

**THIS
AGREEMENT IS
PROVIDED AS A
SAMPLE ONLY**

**Providers will receive a link to
their actual Grant Agreement in
their Recovery Payment email
offer**



Victorian Recovery Payment Background

On 20 September 2020, the Government announced that a Victorian Recovery Payment (the 'Recovery Payment') will be put in place to provide additional support to Victorian child care providers and services.

The Recovery Payment will be provided to all eligible Victorian services and includes additional support for Outside School Hours Care (OSHC) services. The Payment is in response to the restrictions faced by the Victorian Early Education and Care (ECEC) sector and acknowledges they have a different recovery trajectory compared to services elsewhere in Australia. The Recovery Payment includes the following:

- 25 per cent of the average weekly fee charged by the service during the reference fortnight (capped at the relevant CCS hourly rate cap) for Centre Based Day Care, Family Day Care and In Home Care services in Victoria operating in the period 28 September 2020 to 31 January 2021.
- 40 per cent of the average weekly fee charged by the service during the reference fortnight (capped at the relevant CCS hourly rate cap) for Outside School Hours Care (OSHC) services in Regional Victoria operating in the period 12 October 2020 to 31 January 2021.
- 40 per cent of the average weekly fee charged by the service during the reference fortnight (capped at the relevant CCS hourly rate cap) for OSHC services in Metropolitan Melbourne operating in the period 19 October 2020 to 31 January 2021.
- Vacation care only services, will receive 40 per cent of the average weekly fee charged by the service during the reference fortnight (capped at the relevant CCS hourly rate cap) for the relevant period determined by the guidelines.

The purpose of these payments is to support services to remain viable, to retain staff and to continue to provide care to families as Victoria recovers from the impact of the COVID-19 pandemic.

The Recovery Payment is offered as a Grant and will be administered under the Community Child Care Fund (CCCF) Special Circumstances grant program. The payment is offered to eligible providers with Victorian services under the Victorian Recovery Payment Grant Guidelines (the 'Guidelines') at <https://www.dese.gov.au/document/recovery-payment-guidelines>.

Further details of the Recovery Payment are available on the department's COVID-19 webpage <https://www.dese.gov.au/covid-19/childcare/recovery-package>.

To accept this offer and enter into an agreement with the Commonwealth, represented by the Department of Education, Skills and Employment, ABN 12 862 898 150 in relation to the Grant, sign this agreement and electronically submit the agreement by **Friday 13 November 2020**, otherwise this offer will lapse.

Provided the electronically signed copy of the Grant Schedule is received by the Commonwealth by this date, this Grant Schedule and the *Commonwealth Grant Conditions* will form a legally enforceable agreement in relation to the Grant.

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Grant

The Grant is provided under section 85GA of the *A New Tax System (Family Assistance) Act 1999*.

The Commonwealth offers,

«**Provider_Name**»

ABN «**Provider_ABN**»),

«**Legal_Entity_Address_**»,

(the 'Grantee'), a grant under the CCCF Special Circumstances Victorian Recovery Payment (the 'Victorian Recovery Payment'). The offer is for a grant calculated in accordance with the Community Child Care Fund Special Circumstances – Victorian Recovery Payment Guidelines (the 'Guidelines') at <https://www.dese.gov.au/document/recovery-payment-guidelines>.

The amount of the Grant is determined in accordance with the Grant Guidelines. Details on the child care service(s) covered and the service-level grant amounts can be found in the Activity Schedule.

Subject to the Grantee's compliance with this Agreement, and continuing to meet the Eligibility Criteria in paragraph 2.2 of the Guidelines each week, the total Grant funding amount will be made at the service level to the bank account for each service nominated by the provider for CCS and paid in fortnightly instalments.

Eligible OSHC (including vacation care only) services from 21 December 2020 to 31 January 2021 will be paid for eligible weeks of care during this period after session reports are submitted and assessed. The department will use reports about sessions of care under section 204B of the *A New Tax System (Family Assistance) (Administration) Act 1999* to determine whether OSHC services are open and operating during the period from 21 December 2020 to 31 January 2021 prior to deeming services eligible for payment.

The parties acknowledge and agree that they are each registered for GST purposes, have each quoted their Australian Business Number to the other and must notify the other of any changes in their GST status. The Commonwealth considers this transaction is consideration for the supply of child care and is therefore GST-free.

Amounts of the Grant will be paid to the bank account recorded in the Commonwealth's records for a service as at the date the payment is processed (see clause 4.2).

Transferred services

Where a provider (the acquiring provider) acquires a service from another provider (the disposing provider), it is the responsibility of the providers to reach agreement about adjustments for:

- payments that continue to be made to the disposing provider pending the updating of the bank account details to the acquiring provider; and
- payments made to one provider that may, because the payments are made in arrears or in advance, relate to the period where the other provider was approved.

This is a private commercial matter between the providers (see clause 4.4). The department recommends that providers seek independent legal advice.

Scope of this Agreement

This Agreement comprises:

- (a) the Guidelines;
- (b) this document;
- (c) the Commonwealth Grant Conditions;
- (d) the Activity Schedule;
- (e) any other document referenced or incorporated in the Grant Details.

If there is any ambiguity or inconsistency between the documents comprising this Agreement in relation to a Grant, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

This Agreement represents the Parties' entire agreement in relation to each Grant provided under it and the relevant Activity and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

Grant Activity

The Victorian Recovery Payment Grant is being provided to support services in Victoria in their recovery from the COVID-19 pandemic and will be delivered through CCCF Special Circumstances program.

The Grant Activity is the continuing delivery of child care by the eligible services listed in the Activity Schedule that comply with Family Assistance Law for the period specified by the Guidelines, which is:

- From the 28 September 2020 to 31 January 2021 for Centre Based Day Care, Family Day Care and In Home Care services in Victoria.
- From 19 October 2020 to 31 January 2021 for OSHC services in metropolitan Melbourne.
- From 12 October 2020 to 31 January 2021 for OSHC services in Victorian locations other than metropolitan Melbourne.

The activity start date for each service is included in the Activity Schedule.

The Commonwealth may require the Grantee to provide:

- evidence that the Grantee has met the grant conditions, including information relating to fees, JobKeeper and staffing levels (see clauses 7 and 13 of the *Grant Agreement Conditions*); and
- a signed statement verifying that the Grant was spent in accordance with this Agreement (see clause 5 of the *Grant Agreement Conditions*).

Governing law

This Agreement is governed by the law of the Australian Capital Territory.

Record Keeping

The Grantee agrees to maintain records under clause 7 of the *Commonwealth Grant Conditions* for three years after completing the Grant Activity.

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Commonwealth Grant Conditions

1. Undertaking the Grant Activity

The Grantee agrees to use the Grant and undertake the Grant Activity in accordance with this Agreement.

2. Acknowledgements

The Grantee agrees to acknowledge the Commonwealth's support in any material published in connection with this Agreement and agrees to use any form of acknowledgment the Commonwealth reasonably specifies.

3. Notices

The Grantee agrees to promptly notify the Commonwealth of anything reasonably likely to affect the performance of the Grant Activity, including any actual, perceived or potential conflict of interest which could affect the Grantee's performance of this Agreement and to take action to resolve the conflict.

4. Payment of the Grant

4.1 The Commonwealth agrees to pay the Grant to the Grantee in accordance with this Agreement.

4.2 The Commonwealth will make payments of the Grant to the bank accounts that are recorded in the Child Care Subsidy System for the services to which the payments relate as at the date the payments are processed (whatever period and whichever provider the payments relate to). The Grantee agrees that payments of the Grant into those bank accounts constitutes payment to the Grantee.

4.3 Victorian Recovery Payments payable to providers during the grant agreement period will be adjusted in accordance with the guidelines to account for the transfer of services between providers (such as sale of a service by one provider to another).

4.4 Any adjustments or other arrangements the acquiring provider and disposing provider make in respect of in respect of transferred services, is a private commercial matter and the Commonwealth will not engage in any disputes between providers about such matters.

4.5 The Grantee agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this Agreement.

4.5 If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same- time that the consideration for the supply is to be provided under this Agreement.

4.6 If at the commencement of the Agreement the Grantee is not registered for GST and during the term of the Agreement the Grantee becomes, or is required to become, registered for GST, the Grantee agrees to notify the Commonwealth in writing within 7 days of becoming registered for GST.

5. Spending the Grant

The Grantee agrees to spend the Grant for the sole purpose of undertaking the Grant Activity, and to provide a statement, in the form required by the Commonwealth and signed by the Grantee, verifying that the Grant Activity has been undertaken and the Grant was spent in accordance with this Agreement (including, without limitation, clauses 9, 9A, 10 and 11).

6. Repayment

6.1 If any of the Grant amount has been spent other than in accordance with this Agreement or on expiration or termination of this Agreement is additional to the requirements of the Grant Activity, the Grantee agrees to repay that amount to the Commonwealth, unless the Commonwealth agrees in writing otherwise.

6.2 If the Grantee is not entitled to any Grant amount under the Guidelines, the Grantee agrees to repay that amount to the Commonwealth.

7. Record keeping

The Grantee agrees to maintain records of the performance of the Grant Activity for the period specified in the Grant Schedule and to make them available to the Commonwealth on request.

8. Continuing to meet obligations for approval and eligibility

8.1 The Grantee, and all Services of the Grantee, must comply with all conditions for continued approval in Part 8 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

8.2 The Grantee must at all times during the payment period satisfy the eligibility criteria of the Guidelines. In

this clause 8.2 payment period has the meaning given by subclause 2(3) of Schedule A of the Guidelines.

9. Provider and its staff not to be paid JobKeeper

9.1 It is a condition of receiving a payment of the Grant for a service in relation to a period that the Grantee:

- (a) is not paid an amount of JobKeeper payment in relation to that period for an individual who is an eligible employee or eligible business participant of the Grantee; and
- (b) does not engage an individual to undertake duties principally related to the operation of the service under a contract with an entity, if the individual is an eligible employee or eligible business participant of the entity in relation to whom the entity was paid JobKeeper payment for the period.

9.2 In this clause 9 and clause 10 'JobKeeper payment', 'eligible employee', 'eligible business participant' and 'long-term casual employee' have the meaning given by:

[Coronavirus Economic Response Package \(Payments and Benefits\) Rules 2020](#)

(as amended from time to time).

10. The employment (including educator) guarantee

10.1 Grant to be passed on in wages and payments

10.1.1 The Grantee must ensure that, in relation to each family day care service or an in home care service for which it is paid an amount of the Grant ('service amount') for a period, it spends an amount equal to at least 80 per cent of the service amount on salaries and wages for employees, and payments for individuals or educators engaged under contract, who are undertaking duties principally related to the operation of the service for that period.

10.2 Continuation of employment

10.2.1 The Grantee agrees to continue the employment of those employees (including educators) of the approved child care service who were working in the employee guarantee fortnight (the fortnight 20 July 2020 to 2 August 2020) over the Recovery Period. This means the Grantee will not terminate the employment of such employees (including educators) without reasonable justification. For the purposes of this clause 'reasonable justification' includes matter such as serious misconduct and loss of an essential qualification, but does not include genuine redundancy.

10.2.2 At any time in the payment period, the Grantee must not have fewer employees of each of the following kinds than the number of covered employees of those kinds it employed during the employment guarantee fortnight:

- (a) full-time permanent employees;
- (b) part-time permanent employees; and
- (c) long-term casual employees.

10.2.3 Where an employee voluntarily ends their employment, this will be taken into account by the department.

10.2.4 The Grantee must not, without the written agreement of the employee, reduce or increase the hours of a permanent employee who is a covered employee.

10.2.5 The Grantee may adjust the staffing profile during the payment period where it provides a covered employee with additional hours or ongoing employment, which benefits and is agreed by the covered employee.

10.3 Guarantee of wages and hours

10.3.1 During the payment period, the Grantee must pay each full-time employee, undertaking duties related to the operation of a service, their full-time wage.

10.3.2 During the payment period, where the Grantee is a centre based day care service, a family day care service or an in home care service, the Grantee must offer each part-time permanent covered employee whichever is the greater of:

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- (a) total number of hours in a fortnight that is equal to the hours worked by that employee during the employee guarantee fortnight¹; or
- (b) a total number of shifts that is not less than the equivalent of two shifts per week for each week that the service is open in the payment period; or
- (c) a total number of hours of work not less than the equivalent of twelve (12) hours for each week that the service is open in the payment period.

10.3.3 During the payment period, where the Grantee is an outside school hours care service and / or a vacation care service, the Grantee must offer each part-time permanent covered employee whichever is the greater of:

- (a) a total number of hours in a fortnight that is equal to the hours worked by that employee during the employee guarantee fortnight¹; or
- (b) a total number of shifts that is not less than the equivalent of two shifts per week for each week that the service is open in the payment period; or
- (c) a total number of hours of work not less than the equivalent of five (5) hours for each week that the service is open in the payment period.

10.3.4 During the payment period, where the Grantee is a centre based day care service, a family day care service or an in home care service, the Grantee must offer each long-term casual covered whichever is the greater of:

- (a) a total number of shifts that is not less than the equivalent of two shifts per week for each week that the service is open in the payment period; or
- (b) a total number of hours of work not less than the equivalent of twelve (12) hours for each week that the service is open in the payment period.

10.3.5 During the payment period, where the Grantee is an outside school hours care service and / or a vacation care service, the Grantee must offer each long-term casual covered employee whichever is the greater of:

- (a) a total number of shifts that is not less than the equivalent of two shifts per week for each week that the service is open in the payment period; or
- (b) a total number of hours of work not less than the equivalent of five (5) hours for each week that the service is open in the payment period.

10.3.6 The Commonwealth may, on written request by the Grantee, agree in writing to the Grantee not complying with one or more subclauses of this clause. If the Commonwealth does so, the Commonwealth may impose one or more conditions as an alternative to the subclause or subclauses that the Grantee must comply with, and the Agreement is varied accordingly.

10.3.7 In this clause 10:

- (a) *covered employee* means an individual whose principal duties relate to the provision of early childhood education and care or the operation of a services, who was paid salary or wages, or leave entitlements, by the Grantee in relation to the *employment guarantee fortnight* and who was not on long-term leave during that *employment guarantee fortnight*;
- (b) *employee guarantee fortnight* means the fortnight 20 July to 2 August 2020;
- (c) *long-term leave* means leave that is three months or longer in duration; and
- (d) payment period has the meaning given by subclause 2(3) of Schedule A of the Guidelines.

11 Fee Guarantee

11.1 The Grantee agrees not to charge fees in the payment period that exceed the fees charged by the provider in the reference fortnight.

11.2 The Grantee agrees not to charge higher administrative fees in the payment period than it charged in relation to the reference fortnight or add new administrative fees that were not listed in a family's Complying Written Arrangement in the reference fortnight.

11.3 In this clause, 'reference fortnight' has the meaning given under the Guidelines.

12. Dispute resolution

¹ This requirement assumes that all part-time permanent employees worked at least the minimum hours prescribed in their part-time agreement during the guarantee fortnight.

12.1 The parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

12.2 The parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.

12.3 The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

13. Access/Monitoring/ inspection

13.1 The Grantee agrees to give the Commonwealth, including the Department of Education, Skills and Employment and the Australian Taxation Office, or any persons authorised in writing by the Commonwealth:

- (a) access to premises where the Grant Activity is being performed and/or where Material relating to the Grant Activity is kept within the time period specified in a Commonwealth notice; and
- (b) permission to inspect and take copies of any Material relevant to the Grant Activity.

13.2 The Auditor-General and any Information Officer under the *Australian Information Commissioner Act 2010* (Cth) (including their delegates) are persons authorised for the purposes of clause 13.1.

13.3 This clause does not detract from the statutory powers of the Auditor-General or an Information Officer (including their delegates).

13.4 The Grantee agrees to:

- (a) liaise with and provide assistance and information to the Commonwealth as reasonably required by the Commonwealth;
- (b) comply with the Commonwealth's reasonable requests, directions and monitoring requirements, in relation to the Grant Activity and any Commonwealth review or evaluation of it; and
- (c) without limiting clause 7, give information, or produce documents requested by the Commonwealth that may, in the Commonwealth's reasonable opinion, be relevant to Grant Activity or the Grantee's compliance with this Agreement.

14. Termination for default

14.1 The Commonwealth may terminate this Agreement by notice where it reasonably believes the Grantee:

- (a) has breached this Agreement; or
- (b) has provided false or misleading statements in their application for the Grant; or
- (c) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

14.2 The Commonwealth will not be required to make any further payments of the Grant after the termination of the Agreement.

15. Variation

15.1 This Agreement may only be varied by the parties' signed written agreement except as provided by this clause 15.

15.2 The Commonwealth may vary the Guidelines at any time.

15.3 The varied Guidelines will apply to this agreement 14 days after the Commonwealth gives the Grantee notice in writing of the change to the Guidelines.

15.4 Where the Commonwealth gives the Grantee notice of a variation to the Guidelines, the Grantee may give notice in writing to the Commonwealth before the changes become effective that the Grantee terminates the agreement.

15.5. Where the Grantee gives notice of termination under clause 15.4, this Agreement will terminate on the day the amended Guidelines were to commence.

15.6 The Commonwealth will not be required to make any further payments of the Grant after the termination of the Agreement. The Grantee must repay any payments of the Grant made after the date of termination to the Commonwealth under clause 6, except for payments made in arrears for periods before the date of termination.

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16. General provisions

16.1 A party is not by virtue of this Agreement an employee, agent or partner of the other party.

16.2 Clauses 5 (Spending of the Grant), and 6 (Repayment) survive the expiry or termination of this Agreement.

16.3 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

16.4 This Agreement may be executed by the Commonwealth by way of electronic signature.

16.5 This Agreement may only be accepted and executed by the Grantee in the manner of acceptance described in the Grant Schedule, or such alternative method as notified by the Commonwealth to the Grantee in writing.

16.6 Each individual executing this Agreement on behalf of any party expressly represents and warrants that he/she has authority to execute the Agreement and bind that party to this Agreement.

16.7 Expressions used in this agreement that are defined in Family Assistance Law have the same meaning as in Family Assistance Law unless a contrary intention appears.

16.8 The Grantee warrants that the list of services in the Commonwealth's Grant offer (Activity Schedule) is a complete and accurate list of approved services for the provider. Without derogation from the Grantee's obligations under Family Assistance Law, the Grantee will notify the Commonwealth as soon as practicable if the Grantee stops operating a child care service.

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Signatures

Executed as an agreement:

«Provider_Name»

ABN «Provider_ABN»

«Legal_Entity_Address_»

(the 'Grantee') agrees to use the Grant to undertake the Grant Activity in accordance with this Grant Schedule and the enclosed *Commonwealth Grant Conditions*, which together form the Agreement between the Grantee and the Commonwealth in relation to the Grant.

Instruction for grantees:

- You agree you are a person who is authorised to enter a legal arrangement with the Commonwealth on your organisation's behalf.
- You agree that if the Grantee is paid a Grant amount under the Guidelines that the Grantee is not entitled to, the Grantee will repay that amount to the Commonwealth.

As a person who is authorised to enter a legal arrangement with the Commonwealth on your organisation's behalf, you acknowledge to be eligible to receive the Recovery Payment in respect of a service, the provider must:

- be an approved provider under the Family Assistance Law, and be approved in respect of the service;
- not charge fees in the Grant agreement period that exceed the fees charged by the provider in the relevant reference fortnight; and
- meet the conditions of the Employment Guarantee.

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Activity Schedule

CRN	
Service Name	
Service Address	
Activity Start Date	
Weekly Funding	\$

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