



Australian Government

Department of Health

**RURAL, REGIONAL AND OTHER SPECIAL NEEDS BUILDING FUND
GRANT AGREEMENT**

Between

The COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health

ABN: 83 605 426 759

and

<GRANTEE NAME>

<GRANTEE ABN>

**in relation to the provision of funding to contribute towards capital works costs of
residential aged care services under section 73-1(3) of the *Aged Care Act 1997***

Rural, Regional and Other Special Needs Building Fund Grant Agreement

THE DATE OF THIS AGREEMENT is theday of 20xx

This Agreement is made between:

The COMMONWEALTH OF AUSTRALIA (the “**Commonwealth**”) as represented by the Department of Health (the “**Department**”).

AND

<**GRANTEE NAME**> (the “**Grantee**”).

RECITALS

- A. The Commonwealth recognises a need to support access to residential aged care and continuity of care where access would otherwise be at risk. To this end, the Commonwealth has established the Rural, Regional and Other Special Needs Building Fund to support the allocation of Residential Care Grants.
- B. The Commonwealth is empowered by Part 5.1 of the *Aged Care Act 1997* (the Act) to make Residential Care Grants to contribute towards the Capital Works Costs (section 70-3 of the Act) associated with some projects undertaken by Approved Providers to establish Residential Care Services or to enhance their capacity to provide Residential Care.
- C. The Grantee has applied for the allocation of a capital grant for the Project in response to an invitation from the Secretary for applications under section 71-2 of the Act.
- D. On the basis that the Grantee’s application, the Grantee and the allocation of a Grant to the Grantee meet the criteria in Division 72 of the Act, the Secretary has allocated to the Grantee a Grant in the sum of \$<grant amount> (GST exclusive) in relation to the Project, subject to a number of conditions under section 73-1 of the Act.
- E. The Grant is Residential Care Grant and the Grantee is an Approved Provider under the Act.
- F. The Secretary has determined conditions that the Grant is subject to in accordance with section 73-1(2) of the Act, and the Grantee agrees to comply with these conditions and, accordingly, this Agreement is an agreement for the purposes of subsection 73-1(3) of the Act.

This AGREEMENT provides that the Grantee agrees to the Conditions set under section 73-1(2) of the Act.

1. AGREEMENT TO COMPLY WITH CONDITIONS

- 1.1. The Grantee agrees to comply with the Conditions which are set out in Part 1 of this Agreement.
- 1.2. The Grantee agrees that:
 - (a) the performance by the Grantee of its obligations under this Agreement is a condition to which the Grant is subject; and
 - (b) each of the matters set out in Part 1 is a condition to which the Grant is subject.

2. VARIATION OF THE AGREEMENT

- 2.1. Where the Secretary varies a condition of allocation which relates to this Grant under section 73-4 of the Act, this Agreement is taken to be varied accordingly.
- 2.2. Where the Grantee applies to the Secretary for a variation of a condition of allocation under section 73-5 of the Act, and the Secretary varies that condition of allocation, this Agreement is taken to be varied accordingly.

3. COMPLIANCE WITH LAWS AND POLICIES

- 3.1. These Conditions shall be governed by and construed in accordance with the laws of the Australian Capital Territory and the Parties agree, subject to these Conditions, that the Courts of the Australian Capital Territory shall have jurisdiction to entertain any action in respect of, or arising out of, these Conditions.

4. NOTICES

- 4.1. Any notice, request, approval or other communication to be given or served to the Grantee under this Agreement must be in writing and addressed to the Grantee at the address set out below or such other address as the Grantee may from time to time notify to the Commonwealth:

Grantee

<GRANTEE CONTACT DETAILS>

- 4.2. Any notice, request or other communication will be deemed to be received:
 - (a) if delivered by hand, on the date of delivery;
 - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of three (3) Business Days;
 - (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted successfully, and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible; or

- (d) if transmitted electronically, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient.

The parties have executed this AGREEMENT as at the day and year written above.

<p>SIGNED, SEALED and DELIVERED for and on behalf of the</p> <p>COMMONWEALTH OF AUSTRALIA by</p> <p>..... <i>Printed Name</i></p> <p>..... Position</p> <p><i>in the presence of</i></p> <p>..... <i>Printed Name of Witness</i></p> <p>SIGNED, SEALED and DELIVERED for and on behalf of</p> <p><GRANTEE NAME> by</p> <p>..... <i>Printed Name</i></p> <p>..... <i>Position</i></p> <p>in the presence of</p> <p>..... <i>Printed Name of Witness</i></p> <p><u>OR</u></p> <p>THE COMMON SEAL OF</p> <p><GRANTEE NAME> was hereto duly affixed in the presence of</p> <p>..... <i>Printed Name of Director/Company Secretary</i></p>	<p>..... <i>Signature</i></p> <p>..... <i>Signature</i></p> <p>..... <i>Signature</i></p> <p>..... <i>Signature</i></p> <p>..... <i>Signature</i></p>
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Australian Government

Department of Health

PART 1

CONDITIONS

of

**RURAL, REGIONAL AND OTHER SPECIAL NEEDS BUILDING FUND
GRANT**

to

<GRANTEE NAME>

<GRANTEE ABN>

DETERMINED UNDER SECTION 73-1(2) OF THE *AGED CARE ACT 1997*

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CONDITIONS OF GRANT

The following are CONDITIONS determined under section 73-1(2) of the *Aged Care Act 1997* under which a Residential Care Grant is payable to

<GRANTEE NAME> (the “Grantee”).

1. TERM OF THESE CONDITIONS

1.1. These Conditions commence on the Commencement Date and end at the completion of the Designated Use Period.

2. THE PROJECT

2.1. The Grantee will undertake the Project.

2.2. The Grantee must begin the Project within 3 months after the Date of the Agreement.

2.3. The Grantee must:

- (a) carry out the Project in accordance with the Project Timetable;
- (b) complete the Project by the Scheduled Project Completion Date; and
- (c) not unreasonably delay work on the Project or any part of the Project.

2.4. The Grantee must spend the Grantee’s Contribution only on Project Costs and for the Designated Use specified in these Conditions.

3. PROJECT COMPLETION

3.1. Project Completion occurs when the Grantee has lodged and the Commonwealth has accepted:

- (a) tax invoices as required in Clause 5.4 from appropriately qualified trades persons or suppliers, or such other documents to show total expenditure on Project Costs; and
- (b) an architect’s certificate or other appropriate evidence from a trades person or supplier of practical completion or such other documents certifying completion of the Project; and
- (c) local government council’s or other regulatory authority’s certificate of compliance.

4. PERFORMANCE OF THE WORKS

4.1. In performing the Works or contracting for the Works to be performed the Grantee must:

- (a) ensure that the Project is performed in accordance with the standards required by any relevant authorities;
- (b) obtain and comply with all approvals necessary to have the Works performed lawfully and to enable the Property to be used for the Designated Use;
- (c) comply with all statutory requirements, including without limitation, statutory requirements relating to workplace health, safety and rehabilitation and protection of the environment;

- (d) ensure that the Works are performed to a standard which enables the Property to meet any applicable standards under the Act, including the standards and accreditation of residential care services;
- (e) ensure that the Works are carried out in a proper and competent manner;
- (f) ensure that the Works are performed in accordance with the Project Timetable;
- (g) ensure that the Works are carried out in accordance with the requirements of the Building Code of Australia and all relevant standards of Standards Australia;
- (h) ensure that all materials used for the Works are fit for their purpose; and
- (i) otherwise comply strictly with the terms and conditions of these Conditions.

5. CONTRACTING AND SUB-CONTRACTING

- 5.1. The Grantee is solely responsible for the management of all contractors and subcontractors with respect to the Project and for their engagement and termination.
- 5.2. The Grantee shall not enter into any contract that is inconsistent with the terms of these Conditions, the Project, the Project Timetable or the Designated Use.
- 5.3. The Grantee shall not incur any liability to a contractor which causes the Grantee's present or future liability in respect of the Project to exceed the sum of:
 - (a) the Grant; and
 - (b) the Grantee's own funds which are available for the Project; and
 - (c) any amount which a third party is required by virtue of an enforceable agreement to pay the Grantee in respect of the Project.
- 5.4. The Grantee shall not make a payment of Grant money to any person except on presentation of a numbered tax invoice properly describing the goods and services supplied.
- 5.5. Upon request by the Commonwealth, the Grantee must provide the Commonwealth with the names of all contractors and subcontractors working on the Project.
- 5.6. The Grantee must not contract with any person with respect to the Project who the Commonwealth has, by notice in writing to the Grantee, prohibited the Grantee from engaging to provide goods and services with respect to the Project.

6. USE OF THE GRANT

- 6.1. The Grantee shall not use the Grant for any purpose other than the performance of the relevant Project as specified in Item 2 of Schedule A.
- 6.2. The Grantee shall only use the Grant and the Grantee's Contribution for the purposes of expenditure on Project Costs.
- 6.3. The Grant is made available for a particular Project and is not transferable between projects undertaken by the Grantee.

7. TAXES, DUTIES AND GOVERNMENT CHARGES

- 7.1. Subject to this Clause, all taxes, duties and government charges (“Taxes”) imposed or levied in Australia or overseas in connection with these Conditions must be paid by the Grantee, or as the Grantee might arrange.
- 7.2. Without limiting Clause 7.1, the Grantee must pay Goods and Services Tax (“GST”) on the goods, services and other supplies made under these Conditions (“the supplies”) to the extent that they are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (“the GST Act”).
- 7.3. In relation to any GST payable under Clause 7.2, the Grantee must issue the Commonwealth with a tax invoice in accordance with the GST Act.
- 7.4. The Grantee warrants it is registered in accordance with the GST Act and agrees to remain registered during the Project period.

8. PAYMENT OF THE GRANT

- 8.1. Subject to these Conditions, the Grant will be paid to the Grantee by the Commonwealth in instalments in accordance with the Payment Schedule and subject to the Grantee meeting the requirements for payment in accordance with Items 7 and 8 of Schedule A.
- 8.2. If, at a time at which an instalment of the Grant becomes payable, the Grantee is in breach of any of its obligations under these Conditions, or if the Commonwealth reasonably believes a breach is threatened or the Grantee notifies a threatened breach, the Commonwealth may, without prejudice to any other rights under these Conditions, withhold payment of the instalment until such time as the breach is rectified or there is no longer a threat to the breach.
- 8.3. If, at a time at which an instalment of the Grant becomes payable, the Commonwealth forms the view that the Grantee’s expenditure on Project Costs is likely to be less than the amount of the Grant plus the amount of the Grantee’s Contribution, the Commonwealth may withhold payment of all or part of the instalment.
- 8.4. If the Commonwealth has withheld all or part of the instalment under Clause 8.3, and the Commonwealth subsequently forms the view the Grantee’s expenditure on Project Costs is or is likely to be equal to or more than the amount of the Grant plus the amount of the Grantee’s Contribution, the Commonwealth may make payments of funding that had previously been withheld.

9. OPERATION IN ACCORDANCE WITH PURPOSE

- 9.1. Upon completion of the Project, the Grantee agrees to use and continue to use the Property for the Designated Use and no other purpose for the duration of the Designated Use Period.
- 9.2. During the Designated Use Period, the Grantee will ensure that the Property:
 - (a) complies with any applicable laws;
 - (b) without limiting Clause 9.2(a), meets any applicable standards including the standards for accreditation of residential care services under the Act which are applicable to it; and
 - (c) without limiting any other obligation the Grantee may have in these Conditions (including in Clause 9), is maintained to a standard which is appropriate for the Designated Use and which ensures the Grantee meets its obligations under Clause 9.1.

10. MANAGEMENT OF FUNDS & BANK ACCOUNTS

- 10.1. The Grantee must maintain a bank account with an Authorised Deposit-taking Institution controlled solely by the Grantee to hold the Grant and immediately deposit all grant instalments and interest earned on the Grant into that account.
- 10.2. The Grantee must maintain a separate ledger within the Grantee's financial accounting system for the Project that records details of the Grant (including identifying separately any interest earned on the Grant), the Grantee's Contribution and of any other money spent on the Project.
- 10.3. Any interest earned on the Grant shall be retained and used only for the Project or remitted to the Commonwealth.
- 10.4. Where the Grantee receives funds from any other person for the Project, whether by way of loan, gift or any other form of payment, the Grantee shall identify those funds in accordance with Clause 10.2.
- 10.5. The Grantee shall not use the Grant as security for the purposes of obtaining a loan or entering into any financing arrangements.
- 10.6. The Grantee shall ensure that proper accounting controls are exercised over the Project, including the Grant, in accordance with Australian Accounting Standards.
- 10.7. The Grantee shall manage the Project in accordance with the description of the Project at Item 2 of Schedule A and shall not enter into any obligations, commitments, transactions or borrowings in respect of the Project other than those which are consistent with or contemplated by the Project.

11. REPORTING

- 11.1. The Grantee must report to the Department at the times specified in Item 10.1 of Schedule A and in the form specified in Schedule B.
- 11.2. In each report the Grantee must provide to the Department the information required to respond to the matters specified in Schedule B.
- 11.3. The Grantee shall, within three (3) months of the Project Completion Date, provide the Department with an audited financial report that complies with Australian Accounting Standards. The report must include:
 - (a) a financial statement specifying the total funds expended by the Grantee on the Project; and
 - (b) a statement of income and expenditure for:
 - i. the Grant received and expended by the Grantee for the entire period of the Project; and
 - ii. interest earned on the Grant and expended by the Grantee for the entire period of the Project; and
 - (c) certification from the Grantee by a person who is legally empowered to give assurances and enter into contracts and commitments on behalf of the Grantee that the Grant has been spent in accordance with these Conditions; and

(d) certification that the audit has been completed in accordance with Clause 11.4.

11.4. The audit referred to in Clause 11.3 shall be conducted by a person who is:

- (a) registered as a company auditor and must comply with the Auditing Standards; and
- (b) a member of the Institute of Chartered Accountants or of the Australian Society of Certified Practising Accountants holding a current Certificate of Public Practice or its equivalent; and
- (c) not:
 - (i) an employee of the Grantee; and
 - (ii) an office bearer or member of the Grantee; and
 - (iii) not employed by, or a relation of, an office bearer or member of the Grantee.

11.5. The Grantee must provide such further information about the Project to the Secretary as may be reasonably requested by the Secretary.

12. ACCESS TO PREMISES AND MATERIALS

12.1. The Grantee must give the Auditor-General, the Privacy Commissioner and persons authorised in writing by the Department (referred to in this Clause 12 collectively as ‘those permitted’) access to premises at which records and materials associated with these Conditions are stored or work under the Project is undertaken.

12.2. The Grantee must give to those permitted access in order to be able to inspect and copy materials that are in the Grantee’s possession or control, for the purposes associated with these Conditions or any review of performance under these Conditions. The Grantee must also give those permitted access to any assets, wherever they may be located, and reasonable access to the Grantee’s employees for the same purpose.

12.3. The rights referred to in Clause 12.1 are, wherever practicable, subject to:

- (a) the provision of reasonable prior notice by the Department (except where it believes that there is an actual or apprehended breach of the law);
- (b) access being sought during reasonable times (except where those permitted believe that there is an actual or apprehended breach of the law); and
- (c) the Grantee’s reasonable security procedures.

12.4. The Grantee agrees to provide all assistance reasonably requested by the Department in respect of any inquiry into or concerning the Project or the Grantee’s compliance with these Conditions.

12.5. The Grantee must ensure that any subcontract entered into for the purposes of these Conditions contains an equivalent Clause allowing those permitted to have access as specified in this Clause 12.

12.6. Nothing in these Conditions limits or restricts in any way any duly authorised function, power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner or an

authorised officer within the meaning of section 90-3 of the Act. The rights of the Commonwealth under these Conditions are in addition to any other duly authorised power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner or an authorised officer within the meaning of section 90-3 of the Act.

12.7. This Clause 12 applies until the date of the expiration or earlier termination of these Conditions and for a period of 7 years from that date.

13. SPECIFIC CONDITIONS

13.1. The following are additional conditions to which the Grant is subject:

- (a) the Grantee must not apply any part of the Grant to costs other than Project Costs;
- (b) the Grantee must commence the Project, complete any part of the Project or complete the Project by the date specified for that event to occur in the Project Timetable;
- (c) the Grantee must continue to use the Property for the Designated Use for the duration of the Designated Use Period;
- (d) the Grantee must rectify a breach of Clause 9.2 within six months (or such other period as is agreed in writing by the Grantee and the Commonwealth) from the date on which the breach first occurred;
- (e) the Grantee must not apply any part of the Grantee's Contribution to costs other than Project Costs;
- (f) the Grantee must not demolish or transfer ownership or effective control of the land and buildings which constitute the Property or part of the land and buildings, to another person within the Designated Use Period without the prior written approval of the Secretary. The approval of the Secretary can be given subject to conditions, including a requirement the Grantee repay all or part of the Grant.
- (g) the Grantee must not become insolvent, bankrupt, wound up, go into liquidation or pass a resolution to go into liquidation, from the Date of the Agreement until the Designated Use Period is completed; and
- (h) the Grantee's expenditure on Project Costs (the amount spent) must not be less than the amount of the Grant plus the amount of the Grantee's Contribution (the expected expenditure). Where the amount spent is less than the expected expenditure, the Secretary may reduce the amount of Grant by an amount that is not more than the difference between the amount spent and the expected expenditure and may require the Grantee to repay part of the Grant.

13.2. The Grantee must immediately notify the Commonwealth if there is an actual or threatened breach of a Condition to which the Grant is subject or such a Condition is not met.

14. VARIATION OR REVOCATION OF THE GRANT

14.1. Where a Condition to which the Grant is subject is breached or not met the Secretary may, in addition to and without limiting any other right or remedy available to it under these Conditions, the Act or otherwise, do one or more of the following in accordance with section 73-4 of the Act:

- (a) vary the Grant by:

- (i) reducing the amount of the Grant; or
- (ii) varying any of the conditions of the Grant; or

(b) revoke the Grant.

14.2. Where the Secretary decides to vary or revoke the Grant pursuant to Clause 14.1, the Secretary must notify the Grantee in accordance with section 73-4 of the Act.

14.3. When a revocation of the Grant takes effect:

- (a) the Grantee will no longer be entitled to receive any unpaid Grant instalments;
- (b) the Grantee must immediately repay any Grant money which it has received but not yet spent; and
- (c) the Grantee will be liable to repay any part of the Grant already spent which is specified in the notice revoking the Grant, or if no amount is specified, the whole amount of the Grant already spent.

14.4. If the Secretary decides to vary the Grant because of a breach or threatened breach of Clause 13.1, the Secretary may reduce the total amount of the Grant and, as a consequence, reduce the amount of any unpaid instalments or seek recovery of amounts of the Grant already paid.

14.5. Where the Grantee becomes liable to repay an amount under this Clause 14 because the Secretary has revoked or varied the Grant, the Grantee shall repay that amount within 60 days of receiving notice from the Secretary requiring its repayment.

15. REPAYMENT OF THE GRANT – EXTRA SERVICE STATUS

15.1. Should the Grantee be granted Extra Service status under Division 32 of the Act in respect of the residential service which is the subject of this Grant, the Secretary may require repayment of the whole or part of the Grant under Section 43-6 of the Act.

16. REPAYMENT OF THE GRANT

16.1. Where the Commonwealth has given to the Grantee a notice in writing that states that the Grantee must repay an amount of the Grant (“the Repayment Notice”) and the Grantee has not repaid to the Commonwealth the amount specified in the Repayment Notice, the Commonwealth may recover that amount from the Grantee as a debt due to the Commonwealth either under Division 95 of the Act or otherwise as the case may be.

17. INDEMNITY

17.1. The Grantee shall indemnify, at all times, the Commonwealth, its officers, employees and agents from and against all action, claims, demands, costs and expenses (including the cost of defending or settling any action, claim or demand) made, sustained, brought or prosecuted in any manner based upon, occasioned by, or attributable to any loss or damage to any person, or loss or damage to Property which may arise from or be a consequence of the performance of the Project.

18. INSURANCE

- 18.1. The Grantee warrants that it has taken out or will take out, and will maintain for the period specified in Clause 18.2 or 18.3 as applicable, all appropriate types and amounts of insurance for the Project.
- 18.2. If the Grantee takes out a 'claims made policy', which requires all claims and any fact, situation or circumstance that might result in a claim to be notified within the period of insurance, the Grantee must maintain the policy during the term of these Conditions and a policy in like terms for 7 years after the expiry or earlier termination of these Conditions.
- 18.3. If the Grantee takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Grantee must maintain the policy during the term of these Conditions.
- 18.4. The Grantee must, on request, promptly provide to the Department any relevant insurance policies and certificates of currency for inspection.
- 18.5. This Clause 18 shall survive the expiration or earlier termination of these Conditions.

19. NEGATION OF EMPLOYMENT OR AGENCY

- 19.1. The Grantee agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth or the Department, or as otherwise able to bind or represent the Commonwealth or the Department.
- 19.2. The Grantee, its officers, employees, agents and subcontractors do not by virtue of these Conditions become an officer, employee, partner or agent of the Commonwealth or the Department, nor does the Grantee have any power or authority to bind or represent the Commonwealth or the Department.

20. WAIVER

- 20.1. A failure to exercise rights under these Conditions or a delay in exercising those rights shall not operate as a waiver of those rights.

21. NO FETTER

- 21.1. These Conditions will not restrict or otherwise affect the lawful discretion of the Department, the Secretary or the Commonwealth to exercise their functions or powers pursuant to any Act.

22. COMPLIANCE WITH LAWS AND POLICIES

- 22.1. The Grantee shall ensure that in carrying out its functions and expending the Grant in accordance with the terms and conditions of these Conditions, it complies with all relevant Commonwealth, State and local government laws, regulations and by-laws and including, without limiting the generality of the foregoing, all those relating to employment terms and conditions.
- 22.2. The Grantee should note that under the *Criminal Code Act 1995* section 137.1, giving false or misleading information to the Commonwealth is a serious offence.

23. BUILDING CODE

23.1. The Grantee agrees to comply with any requirements in Item 11 of Schedule A regarding the Building Code.

24. WHS ACCREDITATION SCHEME

24.1. The Grantee agrees to comply with any requirements in Item 12 of Schedule A regarding the WHS Accreditation Scheme.

25. ACKNOWLEDGEMENT AND PUBLICATIONS

25.1. The Grantee must acknowledge the financial support it has received from the Commonwealth in relation to the Project in all relevant publications, promotional and advertising materials, public announcements and activities by or on behalf of the Grantee.

25.2. The Grantee must erect a sign on the construction site acknowledging the financial support it has received from the Commonwealth in relation to the Project.

25.3. At the completion of the Project, if there is to be a commemorative plaque attached to the building, the Grantee must acknowledge on the plaque the financial support it has received from the Commonwealth.

25.4. The acknowledgement must take the form set out in Item 9 of Schedule A.

26. NOTICES

26.1. Any notice, request or other communication to be given by the Grantee to the Commonwealth must be in writing and addressed to the Commonwealth at the address as set out in Item 13 of Schedule A or such other address as the Commonwealth may from time to time notify to the Grantee.

26.2. The Grantee must immediately notify the Commonwealth of any change to its address or contact personnel.

27. INTERPRETATION

27.1. In these Conditions unless the contrary intention is indicated:

“**Act**” means the *Aged Care Act 1997* (Cth);

“**Administrative Expenses**” means expenses relating to management expenses or administrative support that may be related to the Project but are not Project Costs and includes, without limitation, payment of rates and taxes and printing, telephone, stationary and insurance costs;

“**Agreement**” means the agreement entered into in accordance with section 73-1(3) of the Act;

“**Allocation Principles 2014**” means the Allocation Principles 2014 made under section 96-1 of the Act;

“**Application**” means the application submitted by the Grantee for funding;

“**Approved Provider**” means a person or body in respect of which an approval under Part 2.1 of the Act is in force, and, to the extent provided for in section 8-6 of the Act, includes any State or Territory, authority of a State or Territory or local government authority;

“Auditor-General” means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

“Auditing Standards” has the same meaning as it has in sections 9 and 336 of the *Corporations Act 2001*, and refers to the auditing standards made by the Australian Auditing and Assurance Standards Board;

“Australian Accounting Standards” refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

“Authorised Deposit-taking Institution” means an authorised depositing-taking institution which is authorised under the *Banking Act 1959* to carry on banking business in Australia;

“Building Code” means the Code for the Tendering and Performance of Commonwealth Funded Building Work 2016. The Code can be downloaded from <https://www.abcc.gov.au/building-code>;

“Business Day” means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in the Australian Capital Territory;

“Capital Works Costs” has the meaning given to it in section 70-3 of the Act;

“Commonwealth” means the Commonwealth of Australia;

“Commencement Date” means the date the Conditions are determined by the Secretary under section 73-1(2) of the Act;

“Conditions” means the conditions determined by the Secretary under section 73-1(2) of the Act as set out in this document and includes any Schedules or attachments to these conditions;

“Date of the Agreement” means the date that the Agreement under section 73-1(3) of the Act is executed by the Commonwealth and the Grantee;

“Department” includes any department or agency of the Commonwealth which is from time to time responsible for the administration of the Agreement;

“Designated Use” means the use of the Property exclusively for the Purpose;

“Designated Use Period” means the period specified in Item 5A of Schedule A;

“Grant” means the financial assistance allocated by the Secretary to the Grantee in accordance with Division 72 of the Act and on the conditions set out in these Conditions to a maximum amount as set out in Item 1 of Schedule A and includes any interest earned on that amount;

“Grantee” means the recipient of the grant paid or pursuant to these Conditions;

“Grantee’s Contribution” means the amount of the Grantee’s own funds or funds from other sources (excluding interest earned on the Grant) which the Grantee contributes or will contribute to the Project, and is at least the amount specified in Item 4 of Schedule A;

“Grant Principles 2014” means the Grant Principles 2014 made under section 96-1 of the Act;

“Normal Overhead and Operating Expenses” means the costs incurred during the normal course of business, that may relate to the Project but are not Project Costs and include, without limitation, costs relating to rent, repairs, staffing costs and maintenance;

“Party” means a party to these Conditions and **“Parties”** means the two parties to the Agreement;

“Payment Schedule” means the schedule of payments set out in Item 7 of Schedule A;

“Project” means the capital works project for which the Grant is given, as described in Item 2 of Schedule A;

“Project Completion” means the date on which the Project is completed in accordance with Clause 3;

“Project Completion Date” means the date that Project Completion has occurred, as determined by the Commonwealth;

“Project Costs” means the amounts spent or to be spent on the Project by the Grantee but does not include:

- a) Normal Overhead and Operating Expenses;
- b) Administrative Expenses;
- c) Interest costs resulting from finance arrangements related to the Project;
- d) Costs associated with obtaining finance related to the Project; or
- e) Costs that can be associated with other work being undertaken by the Grantee (to the extent that the costs are associated with the other work);

“Project Timetable” means the timetable set out in Item 5 of Schedule A;

“Property” means real, personal or intellectual property acquired, constructed or created in the performance of the terms and conditions of these Conditions;

“Proposal” means the proposal relating to the Project submitted by the Grantee as part of the Application;

“Purpose” means the provision of residential care in respect of which a Residential Care Subsidy is paid;

“Residential Care” has the meaning given to it by section 41-3 of the Act;

“Residential Care Grant” means a grant payable under Part 5.1 of the Act;

“Residential Care Service” has the meaning given to it under Schedule 1 of the Act;

“Residential Care Subsidy” means a subsidy payable under Part 3.1 of the Act;

“Secretary” means the person occupying or performing the duties of the Office of the Secretary of the Department and includes any person designated in writing by that person to perform any function or to exercise any of the powers of the Secretary under these Conditions;

“Scheduled Project Completion Date” means the date specified in the Project Timetable set out in Item 5 of Schedule A;

“Tax” means any liability to the Commonwealth arising under, or by virtue of, a taxation law;

“Taxable Supplies” has the meaning given in sections 9-5, 78-50, 84-5 and 105-5 of *A New Tax System (Goods and Services Tax) Act 1999*; and

“WHS Accreditation Scheme” means the workplace health and safety accreditation scheme for Commonwealth building work established under section 35 of the *Fair Work (Building Industry) Act 2012*;

“Works” means the works necessary to complete the Project.

27.2. In these Conditions unless contrary intention is indicated:

- (a) words importing a gender include the other gender;
- (b) words in the singular number include the plural and words in the plural number include the singular;
- (c) headings are for convenient reference only and have no effect in limiting or extending the meaning of the provisions to which they refer;
- (d) where any word or phrase is given a defined meaning, any form of that word or phrase has a corresponding meaning;
- (e) a reference to a Schedule is a reference to a Schedule to these Conditions and includes such Schedules as amended or replaced from time to time by agreement in writing between the parties;
- (f) a reference to a Clause is a reference to a Clause of these Conditions, all references to “Items” are to Items in the Schedules to these Conditions;
- (g) all amounts of money are specified in Australian dollars; and
- (h) a reference to a Party (by whatever title) will, where the context so admits, include the officers, employees, agents and subcontractors of the Party, and the Party’s successors and assigns.

27.3. These Conditions form the entire agreement between the Parties and supercede all communications, negotiations, arrangements and agreements, either oral or written in relation to the subject matter of these Conditions.

27.4. The Schedules and any document attached to them by reference or otherwise shall be deemed to be substantive parts of, and be construed in accordance with, these Conditions.

- 27.5. If there is any conflict or inconsistency between the Act, the provisions in documents forming part of these Conditions, the Act takes priority, to the extent of the conflict or inconsistency, in the following order:
- (a) the Act;
 - (b) the Conditions;
 - (c) any annexures or attachments to the Conditions;
 - (d) any documents incorporated by reference into the above documents.
- 27.6. Where any conflict arises between any part of a Schedule and any part of an attachment, the Schedule prevails.
- 27.7. Any reading down or severance of a particular provision does not affect the other provisions of these Conditions.
- 27.8. The laws of the Australian Capital Territory apply to these Conditions.
- 27.9. A single or partial exercise by a Party of any of its rights under these Conditions or at law does not prevent the further exercise of any right.

SCHEDULE A

1. AMOUNT OF GRANT

\$<AMOUNT> (GST exclusive)

2. THE PROJECT

2.1 <PROJECT DETAILS>

3. EXPENDITURE ON PROJECT COSTS

At least \$<PROJECT_COST> (GST exclusive) must be spent by the Grantee on Project Costs.

Note 1: Project Costs are defined in Clause 27 of the Conditions. Project Costs do not include Normal Overhead and Operating Expenses, Administrative Expenses, interest costs, costs associated with obtaining finance and costs relating to other work undertaken by the Grantee.

Note 2: The terms that are capitalised in Note 1 are also defined in Clause 27 of the Conditions.

4. GRANTEE'S CONTRIBUTION

4.1 The Grantee's Contribution must be at least \$<GRANTEE_CONTRIB> (GST exclusive), or such lower amount as may be determined by the Secretary should the Secretary decide to vary these Conditions.

<OR, if zero contribution proposed>

The Grantee must make a contribution to meet any balance of costs to complete the Project.

Note 3: The Grant may be adjusted where the total expenditure on Project Costs is less than the amount stated in Item 3 of Schedule A. In such a case, the Secretary may reduce the amount of the Grant by an amount up to the difference between the amount stated in Item 3 of Schedule A and the total expenditure on Project Costs.

5. PROJECT TIMETABLE

Scheduled Project Completion Date: On or before <DATE>

Note 4: Under Clause 2.2 of the Conditions, the Project must start in the 3 month period from the Date of the Agreement.

Note 5: The Project is taken to commence when, after the Agreement is signed, planning approval is sought, a contract for the work is signed or any work that is required to undertake the Project, is commenced.

5A. DESIGNATED USE PERIOD

The Designated Use Period is <PERIOD> years from the Project Completion Date.

6. ADDITIONAL CONDITIONS OF GRANT

- 6.1 The Grantee must ensure that a majority of the care recipients who receive, or will receive, the care to which the Project relates, must be to people from special needs groups (as defined in the *Aged Care Act 1997*) or concessional, assisted or supported residents (as defined in the *Aged Care (Transitional Provisions) Act 1997*) or low-means care recipients (as defined in the Allocation Principles 2014).

Note 6: This reflects Part 2 of the Grant Principles 2014.

- 6.2 Where the Project involves land/buildings that are leased, or otherwise not owned by the Grantee, the Grantee must ensure that the lessor or owner of the Property enters into a Deed of Acknowledgement with the Commonwealth on the terms specified by the Commonwealth.

7. PAYMENT SCHEDULE

- 7.1 The Grant shall be paid in instalments, as set out below:

First Instalment: The first instalment of up to \$ plus GST shall be payable 30 days after:

- (a) the Grantee has lodged the tax invoice and reports referred to in Item 7.2; and
- (b) the Secretary is satisfied that Item 8. of Schedule A has been met.

Second Instalment: The second instalment of up to \$ plus GST shall be payable 30 days after:

- (a) the Grantee has lodged the tax invoice and reports referred to in Item 7.2; and
- (b) the Secretary is satisfied that Item 8. of Schedule A has been met.

Third Instalment: The third instalment of up to \$ plus GST shall be payable 30 days after:

- (a) the Grantee has lodged the tax invoice and reports referred to in Item 7.2; and
- (b) the Secretary is satisfied that Item 8. of Schedule A has been met.

Final Instalment: The final instalment of up to \$ plus GST shall be payable 30 days after:

- (a) the Grantee has lodged the tax invoice and reports referred to in Item 7.2; and
- (b) the Secretary is satisfied that Item 8. of Schedule A has been met.

- 7.2 To enable payment, the Grantee must:

- (a) issue a tax invoice to the Commonwealth, as specified in Clause 7.3 of the Conditions; and
- (b) provide a report in the form specified in Schedule B containing the information required to respond to the matters specified in Schedule B.

8. PAYMENT REQUIREMENTS

- 8.1 **Instalment 1:** Prior to the payment of the first instalment, the Grantee must demonstrate to the satisfaction of the Commonwealth that:

- (a) the anticipated expenditure on Project Costs covers the capital works as described in Item 2 of Schedule A. As evidence, the Grantee shall provide to the Commonwealth:
 - (i) a statement of verification of anticipated expenditure on Project Costs showing the amount of the cost of each element of the Project, signed by a person who is legally empowered to give assurances and enter into contracts and commitments on behalf of the Grantee;
 - (ii) a copy of the builder's contract and/or other relevant contract/s detailing the capital works that the Grantee has entered into; and
 - (iii) a cost estimate of other elements of the anticipated expenditure on Project Costs that are not covered in Item 8.1(a)(ii) of Schedule A signed by an independent architect or other professional with relevant qualifications or appropriately qualified trades person.

8.2 **Instalment 2:** The second instalment will only be payable to the Grantee if the Grantee has:

- (a) satisfied the Commonwealth that at least \$X (GST exclusive) has been spent on Project Costs. As evidence, the grantee should provide:
 - (i) a summary detailing tax invoices to the value of at least \$XXX in accordance with Clause 5.4 of the Conditions from appropriately qualified trades persons or suppliers ; or
 - (ii) such other documents that the Secretary agrees will be appropriate instead of tax invoices referred in Item 8.2(a)(i) above; and
- (b) certification by the project manager or an appropriate qualified person that no extension of time have been sought by the building contractor; and
- (c) three (3) site photographs.

8.3 **Instalment 3:** The third instalment will only be payable to the Grantee if the Grantee has:

- (d) satisfied the Commonwealth that at least \$X (GST exclusive) has been spent on Project Costs. As evidence, the grantee should provide:
 - (iii) a summary detailing tax invoices to the value of at least \$XXX in accordance with Clause 5.4 of the Conditions from appropriately qualified trades persons or suppliers ; or
 - (iv) such other documents that the Secretary agrees will be appropriate instead of tax invoices referred in Item 8.2(a)(i) above; and
- (e) certification by the project manager or an appropriate qualified person that no extension of time have been sought by the building contractor; and
- (f) three (3) site photographs.

8.4 **Final Instalment:** The final instalment will only be payable to the Grantee after the Commonwealth has determined that the Project Completion Date has occurred and the Grantee has satisfied the Commonwealth that:

- (a) a summary detailing tax invoices to the value of at least \$XXX in accordance with Clause 5.4 of the Conditions from appropriately qualified trades persons or suppliers;
- (b) an architect's certificate or other appropriate evidence from a trades person or supplier of practical completion or such other documents certifying completion of the project;
- (c) local government councils or other regulatory authorities certificate of compliance;
- (d) three (3) site photographs;
- (e) in accord with Clause 25.3 and 25.4 of the Conditions the Grantee must attach a commemorative plaque to the building acknowledging the financial support it has received from the Commonwealth in relation to the project. The plaque must take the form set out in Item 9 of Schedule A; and
- (f) the Grantee has issued a tax invoice to the Commonwealth, as specified in Clause 7.3 of the Conditions.

Note 7: For details of Project Completion and the Project Completion Date see Clauses 3 and 27.1 of the Conditions.

9. ACKNOWLEDGEMENT

9.1 The financial support from the Commonwealth must be acknowledged using the words 'built with the assistance of the Australian Government'.

10. REPORTS

10.1 The Grantee must submit to the Secretary signed reports on the progress of the Project, containing the information required by Clause 11 of the Conditions, on 30 June and 31 December each year from the Date of the Agreement until the Project Completion Date. The format for these reports is set out in Schedule B.

10.2 The Grantee shall, within three (3) months of the Project Completion Date provide the Commonwealth with an audited financial report as specified in Clause 11 of these Conditions.

11. BUILDING CODE

11.1 Does not apply to this project.

12. THE WHS ACCREDITATION SCHEME

12.1 Does not apply to this project.

13. ADDRESSES FOR NOTIFICATION

Grantee

<GRANTEE CONTACT DETAILS>

Commonwealth/Secretary

Community Grants Hub
Centralised Performance Team – Capital
GPO Box 9820 Canberra ACT 2601
Phone: 1800 044 584 (option 2)
Email: capital@dss.gov.au

SCHEDULE B

CAPITAL GRANT PROGRESS REPORT

Name of Grantee/Approved Provider:	<GRANTEE NAME>
Name of Service:	<SERVICE NAME>
Amount of Grant:	\$<GRANT AMOUNT>
Minimum Grantee's Contribution Required:	\$<GRANTEE_CONTRIB>

****Please complete ALL sections even if it is a NIL or \$0 response****

Part A: Project Progress

1. Does the Project differ from the description in Item 2 of Schedule A of the Agreement? If yes, please provide details.
Yes / No (<i>mark as appropriate</i>)
Any change to the Project without prior approval from the Department will be regarded as a breach of the Agreement, and the grant may consequently be reduced or revoked.
Refer to Part C of this Schedule for information on what constitutes proposed changes to capital works and how they must be handled.
2. Describe the progress of the Project to date, including milestones achieved. Please attach three site-photos.

3. Do you anticipate that you will meet the Project Timetable specified in Item 5 of Schedule A of the Agreement? If not, please provide reasons for the delays, how they will be addressed, and the expected completion date.

The current completion date is:

Expected completion date: _____

Reason for the delay/s and how this will be addressed:

4. When do you anticipate future Grant milestones will be met? (Show day/month/year).

Milestone	Current Due Date	New Due Date
Milestone 1		
Milestone 2		
Milestone 3		
Final Milestone		

5. Has any actual breach of conditions of the Agreement occurred or is there potential for such a breach? If yes, please provide details.

Yes / No (*mark as appropriate*)

6. Is there any other information that is relevant to the progress of the Project? If yes, please provide this information.

Yes / No *(mark as appropriate)*

7. Has there been a change in the financial or other circumstances of the Grantee that materially affects the Grantee's ability to complete the Project in accordance with the Agreement? If yes, please provide details.

Yes / No *(mark as appropriate)*

8. Has the Grantee's payment details changed from those previously advised? If yes, please provide new bank account details for the Grantee.

Yes / No *(mark as appropriate)*

Bank Account No:

BSB:

Name of Account:

Part B: Project Financial Information

	\$ (excluding GST)
Project income received to date	
a. Grant funds received to date	\$
b. Interest earned on Grant funds to date	\$
c. Grantee's contribution to date	\$
d. Other Project funds to date	\$
TOTAL (a+b+c+d)	\$
Expenditure on Project Costs to date	\$
Estimated total expenditure on Project Costs (as at Project Completion)	\$

Part C: Changes to capital works

No change to the Project should be made without the Department's prior, written approval.

- The grant is to be applied ONLY to the Project as described at Item 2 of Schedule A.
- Prior approval of the Department must be sought for ANY change to the Project including, but not limited to, any change to the privacy/amenity to be offered to residents or any expansion or reduction in the scope of the works to be undertaken.

Additional Works

If you are considering undertaking additional works at the same time as the Project, and under the same building contract, you should advise the Department in writing at the earliest opportunity, setting out the additional works to be undertaken, and the reason for undertaking the works.

Financial Capacity

The eligibility criterion relating to the applicants lack of capacity to fund the project in its ACAR application relates to all financial resources available to the Approved Provider, including from any parent or related entity and from borrowing. The Department will need to be advised of the circumstances which allow the grantee to finance any additional works in light of the grantee's claims that it does not have the capacity to fund all or part of the Project to which the grant relates without a grant.

The Department will then consider the impact this may have on the requirements in the Agreement related to expenditure on Project Costs and the Grantee's Contribution.

A change to the Project without prior approval from the Department will be regarded as a breach of the Agreement, and the grant may consequently be reduced or revoked.

Declaration

- I certify that the above Progress Report is not misleading by reason of any material misstatements or omissions.
- I have read Part C. *Changes to Capital Works* and, in light of the information in Part C, warrant that the Project is as described at Item 2 of Schedule A to the Rural, Regional and Other Special Needs Building Fund Grant Agreement and Conditions of Grant, except to the extent set out in Item 1 of this Progress Report.
- I acknowledge that a change to the Project without prior approval of the Department of Health will be regarded as a breach of the Agreement, and the grant may consequently be reduced or revoked.
- I acknowledge that under section 137.1 of the schedule to the *Criminal Code Act 1995* it is an offence to provide false or misleading information to the Commonwealth.
- I am a person authorised by the Grantee to execute documents and legally bind the Grantee by their execution.

A person authorised by the Grantee to execute documents and legally bind the Grantee by their execution must sign the report.

Signature:

Full Name:

Position:

Date: