus on the performance of the Activity and its outcomes. In some situations, you may require additional information to be provided by the Grantee, such as data showing the outcomes of the Activity.
45. You should carefully consider what data and reporting you require the Grantee to provide. While you should ensure that the Grantee is providing sufficient information to enable you

to assess the Grantee's performance of the Activity, you should avoid requesting data or reports that you do not intend to use.

46. You should be very clear about what needs to be included in each report, what data needs to be collected, how the information in the report should be presented, details of any particular certification or sign off required and the date by which reports are to be submitted. To avoid confusion, you may specify a template under this section to ensure the Grantee's reports comply with your entity's expectations or requirements.
47. Where the Grant is being paid in instalments, the timing of submission of reports can be aligned with the payment of the Grant to assist with management of the Agreement.
48. Where reports are required to be approved before they are accepted, this should be clearly indicated and you should ensure that sufficient information is requested to allow the reports to be properly assessed.

**IMPORTANT: The licence to [Intellectual Property Rights in Reporting Material](#) (see [SGC 17](#)) directly relates to the reports in item 'E. Reporting'.**

49. The default position under the SGCs requires the Grantee to provide a signed statement indicating that the Grant was spent in accordance with the Agreement (see SGC 10). You should consider carefully whether there is a need for additional financial reports or acquittals and the burden this might create for the Grantee, taking into account the value of the Grant, the nature of the Activity and the relevant risks.
50. Consistent with the [Commonwealth Grants Rules and Guidelines](#), when determining what financial acquittal or reporting is required, you must have regard to information collected by regulators that are available to you. If a Grantee provides an annual audited financial statement to a regulator, then a financial acquittal should not be required, except for higher risk grants.
51. Independently audited financial acquittal reports can be expensive and you should carefully consider whether they are needed given the risks to be mitigated by requiring them. Where independently audited financial acquittal reports are appropriate, due to the nature of the Grant, the cost of preparing the report should be factored into the Grant.

## **2.6 Item F. Party representatives and address for notices**

52. The Parties' representatives will be responsible for liaison and the day-to-day management of the Grant, as well as accepting and issuing any written notices (see SGC4) in relation to the Grant. Each person chosen to represent the Parties should have the authority to make decisions with regard to the Agreement.
53. These details should be kept up-to-date, for example, where there is a change in personnel responsible for managing the Grant. In some situations, it may be appropriate for your entity to establish a dedicated email address for a Grant or series of Grants that is accessible by more than one person, to avoid notices being missed.

## **2.7 Item G. Activity Material**

54. In this section you should list the Activity Material that is to be created or developed by the Grantee as a result of the Activity. Activity Material is defined at SGC 22. Activity Material will include Existing Material that has been incorporated in or supplied with the



Activity Material, but does not include Reporting Material. The default position under this Agreement with regard to Activity Material is contained at SGC 17. The default position is for the Grantee to own the Intellectual Property Rights (IPR) in Activity Material (except where that is Existing Material where the IPR are owned by another) and for the Commonwealth not to be given any licence over Activity Material. If you need a licence over Activity Material or wish to set out other allocation of IPR in Activity Material, you should consider using one of the options at Supplementary Term 'CB3 Intellectual property in Activity Material'.

### 3. Part 3: Supplementary Terms from the Clause Bank

55. The Supplementary Terms are an additional component of the template. They are optional clauses you can include from the Clause Bank, if necessary. The Supplementary Terms address some of the more common issues which are not covered by the SGCs. Other than as indicated, you cannot amend or insert your own Supplementary Terms.

**IMPORTANT: You cannot draft your own additional Supplementary Terms to include in the template.**

#### Other Contributions

56. Where the Grant is contingent on the Grantee securing a contribution from someone other than the Commonwealth, Supplementary Term CB1 can be included. It is not uncommon for the Commonwealth to require a Grantee to secure contributions from other sources as a condition of the Grant. For example, the Commonwealth may be contributing 50 per cent of the funding for an Activity with the other 50 per cent to be sourced from the Grantee itself or from other organisations, such as a state government or a non-government organisation.
57. CB1 allows the Commonwealth to impose a requirement on the Grantee to receive and use other monetary or in-kind contributions which will also contribute to the Activity. This Supplementary Term may be used to ensure the Grantee has the capacity to complete the Activity where the Grant is not the only source of funding available to the Grantee. This Term also allows the Commonwealth to manage double-dipping situations where a Grantee may have alternate sources available to it to fund the Activity.

#### Activity Budget

58. Where the Grant is contingent on the Grantee providing a Budget outlining how the Grant will be spent, Supplementary Term CB2 can be included. CB2 is intended to provide the Commonwealth with oversight of a Grantee's actual expenditure of the Grant against its projected forecast. This is a useful Term for managing programs or Grantees where there may be risk of the actual expenditure exceeding the Grant amount resulting in the Activity being unable to be delivered within Budget.

#### Intellectual Property

59. SGC 17 provides the Commonwealth with a licence to use Reporting Material only. Supplementary Terms 'CB3 Intellectual property in Activity Material', 'CB3A Intellectual property - research' and 'CB3B Creative Commons licence' expand the rights and obligations relating to intellectual property in Activity Material and Reporting Material.

60. Supplementary Term CB3 Option 1 provides the Commonwealth a licence to deal with Activity Material specified in the Grant Details. Both Options 1 and 2 of CB3 also require the Grantee to obtain moral rights consents for Reporting Material (and any Activity Material specified in the Grant Details).
61. If you believe the Commonwealth will need to use Activity Material in which all of Intellectual Property Rights (IPR) are owned by the Grantee, you should:
  - A. include Supplementary Term CB3 Option 1; and
  - B. specify in Item G of the Grant Details the precise Material to be covered by the licence under Supplementary Term CB3.2.
62. If there will be Activity Material in which some of the IPR are owned by the Grantee and some are owned by the Commonwealth, you should:
  - A. include Supplementary Term CB3 Option 2;
  - B. specify, at CB3.1 or in a Schedule, the Activity Material in which the Grantee and the Commonwealth own the IPR. You should take care to include all Activity Material if this option is used, and also consider whether there is Activity Material in which either party owns any residual IPR; and
  - C. specify in Item G of the Grant Details the precise Material to be covered by the licence under Supplementary Term CB3.3 Option 2.
63. If you use either Option 1 or Option 2 of Supplementary Term CB3, you should carefully specify the Material over which the Commonwealth requires a licence in Item G of the Grant Details (Activity Material) by describing the Material with sufficient detail to ensure there will not be any ambiguity about the scope of the Material to be included in the licence.
64. Supplementary Term CB3A provides for arrangements for IPR in grants involving publicly funded research where the Commonwealth does not wish to have any claim over the IPR in material related to or arising from the research. This gives assurance to the Grantee and participants that the Commonwealth will not seek to own the IPR in their research. The Commonwealth is given a licence over the Activity Material by CB3A.3.
65. Supplementary Term CB3B allows the Commonwealth to publish Reporting Material (and any Activity Material specified in the Grant Details) under a creative commons attribution licence (CCBY). Note that if you require a creative commons licence to cover Activity Material specified in the Grant Details you must also include Supplementary Term CB3 to ensure you have the licence to deal with the Activity Material you specify in the Grant Details.

#### **Access/Monitoring/Inspection**

66. Supplementary Term CB4 provides the option of a right of access to the Grantee's premises and a right to take copies of any Material relevant to the Activity. The purpose of this Supplementary Term is to allow the Commonwealth to adequately manage high-risk situations that may have arisen in respect of the Activity. Accessing premises and removing Material is a significant power and is unlikely to be necessary for most Grants. Accordingly this Supplementary Term should only be included where it is considered absolutely necessary to the risks to be mitigated.

### **Equipment and Assets**

67. Supplementary Term CB5 deals with equipment and assets which are purchased, leased, created or otherwise brought into existence, wholly or in part, using the Grant. There are two options in this Supplementary Term, the purpose of which is to prevent any Asset from unauthorised use by the Grantee, and to protect the Grant from possible loss in circumstances where the Grantee receives the proceeds for the sale of an Asset which has been funded by Grant funds.
68. Option 2 imposes additional Grantee responsibilities for any loss, damage or disposal of Assets after the Agreement has expired. Both Options 1 and 2 allow the Commonwealth to give directions to the Grantee about how to deal with an Asset after the expiry or termination of the Agreement.
69. Under the Agreement, Assets purchased by the Grantee for the purpose of undertaking the Activity are owned by the Grantee. Where the cost of the Assets comprises a significant proportion of the Grant, cost overruns for these Assets can have a significant impact on the Grantee's ability to undertake and complete the Activity. The creation and maintenance of an asset register can assist with managing assets. This Supplementary Term allows the Commonwealth to specify an appropriate threshold amount above which the Grantee must obtain written approval before using the Grant to purchase any Assets that aren't listed in the Agreement. In addition, the Grantee agrees to maintain a register of all equipment and assets purchased with a value above a specified threshold amount.
70. Supplementary Term CB5 should only be used where equipment and assets are expected to form a large proportion of the Grant or there are a large number of assets required for the Activity.

### **Specified Personnel**

71. Supplementary Term CB6 deals with personnel permitted to be involved in the Activity. The purpose of this Term is to allow the Commonwealth to exercise input and/or control over the personnel who may work on the Activity. Under this Term, if the Commonwealth believes the Grantee's Specified Personnel are inappropriate to be involved in the Activity, the Grantee must remove the personnel (subcontractors, agents or volunteers). Additionally, the Grantee would provide replacement personnel acceptable to the Commonwealth at no extra cost if required by the Commonwealth.
72. Directing the removal of personnel from an Activity can have serious workplace implications for the Grantee. For example, for financial reasons, a Grantee may need to terminate the employment of the relevant person in order to satisfy the Commonwealth's direction for removal of personnel. This course of action may amount to a breach of the Fair Work obligations for the Grantee. Before directing the removal of personnel, you should carefully consider whether other courses of action are open to the Commonwealth. If in doubt, seek legal advice.

### **Relevant Qualifications, Licenses, Permits, Approvals or Skills**

73. Supplementary Term CB7 allows the Commonwealth to impose obligations on the Grantee to ensure that personnel that perform work in relation to the activity have and maintain, the relevant skills, qualifications and other requirements to do so. Due to the nature of the Activity, or tasks being performed, there may be specific qualifications required by

legislation or industry standards, for example, first aid or trade certificates, etc. This is more likely to be relevant where the Grant relates to Activities of a technical nature. You have the option to specify relevant activities and your requirements, or, alternatively, to require appropriate qualifications, licences, permits, approvals or skills generally. If the Activity involves vulnerable persons or children, this Term is not sufficient and you should use the Supplementary Term specifically for such Activities: 'CB8 Vulnerable Persons' or 'CB9 Child safety'.

### **Vulnerable Persons**

74. Supplementary Term CB8 should be used where any part of the Activity involves working with or contact with one or more vulnerable persons. A Vulnerable Person is defined for the purposes of the Grant Template Suite as: "an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason".
75. Supplementary Term CB8 imposes requirements on the Grantee to obtain police checks and take other steps to ensure that any person who works on any part of the Activity that involves working or contact with a Vulnerable Person is a fit and proper person to perform that work. The term sets out relevant criteria to take into account in conducting a risk assessment to determine if any risk is acceptable if a person does have an offence or offences recorded against them. The term imposes obligations on the Grantee to notify the Commonwealth regarding risk assessments conducted and in the event that a person performing work on the Activity is charged or convicted of certain offences. Persons convicted of certain offences during the term must not perform any work or role relating to the Activity.

### **Child Safety**

76. Supplementary Term CB9 imposes obligations on Grantees in relation to child safety. The decision about when to use Supplementary Term CB9 is at the discretion of the Commonwealth entity – at your discretion – on a case by case basis.
77. It is recommended that Supplementary Term CB9 be used in grant agreements:
  - A. where the grant is for services directly to children (individuals under the age of 18 years). For example, providing early childhood learning services to children, providing telephone counselling services to primary school aged children or teaching children to abseil at an outdoor mentoring program; and
  - B. for Activities that involve contact with children that is a usual part of, and more than incidental to, the Activity. For example, a service to train vulnerable parents may involve significant contact with the vulnerable parent's child even if the service is directed at the parent.
78. It is recommended that Supplementary Term CB9 also be considered for use when Grantee personnel (including officers, employees, contractors, subcontractors, agents and volunteers), as part of the Activity, may interact with children. For example, if an Activity may be located on a school premises, this is likely to result in Child-Related Personnel having increased interaction with children, even if it is not a service to a child.

79. Clause CB9.1 prescribes the definitions that apply to the clause.
80. Clause CB9.2 provides that the Grantee must comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity. The clause also provides that if Working with Children Checks are required they must remain current for the duration of the Activity. Clause CB9.2 is aimed at requiring the Grantee to ensure that they comply with state and territory legislation relating to working with children checks and mandatory reporting obligations. The Relevant Legislation will depend upon which jurisdiction the grant Activity is taking place in. If the Activity takes place in more than one state or territory, the Grantee will need to comply with requirements in each jurisdiction.
81. The obligation in clause CB9.2 extends to 'Child-Related Personnel' as defined in clause CB9.1. This extends the Grantee's obligations to officers, employees, contractors, subcontractors, agents and volunteers who as part of their involvement in the Activity may interact with children. The Grantee is responsible for ensuring that all relevant aspects of the Agreement are complied with, even when subcontractors are involved. This means that, if subcontractors are performing work on the Activity for the Grantee that involves interaction with children, the Grantee is responsible for ensuring that the subcontractor complies with their requirements under this Supplementary Term.
82. Clause CB9.3 provides that, in relation to the Activity, the Grantee must:
- implement the National Principles for Child Safe Organisations;
  - ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
  - complete and keep updated a child-related risk assessment including implementation of management strategies; and
  - provide training and implement a compliance regime to ensure that all relevant persons are aware of National Principles for Child Safe Organisations, risk management strategies and relevant legislation.
83. Clause CB9.3 (f) requires the Grantee to provide the Commonwealth with an annual statement of compliance with clauses CB9.2 and CB9.3, in the form specified by the Commonwealth. The fact that clause CB9.3 (f) provides for the Commonwealth to specify the form of the report gives you the flexibility to decide the type and manner of reporting. This means that you can design your child safety reporting to suit your entity. Your child safety reporting could be incorporated into existing reports that the Grantee must provide (e.g. annual financial acquittals) or it could be separate reporting. You could ask the Grantee for child safety reporting for each Activity or to provide reporting for all grants for your entity.
84. The National Principles for Child Safe Organisations provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing across all sectors engaging with children and young people in Australia. The National Principles are 10 high-level principles showing the elements of a child safe organisation to prevent future abuse of children in institutional environments. The obligations under the National Principles are not insignificant. However, if used in appropriate grant agreements, they are an important tool for ensuring the safety and protection of children. The [Australian](#)

[Human Rights Commission \(https://www.humanrights.gov.au/our-work/childrens-rights/projects/child-safe-organisations\)](https://www.humanrights.gov.au/our-work/childrens-rights/projects/child-safe-organisations) has tools and resources available to assist with practical implementation of the National Principles.

85. Clause CB9.4 provides the Commonwealth with the ability to review the Grantee's compliance with Supplementary Term CB9. Clause CB9.4 requires the Commonwealth to provide the Grantee with reasonable notice of a review of compliance with the clause. What will be considered reasonable notice will depend upon the facts in each case but should be proportional to the nature and substance of the review. For example, if the review will require significant resources from the Grantee, including site visits, then a substantial notice may be reasonable.
86. Clause CB9.5 (a) requires the Grantee to notify the Commonwealth of any failure to comply with this Supplementary Term. Given the importance of the child safety obligations and the potential risks to children of non-compliance, if the Grantee reports that they do not comply with Supplementary Term CB9, you should ensure that you manage the Agreement to rectify this problem. In the first instance it may be appropriate to ask the Grantee to provide:
  - further information about the non-compliance;
  - details about how the Grantee will urgently rectify their non-compliance (please ensure that this is done within an appropriate timeframe); and
  - notice of when the Grantee has achieved compliance with clause.
87. If you do not receive an adequate response from the Grantee regarding compliance with Supplementary Term CB9, you may wish to consider:
  - seeking internal legal advice about the remedies that may be available under the Agreement, including termination of the Agreement (SGC 19) or withholding payment of the Grant until the Grantee complies with their contractual obligations (SGC 2);
  - reporting non-compliance to the relevant state or territory government office if it involves non-compliance with the Grantee's obligations for working with children checks or mandatory reporting specified in legislation. It may be an offence in the relevant state or territory to fail to comply with the legislative requirement for Working with Children Checks and mandatory reporting obligations.
88. Clause CB9.5 (b) provides that the Grantee must co-operate with the Commonwealth in any review of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this Supplementary Term. Clause CB9.5 (c) provides that if the Grantee has failed to implement the requirements of this Supplementary Term, the Grantee must take prompt action, at its own cost, to rectify the failures to the Commonwealth's satisfaction. This provides the flexibility to allow both for the Commonwealth to direct the action to be taken by the Grantee or for the parties to collaborate on the appropriate action, with the key requirement in either case being that the Commonwealth is satisfied that the action rectifies the failures.

### **Commonwealth Material, Facilities and Assistance**

89. Supplementary Term CB10 allows the Commonwealth to specify any Commonwealth Material, access to facilities or other assistance which the Commonwealth will provide or make available to the Grantee in addition to the Grant. Types of assistance that could be provided include documentation, equipment, access to premises and administrative support.
90. Note that not including Supplementary Term CB10 or failing to specify a particular form of assistance in this section, does not prohibit the Commonwealth from subsequently providing that assistance to the Grantee. Rather, this Supplementary Term allows you to include any items that may have formed the basis for reaching agreement to undertake the Activity.
91. Once specified, the inclusion of this Term allows the Commonwealth to prevent the Grantee from making unauthorised use of any Commonwealth Material, facility or assistance and to ensure the Grantee complies with any direction or other requirements notified by the Commonwealth when accessing any facility or other assistance or using and storing any Commonwealth Material.

### **Jurisdiction**

92. Supplementary Term CB11 allows you to specify which jurisdiction's law will govern the Agreement. This may be appropriate where the Agreement is being used across a variety of states and territories.
93. It is not uncommon for Commonwealth grant agreements to specify that they are governed by the law of the Australian Capital Territory (ACT). This may make sense to the entity administering the grant and the drafter of the agreement, if they are based in the ACT. However, it may not be appropriate where the agreement is executed in a state office, for the purposes of a grant in that state. In this situation, it is likely that any disputes or other issues would be best dealt with by a court in the state applying the laws of that state (such as general contract law or any specific laws relevant to the Activity being undertaken).

### **Grantee Trustee of Trust**

94. Supplementary Term CB12 deals with Grant arrangements in which the Grantee is the trustee of a Trust. Option 1 should be included when the Grantee is one person who is the trustee of a Trust. Option 2 should be included when the Grantee is made up of a number of persons who together are the trustee of a trust.
95. The purpose of this Supplementary Term is to protect the Commonwealth by requiring the Grantee to warrant that it is (or they are) the legal entity of the Trust and has the necessary level of control over the Trust assets.
96. Trusts can have a variety structures and differing constitutions. Similarly, the law that applies to Trusts may differ across jurisdictions. If you are entering into an Agreement with a Grantee who is the trustee of a Trust and the Grantee has raised any concerns with the inclusion of this clause or has proposed amendments to this clause, you should seek legal advice.
97. Supplementary Term CB12 Option 2 imposes joint and several liability for the performance of the Agreement upon each trustee of the Trust that comprises the Grantee.

## **Fraud**

98. Supplementary Term CB13 provide two options for arrangements to deal with any suspected or actual fraud, and any subsequent investigation in relation to the Grant. Supplementary Term CB13 Option 1 is aimed at reducing the risk of fraud going undetected and ensuring any fraud is appropriately investigated.
99. Supplementary Term CB12 Option 2 is suitable for higher risk granting arrangements. Option 2 enables the Commonwealth to require the Grantee to undertake a Fraud risk assessment and to produce a Fraud control strategy.
100. Under both options, where Fraud is suspected in relation to the performance of the Activity or any other Fraud that has had or may have an effect on the performance of the Activity, the Commonwealth may require the Grantee, at its own cost, to arrange for an external forensic audit.

## **Prohibited Dealings**

101. Supplementary Term CB14 may be appropriate to include in your Agreement if there is a need to specifically address the risk of the Grantee or its personnel having dealings with persons or entities that are the subject of certain sanctions at national and international level. However, if this is a significant risk, you should consider whether this template agreement is suitable for your needs.

## **Anti-Corruption**

102. Supplementary Term CB15 may be appropriate to include in your Agreement if there is a need to specifically address the risk of the Grantee or its personnel engaging in any illegal or corrupt practice. However, if this is a significant risk, you should consider whether this template agreement is suitable for your needs. Lawful and proper payments of amounts from the Grant to a government will not be illegal or corrupt and so will not contravene this Term.

## **Step-in Rights; Grant Administrator; Management Adviser**

103. Supplementary Terms CB16, CB17 and CB18 provide the Commonwealth with additional rights to take pre-emptive action against a Grantee to protect the Activity. These provisions allow the Commonwealth to step in and take control of the Activity in circumstances where the Grantee's actions have resulted in the delay or failure to deliver the Activity due to the Grantee's inability to administer the Grant properly.
104. A Clause 2 (Payment of the Grant) Notice operates as a trigger to invoke the Commonwealth's additional rights under each of these Supplementary Terms.
105. Supplementary Term CB16 enables the Commonwealth to take any step to manage the Activity that is reasonably necessary having regard to the trigger event. The Commonwealth may also specify that the Grantee shall no longer be responsible for the performance of the Activity until such time as the Commonwealth directs otherwise. The Commonwealth may also reduce the amount of the Grant payable to the Grantee proportionate to the costs incurred by the Commonwealth in exercising its rights under this clause.
106. Supplementary Term CB17 enables the Commonwealth to appoint an administrator to oversee the Grantee's continued performance of the Activity and its management of the



Grant. If a Grant Administrator has been appointed, the Grantee must consider all advice given by the Grant Administrator; co-operate fully and in good faith; and comply with all directions given by the Grant Administrator relating to the administration of the Grant.

107. If the Commonwealth invokes this right to appoint a Grant Administrator, the Grantee nevertheless remains responsible for the Grant. The Grant Administrator cannot enter into agreements for or on behalf of the Grantee, nor incur debts or other obligations on the Grantee's behalf. Nor is the Grant Administrator an employee, officer, agent or contractor of the Grantee, or an agent of the Commonwealth.
108. Supplementary Term CB18 operates in a similar manner to CB16 and CB17, but the scope of a Management Adviser's appointment is limited to corporate governance arrangements, matters relating to the management of the Activity and the management of the Grantee's personnel.
109. The Commonwealth must bear the cost of the appointment of a Management Adviser and does not have a right to offset any expenses associated with exercising its rights under Supplementary Term CB18 against any Grant payments payable to the Grantee.

### **Indemnities**

110. Supplementary Term CB19 deals with indemnities. An indemnity seeks protection for a Party against loss which it might suffer as a result of the Activity. This Supplementary Term sets out the Grantee's obligations in indemnifying the Commonwealth in respect to the Activity. The Commonwealth is responsible to the extent it contributed to the claim, loss or damage. This Term is designed to be consistent with the obligations that exist at common law regarding indemnities.

### **Compliance with Legislation and Policies**

111. Supplementary Term CB20 contains two options which aim to ensure the Grantee complies with any requirements - legislative or policy or industry standards - that are particularly relevant to the Activity. Although it is not necessary to restate requirements that already exist in law, specific grant opportunities and programs may have policy objectives which are relevant to promote when engaging with the community. Whilst the omission of this Supplementary Term does not mean that the Grantee does not have a general obligation to comply with any applicable legislation and policies, its inclusion allows the Commonwealth to draw the Grantee's attention to particular matters which are especially relevant to the Grantee's obligations under the Agreement.
112. Option 2 is suitable if you wish to specifically list legislation, policy or standards that are relevant to the Activity. For example, for some Activities, you may wish to ensure that the Grantee complies with your internal entity policies. For instance, where the Grantee's personnel are likely to be interacting or working closely with entity staff, or regularly attending entity premises, it may be appropriate to list the Australian Public Service Code of Conduct or internal entity work, health and safety policies.
113. It is important to understand the potential consequences of including Supplementary Term CB20 in the Agreement. By including a requirement to comply with specific legislation or policy, the Grantee is bound by the Agreement to do so. Failure to comply would be a breach of contract and could expose the Grantee to the enforcement provisions of the

Agreement, including withholding payments and/or termination. This would be in addition to any penalties under the law or policy.

### **Work Health and Safety**

114. Supplementary Term CB21 deals with work health safety requirements. The omission of this clause would not release the Grantee from its legislative and regulatory obligations, however, its inclusion in the Agreement would allow the Commonwealth to reinforce the Grantee's responsibilities for work health and safety matters, especially if the nature of the Activity involves higher than usual risks to the safety of the personnel performing the Activity.

### **Transition**

115. Supplementary Term CB22 allows the Commonwealth to compel the Grantee to cooperate and provide assistance in circumstances where the Agreement has been reduced in scope or terminated pursuant to SGC 19. The purpose of this clause is to safeguard to the greatest extent possible the continued performance of the Activity to ensure its ongoing delivery.

116. This Term would be appropriate for inclusion where a risk assessment indicates a higher than usual level of Grantee risk, such as its financial viability or capability to deliver the Activity.

### **Corporate Governance; Incorporation Requirement**

117. Supplementary Terms CB23 and CB23A are intended to safeguard the Grant by requiring the Grantee to have proper corporate governance arrangements in place to avoid potential conflicts with the Grantee's obligations under the Agreement.

118. 'Constitution' is defined broadly in Supplementary Term CB23 so as to encompass the governing rules of the Grantee, whether the Grantee is a company, body corporate, incorporated association or other body.

119. Supplementary Term CB23 Option 1 requires, as a minimum, that the Commonwealth may inspect a Grantee's constitution on request. Supplementary Term CB23 Option 2 allows the Commonwealth to prohibit the involvement of certain persons in the management or financial administration of the Grantee's corporate affairs. Option 2 also allows the Commonwealth to withhold payment of the Grant or suspend the Agreement if the Grantee comes under any form of external administration.

120. Supplementary Term CB23A allows the Commonwealth to require a Grantee to become incorporated where the total value of the Grantee's annual funding from the Commonwealth exceeds \$500,000. The purpose of Supplementary Term CB23A is to ensure the Grantee's proper management and financial administration in order to protect Commonwealth funding from adverse circumstances that might arise where the Grantee does not have suitable corporate arrangements in place.

121. Supplementary Term CB23A allows the Commonwealth to direct Indigenous organisations to incorporate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act). Indigenous corporations operating under the CATSI Act can access additional support provided by the Office of the Registrar of Indigenous Corporations (ORIC) not available from any other corporate regulator. In addition, the Registrar has unique regulatory power to put failing corporations under independent administration,

restore them to healthy operation and hand back control to members. You should consider adding this Supplementary Term to your Agreement as an additional risk mitigation and governance support option if it is more than \$500,000 per year and with a non-CATSI Act Indigenous organisation.

### **Counterparts**

122. Supplementary Term CB24 allows the Agreement to be executed in counterparts, giving the parties the convenience of signing separate versions of the Agreement and avoiding the need to post a single, original Agreement.

### **Employees Subject to SACS Decision**

123. Supplementary Term CB25 deals with supplementation funding for eligible organisation to cover costs arising from the Equal Remuneration Order made by the Fair Work Commission<sup>1</sup>. The Australian Government provides supplementation to eligible organisations who receive Australian Government funding directly from the Commonwealth or through a Commonwealth-State agreement grant agreement for in-scope programs with eligible service providers include a SACS supplementation component. This clause should be included if your program is likely to provide funding to eligible organisations.

### **Program Interoperability with National Disability Insurance Scheme**

124. Supplementary Term CB26 is intended for use by entities that have programs and agreements that are transitioning to the National Disability Insurance Scheme (NDIS) implemented by the National Disability Insurance Agency (NDIA). The Term aims to ensure that the arrangements that apply during the transition are clearly identified and to facilitate review processes for quality assurance during the transition.

### **Rollover of surplus and uncommitted funds**

125. Supplementary Term CB27 may enable an entity and Grantee to treat and account for funds, left over from previous grants for activities that are the same or similar, as part of the Grant provided under this Agreement. Including Supplementary Term CB27 in your Agreement will facilitate rolling over surplus and uncommitted funds from the current Grant to future Grants to the Grantee. It would be appropriate to include this Term if it is likely that the Commonwealth will award future grants to the Grantee for the same or similar activities.

126. However, if you are including Supplementary Term CB27 for the first time in a series of grant agreements with the Grantee, you should especially take care to read the Term in conjunction with the provisions of the relevant previous grant agreement. You should consider whether this Supplementary Term CB27 is consistent with the terms and conditions of the previous grant agreement on handling unspent monies, noting that such terms may be expressed to survive termination or expiry of that agreement, just as clause CB27.5 provides that Supplementary Term CB27 survives termination or expiry of the Agreement. If you are in doubt, seek legal advice.

<sup>1</sup> See link for further information. <https://www.dss.gov.au/our-responsibilities/communities-and-vulnerable-people/grants-funding/fair-pay-for-social-and-community-services-workers/sacs-funding-supplementation-frequently-asked-questions>.

## **Secret and Sacred Indigenous Material**

127. Supplementary Term CB28 is to protect information, knowledge or other material of special spiritual, cultural or customary significance which is considered to be sacred or of significance by an Indigenous Person or according to Aboriginal Tradition, as defined by clause CB28.1. Supplementary Term CB28 prevents any Secret and Sacred Indigenous Material from becoming Activity Material or Reporting Material and exempts this Material from record-keeping requirements. Secret and Sacred Material is treated as the confidential information of the relevant Indigenous Person or community. However, if there is Secret and Sacred Indigenous Material relevant to the performance of the Activity, the Grantee is to inform the Commonwealth that it exists and is not being disclosed because it is Secret and Sacred Indigenous Material.
128. It would be appropriate to include Supplementary Term CB28 if the Grantee is an Indigenous person or organisation, or the Activity specifically involves Indigenous people or communities.

## **4. Part 4: Signatures**

129. The signatures page is where the Grantee and the Commonwealth indicate their assent to, and execute, the Agreement. Once the Agreement has been executed it will take effect, and the Parties will be legally bound by it.
130. Included in the template are signature blocks for four common legal structures that will be relevant for entities likely to receive grants from the Commonwealth. You can modify the signature page to suit the particular Grantee. If you are unsure of the appropriate way to execute the Agreement you should seek legal advice.
131. A model signature block has not been included for trustees. If the Grantee is the trustee of a Trust you will need to determine the appropriate method of executing the Agreement.
132. In some situations, a representative of the Grantee (other than a Director, such as the Parties' representatives) will be executing the Agreement on behalf of the Grantee. It is important that the signatory has sufficient authority to enter into the Grant on behalf of the Party they represent. You should ask the Grantee to confirm the way in which it will be executing the Agreement and the basis upon which this is being done. If necessary, seek legal advice.

## **5. Part 5: Commonwealth Standard Grant Conditions (Schedule 1)**

133. This part provides guidance on the Commonwealth Standard Grant Conditions (SGCs). The SGCs are a compulsory set of terms and conditions that automatically apply to all Agreements and all Grants using the template.
134. The SGCs comprise 21 clauses and a definitions clause. They cover categories such as:
- undertaking the Activity
  - the relationship between the Commonwealth and the Grantee
  - conditions relating to the payment of the Grant
  - handling of information
  - resolving disputes

- changing or ending the Agreement before its completion.
135. Certain of the SGCs contain Alternative Options to the default Condition. Where an Alternative Option has been provided, the Option will cover the position under the default SGC and impose broader or more specific obligations on the Grantee to allow the Commonwealth to more effectively manage Grants which may have higher risk elements.
136. Where more than one Option is provided, the second option will cover the positions under both the default Condition and Option 1. Note that where you elect to use an Option, you must substitute that Option in its entirety for the default Condition.
137. The SGCs (whether the default or an Option has been used) cannot be changed. However, some may be expanded by Supplementary Terms (see part 3 of the user guide). For example, including Supplementary Term CB3 Intellectual Property will give the Commonwealth a broader licence to Intellectual Property Rights than under SGC 17.

### **5.1 How is the Activity to be undertaken?**

138. This section of the user guide concerns the obligations on the Grantee when carrying out the Activity, as described in Item B of the Grant Details, and the subsequent reporting to be provided by the Grantee on the conduct and outcome of the Activity.
139. Under SGC1 the Grantee agrees to undertake the Activity according to the Agreement. This is the Grantee's main obligation under the Agreement. Where the Grantee fails to undertake the Activity in accordance with the Agreement it may trigger some of the other provisions, such as withholding payments (see SGC2 or SGC11) or reduction, suspension or termination for default (see SGC 19).
140. SGC13 sets out the reporting obligations of the Grantee. The default position under SGC13 requires the Grantee to provide the Reporting Material specified in Item E of the Grant Details.
141. Alternative Options 1 and 2 impose more specific obligations with respect to the Reporting Material to be provided. Option 1 requires the Grantee to provide any additional information as reasonably required by the Commonwealth, or to comply with the Commonwealth's reasonable requests, directions, or monitoring requirements. Option 1 also allows the Commonwealth to require the Grantee to provide additional reports if the Commonwealth has reasonable concerns about the performance of the Activity or the management of the Grant.
142. Option 2 contains an additional provision that is intended to address concerns where the Activity may not be fully meeting the purpose of the Grant, or where there may be Activity risks that need to be addressed which do not relate to the Grantee's performance of the Activity. This may be where, notwithstanding the Grantee's satisfactory performance of the Activity (for example, the provision of before school breakfast to school-age children), the Activity is not meeting the purpose of the Grant (to improve school attendance of the children).
143. Option 2 provides that, by written notice from either Party, the other Party agrees to work cooperatively to consider and negotiate in good faith any proposed change to the Activity so as to better align with the purpose of the Grant. Any such changes agreed by the Parties must be effected by variation under SGC8.

## 5.2 What conditions apply to payments?

144. This section deals with the conditions that attach to the payment of the Grant. It covers making payments and repayments, withholding payments and spending payments.
145. SGC2 deals with payment of the Grant. While the performance of the Activity is the Grantee's main obligation under the Agreement, payment of the Grant in accordance with the Grant Details is the Commonwealth's main obligation.
146. This could be relevant where the Grantee has not complied with the Agreement, for example, by failing to meet milestones. Withholding payments can seriously impact on the ability of the Grantee to continue to undertake the Activity so this option should be carefully considered. Any issues with the Grantee's performance of the Agreement should be discussed with the Grantee in a timely manner. If a payment is withheld, it is important that the Grantee is made aware of the reason and the action the Grantee can take to address the issue. This will enable it to be resolved as quickly as possible.
147. Clause 2 allows the Commonwealth to take action where it reasonably believes the Grantee has failed to comply with the Agreement, or is unlikely to be able to perform the Activity, or manage the Grant, in accordance with the Agreement, the Commonwealth may be able to withhold the Grant, or take other action against the Grantee by giving notice. These other actions include the range of possible remedies open to the Commonwealth under SGC 19 which include:
- A. reduction in the scope of the Agreement (clause 19.1);
  - B. suspension of the Grantee from the Activity (clause 19.2); or
  - C. termination of the Agreement (clause 19.3).
148. Alternative Options 1 and 2 to SGC2 allows the Commonwealth to impose more specific requirements on the Grantee with respect to the Grant. These requirements are that the Grant must be held in a bank account controlled by the Grantee (Option 1), or that the relevant bank account must be established solely for the purposes of the Activity and separate from the Grantee's other operational accounts (Option 2).
149. Note that to retain the Commonwealth's full options to invoke one of these actions under SGC19, it is important that any the notice under SGC2 has been correctly issued and any subsequent non-compliance by the Grantee has been carefully documented.
150. A SGC2 notice will also operate as a trigger clause for the following Supplementary Terms if they have been imported into the Agreement from the Clause Bank:
- CB16. Step-in rights
  - CB17. Grant Administrator
  - CB18. Management Adviser
151. SGC9 deals with the taxation implications of a Grant. Under default SGC9, the Grantee agrees to pay GST payable on supply made under the Agreement. The Alternative Option allows the Commonwealth to issue the Grantee with a recipient created tax invoice.
152. SGC10 contains the second main obligation on the Grantee, which is to spend the Grant for the purpose of the Activity only. It also requires the Grantee to provide a signed

statement verifying that the Grant was spent in accordance with the Grant Details within one month after the Activity Completion Date.

- 153.SGC10 sets out the requirements in relation to financial reporting and acquittals. At item 'E. Reporting' in the Grant Details, you should specify the form and content of the signed statement. You should also indicate who should sign the statement. This may be the Grantee's representative as indicated at item 'F. Party representatives and address for notices' of the Grant Details. In other circumstances, it may be appropriate to specify some other representative of the Grantee, for example, the chief financial officer.
- 154.The default position under SGC10 is that the Grantee agrees to provide the Commonwealth with a signed statement verifying the proper expenditure of the Grant with one month of the Activity's completion date.
- 155.SGC10 also allows the Commonwealth to impose more specific obligations. Option 1 allows the Commonwealth to require the Grantee to provide an income and expenditure statement in relation to the Grant and the Activity at least every 12 months during the term of the Activity. Option 2 allows the Commonwealth to require the Grantee to provide independently audited financial acquittal reports after each 12 month anniversary of the Activity's start date during the term of the Activity. Option 2 also sets three months as the default timeframe for the first report after the Activity Completion Date if no other timeframe is set by the Commonwealth.
- 156.Under SGC11, the Commonwealth can require the Grantee to repay any amount of the Grant that is misspent or that is additional to the requirements of the Activity, unless agreed otherwise.
- 157.SGC11 also allows the Commonwealth to deduct an amount to be repaid from future payments of the Grant (or deal with that amount as directed by the Commonwealth) rather than requiring repayment. This may be more administratively efficient where there are future payments of the Grant to be made. You should be careful when deducting from future payments where there are multiple Grants under the one Agreement. Each Grant should be separately accounted for and excess or misspent amounts of one Grant should generally not be 'transferred' or 'set-off' against other Grants with the same Grantee.
- 158.Supplementary Term CB27 Rollover of Surplus and Uncommitted Funds can enable an entity and Grantee to treat and account for funds, left over from previous grants for activities that are the same or similar, as part of the Grant provided under this Agreement.

### **5.3 How is the relationship governed?**

- 159.This section of the user guide concerns the relationship between the Commonwealth (represented by your entity) and the Grantee. It covers acknowledgements, notices, subcontracting, conflict of interest, the legal relationship between the Parties, and variations to the Agreement.
- 160.SGC3 deals with acknowledgements. It is common practice for a recipient of an Australian Government grant to acknowledge the Australian Government's support in grant-related material and this is required by SGC3. There may be specific wording that you would like used, such as a reference to the grant program under which the Grant is provided. SGC3 also prohibits any public announcement by the Grantee of the awarding of the Grant in connection with the Agreement without the Commonwealth's prior written approval.

161. Often the form of the acknowledgement will include the Commonwealth Coat of Arms or the administering entity's logo. The Alternative Option to SGC3 allows the Commonwealth to prohibit use of the Commonwealth Coat of Arms in connection with the Grant or Activity without the Commonwealth's prior written approval.
162. SGC4 sets out when and how one Party must give the other Party notice. SGC4 requires both the Commonwealth and the Grantee to notify the other if something happens that is reasonably likely to have a negative effect on the carrying out of the Activity, the management of the Grant or anything else that party is required to do under the Agreement.
163. SGC4 requires all notices given by a Party under the Agreement be in writing and addressed to the other Party's representative (as specified in item 'F. Party representatives and address for notices' of the Grant Details or as most recently updated). Notices in writing include electronic communications such as email.
164. The Alternative Option to SGC4 sets out when a notice is deemed to have been effective. The Alternative Option also enables the Commonwealth to give the Grantee notice of certain minor or administrative changes to the Agreement without the need for a formal variation in accordance with SGC8. The notice must be in accordance with SGC4. This is limited to minor or administrative changes that do not increase the Grantee's obligations under the Agreement, such as a change of contact details, indexation or a change of reporting date to the benefit of the Grantee. Any such changes are legally binding. If there is any doubt about whether the change is minor or administrative and doesn't increase the obligations of the Grantee, a formal variation to the Agreement should be made. A Notice of Change template is available for use in making these minor or administrative changes.
165. While notices under SGC4 will need to be in writing by the Party giving notice, not all communication between the Parties needs to be in writing and signed. Generally, written notification will be required for any official correspondence in relation to the Grant or under the Agreement, such as accepting reports, withholding payment (see SGC2), reduction, suspension or termination for fault (see SGC19) and cancellation for convenience (see SGC20).
166. Day-to-day interaction between you and the Grantee can be undertaken in a less formal setting. However, you should ensure that appropriate file notes and other records are kept and that anything significant is confirmed in writing.
167. SGC5 clarifies that the Agreement does not make either Party the employee, agent or partner of the other Party. It also makes it clear that no Party can bind or represent the other Party to someone outside the Agreement (i.e. the Grantee is not part of your entity, or able to speak on behalf of your entity, just because it is undertaking the Activity).
168. SGC6 deals with subcontracting. Under the default SGC6, the Grantee is not required to obtain the Commonwealth's approval prior to engaging subcontractors. The Grantee remains responsible for the compliance of subcontractors with the Agreement. The Grantee is still required to provide the details of any subcontractors to the Commonwealth upon request.
169. The Alternative Options of SGC6 allows the Commonwealth to impose more specific requirements in respect of subcontracting. Option 1 allows the Commonwealth to require the Grantee to seek the Commonwealth's prior written consent (on any reasonable and



appropriate conditions) before the Grantee can subcontract any part of the performance of the Activity. Option 2 allows the Commonwealth to impose the additional requirement that the Grantee agrees to remove a subcontractor from the Activity at the reasonable request of the Commonwealth.

170. It will be the Grantee's responsibility to manage any issues with subcontractors, given they are best placed to do this. Under the Agreement, the Grantee is required to ensure that all relevant aspects of the Agreement are complied with, regardless of whether subcontractors are involved.
171. Under SGC7, the Grantee agrees to notify the Commonwealth promptly of any conflict of interest issues, which could affect its performance of the Agreement. The inclusion of a conflict of interest provision is common for most types of agreements with the Commonwealth. The Grantee is also required to take action to resolve conflict, which will depend on the nature of the conflict.
172. Where the Grantee fails to take appropriate action to resolve a conflict, you may be entitled to enforcement provisions, such as withholding payments.
173. SGC8 requires that any variations to the Agreement are recorded in writing and signed by both Parties. It is not uncommon for a grant agreement to need to be varied during the life of the agreement. For example, intervening factors may require milestones or the timing of payments to change. While these issues are likely to be initially addressed through discussions with the Grantee, it is important that any variations are formally recorded in writing and signed by the appropriate personnel. This reduces the risk of uncertainty regarding the Parties' respective roles and responsibilities. The SGC4 Alternative Option provides for those minor or administrative changes that do not increase the Grantee's obligations to be notified to the Grantee without the need for a variation.
174. SGC8 also clarifies that the Grantee cannot assign its rights or obligations without the Commonwealth's approval and that waiver of any right under the Agreement can only be effected by signed written notice.

#### **5.4 How is information to be handled?**

175. This section of the user guide deals with information under the Agreement. It covers record keeping, intellectual property, privacy and confidentiality.
176. SGC12 sets out the record keeping requirements under the Agreement. Under the default position in SGC12, the requirement for the Grantee to maintain records of expenditure ceases when the Agreement ends. The Alternative Option of SGC12 requires the Grantee to maintain specific classes of records for five years after the Activity Completion Date. Note that it is important that the Agreement End Date is after the time that all reports are provided.
177. SGC17 contains the default position under the Agreement with respect to Intellectual Property Rights (IPR). This is that the Grantee owns all IPR in Activity Material and Reporting Material, except in the case of Existing Material with IPR originally owned by someone other than the Grantee. Whoever is the original owner of IPR in Existing Material retains ownership. The Commonwealth is granted a licence with regard to Reporting Material only for Commonwealth Purposes. Activity Material, Reporting Material, Existing Material and Commonwealth Purposes are defined in SGC22.

178. The default licence in SGC17 allows the Commonwealth to adapt and use the reports, and the intellectual property contained in them free for Commonwealth Purposes (which do not include commercial purposes). This licence covers, for example, reporting to Ministers or publishing on the entity website. Activity Material is specifically excluded from the default licence.
179. Where the purpose of the Grant is to produce some sort of product, such as a pamphlet or training tools, which the Commonwealth may want to use or adapt, the licence granted under SGC17 is likely to be insufficient. Supplementary Terms 'CB3 Intellectual property in Activity Material', CB3A Intellectual property – research' and 'CB3B Creative Commons licence' expand the rights and obligations relating to intellectual property in Activity Material (see Part 3 above).
180. The default licence granted under SGC17 does not include specific provisions dealing with moral rights. If the proposed Activity includes the development of indigenous intellectual property; matters with a distinct religious, spiritual, moral or ethical context; work where there is a high degree of artistic sensitivity; or work that may need to be heavily adapted or edited by the Commonwealth, you should consider using Supplementary Term CB3 from the Clause Bank, which requires the Grantee to obtain written moral rights consents. If indigenous intellectual property is involved, you should also consider including Supplementary Term 'CB28 Secret and Sacred Indigenous Material'.
181. SGC14 defines the obligations on the Grantee with regard to Personal Information under the Agreement. Under the default Condition, the Grantee agrees to comply with the *Privacy Act 1988*, and not to do anything which, if done by the Commonwealth, would be a breach of the *Privacy Act 1988*.
182. The Alternative Options impose more specific obligations upon the Grantee. Option 1 will require the Grantee to make any subcontractor or personnel aware of its obligations when dealing with personal information, and to immediately notify the Commonwealth of any breach in the handling of personal information.
183. Option 2 allows the Commonwealth to prohibit the Grantee from sending any personal information outside Australia without the Commonwealth's written approval.
184. SGC15 concerns confidentiality. It is designed to be consistent with the obligations that exist at common law regarding confidential information.

## 5.5 How are risks managed?

185. This section of the user guide deals with the management of certain risks under the Agreement. It covers insurance. Determining what is adequate insurance for a given Activity depends on the nature and circumstances of the Activity and the Grantee. The template assumes the Grantee, rather than the Commonwealth, is best placed to assess the type and amount of insurance required for the Activity.
186. The default position under SGC16 requires the Grantee to maintain adequate insurance, and to provide proof of insurance when requested. It is important for entities to be aware whether the risk for which the Grantee is expected to obtain insurance is in fact insurable. If in doubt speak to the risk or assurance area of your entity.

187. Option 1 requires the Grantee to maintain a range of common insurance policies for so long as any obligations remain in connection with the Agreement. This Option also allows the Commonwealth to specify any additional insurance under the Grant Details.
188. Option 2 allows the Commonwealth to require the Grantee to conduct a risk assessment to determine what insurance would be appropriate to mitigate risks identified in the risk assessment.

## **5.6 How are disputes resolved?**

189. This section of the user guide deals with dispute resolution under the Agreement. The expectation is that the Parties will seek to resolve disputes through negotiation before resorting to litigation.
190. SGC18 requires the Grantee and the Commonwealth to attempt to resolve any disputes by negotiation before initiating any legal proceedings. However, the requirement to negotiate does not apply to actions relating to termination, cancellation or urgent litigation.
191. Importantly, both Parties must continue to perform their respective obligations under the Agreement even where a dispute exists. This ensures that unrelated aspects of the Activity are not disrupted during the course of negotiations in relation to a dispute.

## **5.7 How is the Agreement ended early?**

192. This section deals with some ways the Agreement can be ended before the Completion Date. It covers termination and cancellation as well as clauses that survive the end of the Agreement.
193. SGC19 allows the Commonwealth to take action when the Grantee has failed to comply with the Agreement. In circumstances where the Commonwealth believes that the non-compliance is capable of remedy, SGC19.2 allows the Commonwealth to suspend the Grantee from further performance of the Activity.
194. If the Commonwealth believes that the non-compliance is not capable of remedy, or the Grantee has failed to comply with a notice to remedy, SGC19.1 allows the Commonwealth to reduce the scope of the Agreement by written notice.
195. SGC19.3 allows the Commonwealth to terminate the agreement where the Commonwealth believes the Grantee committed certain breaches of the Agreement, or the Grantee has provided false or misleading statements in their application for the Grant, or the Grantee has encountered substantial financial difficulties.
196. Terminating or reducing the scope of an Agreement for default has serious implications. In addition to considering the policy and program issues, you should consider seeking legal advice before using SGC19 to take such action against a Grantee.
197. SGC20 provides that the Commonwealth may cancel or reduce the scope of the Agreement in limited circumstances, even though the Grantee may not have breached its obligations under the Agreement. The two circumstances include where there is a change in government policy, or where there is a Change in the Control of the Grantee which the Commonwealth believes will negatively affect the Grantee's ability to comply with the Agreement. It is not expected that this clause would be used very often.

198. Where a Grantee receives a notice of cancellation under this clause, it must stop performing the obligations of the Agreement, as specified in the notice, and take all available steps to minimise any loss resulting from the cancellation. This would include not entering into any new commitments in relation to the Activity.
199. Unlike termination for default, the Commonwealth will be liable to pay certain amounts to ensure that the Grantee is not unfairly disadvantaged by the decision to cancel the Agreement. This includes reimbursing reasonable expenses arising directly from the cancellation. What constitutes a reasonable expense will depend on the circumstances. However, it will not extend to indirect expenses or losses of prospective profits or benefits and cannot exceed the amount of the Grant.
200. Cancelling an Agreement for convenience has serious implications. In addition to considering the policy and program implications, you should consider seeking legal advice before using SGC19 to cancel an Agreement.
201. SGC21 lists the SGCs that will continue to operate after the Agreement has ended. An example is the requirement to repay any amount not spent in accordance with the Agreement or where the Commonwealth sought indemnification in relation to a claim arising under the Agreement, which may occur after the Agreement has ended.

### **What are the definitions?**

202. SGC22 lists terms defined under the Agreement. Definitions are designed to help clarify words which have a specific meaning under the Agreement. You should only use these words, when capitalised, the way they are defined in SGC22.