

COUNTRY TO COAST, QLD



Standard Terms & Conditions

Version 1.0

Current from March 2023

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Country to Coast Queensland acknowledges the traditional custodians of the lands across our region and pays respect to the Elders past, present, and emerging. We recognise these lands were never ceded and acknowledge the continuation of culture and connection to land, sky and sea. We acknowledge Aboriginal and Torres Strait Islander peoples as Australia's First Peoples and honour the rich diversity of the world's oldest living culture.

Country to Coast Queensland is an independent, not-for-profit organisation proudly delivering the PHN program in Central Queensland, Wide Bay, Sunshine Coast. We are committed to improving the health of our communities through quality primary health care. The PHN program is an Australian Government initiative.

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OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In the Agreement the following definitions apply:

"Activity" means the activity described in Item 8, including:

- (a) the provision of Developed Intellectual Property for that activity; and
- (b) the applicable Client Services forming all or part of that activity (if any).

"Acquire" in relation to an Asset includes to create, purchase, lease or hire the Asset (including under a hire-purchase or other arrangement).

"Agreement" means the agreement between Sunshine Coast Health Network Ltd, trading as Country to Coast Queensland, ABN 21 156 526 706 (CCQ) and Provider regarding the performance of the Activity (including, as applicable, the provision of Client Services) by Provider, comprising these standard terms and conditions and the relevant Services Order, as may be varied in accordance with these standard terms and conditions.

"Asset" means, in respect of the Activity, as item of property which:

- (a) has been Acquired wholly or in part with the Funding provided for the Activity; and
- (b) at the time of its Acquisition, the value of the item is greater than \$10,000 (GST-inclusive); but excludes Intellectual Property and land, buildings or other real property.

"Australian Privacy Principle" has the meaning given in the Privacy Act.

"Budget" means, in respect of the Activity, the budget (if any) for expenditure of the Funding and Other Contributions for the Activity (if any) specified in Item 9 or as otherwise specified in writing by CCQ from time to time.

"CEO" means a person's principal executive officer responsible for the person's day-to-day management, whether referred to as its chief executive officer, general manager, managing director, or by another name.

"Child" means an individual under the age of 18.

"Client" means a person to whom Client Services are provided by a Professional.

"Client Services" means health and health-related services provided to a client under or as a consequence of the Agreement, being the services (if any) described as "Client Services" in Item 8.

"Committed" means, at a particular date, Funding that:

- (a) Provider is contractually and irrevocably obliged to pay to a third party in respect of any part of the Activity; and
- (b) is identified in a written contractual arrangement between Provider and that third party.

"Commonwealth" means the Commonwealth of Australia and includes the Department.

"Commonwealth Funding" means funding provided, or to be provided, to CCQ by or on behalf of the Department under the Funding Agreement.

"Commonwealth Official" means each of the following:

- (a) the Department;
- (b) the Auditor-General;

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- (c) any person appointed under Commonwealth legislation to perform information management, privacy or freedom of information functions in relation to the Australian Government;
- (d) the Commonwealth Ombudsman; and
- (e) any person authorised by a person described in any of the above paragraphs.

"Confidential Information" means any information provided by CCQ or any of its Representatives to Provider or any of its Representatives, or otherwise obtained by Provider or any of its Representatives, whether before or after execution of the Agreement, in connection with CCQ, the Activity, Client Services or the Agreement. It includes:

- (a) all confidential business information, documents, records, financial information, reports, technical information and forecasts which relate to CCQ or CCQ's business;
- (b) CCQ's Intellectual Property including the Developed Intellectual Property;
- (c) the terms and conditions of the Agreement (including to avoid doubt these standard terms and conditions); and
- (d) any information created under or arising out of the performance of the Activity (including, if applicable, the provision of Client Services) under the Agreement.

It does not include information which:

- (e) relates to a recipient of Client Services, where that information is clinical information or Personal Information;
- (f) is in or becomes part of the public domain, other than through a breach of the Agreement or an obligation of confidence owed to CCQ or any of its Representatives;
- (g) was known to Provider at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or
- (h) Provider can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in the Agreement.

"Conflict" means any matter, circumstance, interest or activity involving or affecting Provider or any of Provider's Representatives, which may or may appear to impair Provider's ability to perform its obligations under the Agreement, including performing, or (where authorised by CCQ) procuring the performance of, the Activity (including, if applicable, providing Client Services) fairly and independently.

"Contract Administrator" means, in respect of each party, the person whose details are set out in Item 4.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Criminal or Court Record" means any record of any Other Offence.

"Cyber Incident" means any actual, suspected or threatened action taken through the use of computer networks or any unauthorised access or use that disrupts, threatens or attempts to disrupt, or otherwise may result in an actual or potentially adverse effect on, any or all of the following:

- (a) any of Provider's or its Representatives' business or information systems or networks or the ability to use any of the Provider's or its Representatives' business or information systems or networks as intended;
- (b) Data; or
- (c) any of CCQ's business or information systems or networks.

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"Data" means data or information that is collected, generated, processed, transmitted, or stored in connection with services delivered under the Agreement.

"Department" means the Commonwealth Department of Health and Aged Care (and, as applicable, its successors).

"Developed Intellectual Property" means Intellectual Property that is discovered, developed or has otherwise come into existence as a result of, for the purposes of, or in connection with the performance of the Activity (including, if applicable, the provision of Client Services) or the Agreement.

"Dispose" means to sell, license, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use or to enter into an agreement to do any of those things.

"Dispute" means any dispute or disagreement concerning the Agreement, the performance of the Activity (including, if applicable, the provision of Client Services) by or on behalf of Provider or the rights or obligations of the parties under the Agreement.

"End Date" means the date set out in Item 2, being the date by which the Activity is to be completed (other than the provision of any Reports due after that date).

"Funding" or "Funds" means, in respect of the Activity:

- (a) the maximum amount of money payable by CCQ to Provider under the Agreement for the Activity as specified in Item 9; and
- (b) any amount calculated in accordance with clause 12.23 in respect of the Activity,

and to avoid doubt includes any Grant Funds paid or payable to Provider under the Agreement.

"Funding Agreement" means the Funding Agreement dated on or around 1 June 2020 between the Commonwealth as represented by the Department and CCQ in respect of the Programme, or other relevant contract between the Department and CCQ, including all variations to the relevant contract from time to time, the terms of which may be amended unilaterally by the Commonwealth from time to time.

"Grant Funding" or "Grant Funds" means any Funding that CCQ pays Provider under the Agreement in advance of the relevant aspects of the Activity being performed by Provider (including, if applicable, the applicable Client Services). To avoid doubt, this includes:

- (a) Funding paid to Provider at the time the Agreement is executed, including to enable Provider to hire staff and purchase equipment in order to perform the Activity; and
- (b) Funding paid to Provider after the date of the Agreement that relates to aspects of the Activity whose delivery, completion or achievement is the subject of a later Milestone, in advance of that Milestone being achieved.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and **"GST Law"** has the same meaning as in the GST Act.

"GSTR 2000/10" means GSTR 2000/10 "Goods and services tax: recipient created tax invoices", as may be amended or replaced from time to time.

"Guidelines" means:

- (a) any guidelines issued by the Commonwealth (including the Australian Commission on Safety and Quality in Health Care, such as "National Safety and Quality Health Service Standards" including the "National Safety and Quality Health Service Standards User Guide for Aboriginal and Torres Strait Islander Health (2017)", or the National Health and Medical Research Council) or by a State or Territory or any statutory body which set minimum standards for the performance of any aspect of the Activity or the provision of Client Services;
- (b) any guidelines listed in Item 8; and

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- (c) any guidelines relating in any way to the performance of the Activity or the provision Client Services that may be specified by CCQ from time to time.

"Health Information" has the meaning given to it in the Privacy Act and, where the context relates to obligations of Provider under Privacy Law other than the Privacy Act, the meaning given in the relevant Law, code or guideline.

"Health Professional" means a medical practitioner, allied health practitioner or other professional providing health services.

"Insolvency Event" means any of the following occurring with respect to a party:

- (a) subject to the Corporations Act, a liquidator is appointed to the party;
- (a) the party ceases to carry on its main business or notifies the other party that it is ceasing to carry on its main business; and
- (b) if the party is a natural person, a step being taken to make the party bankrupt, an application being presented or an order being made for the sequestration of the party's estate or a meeting of the party's creditors being called or held.

"Intellectual Property" means all present and future rights, title and interests in and to inventions, innovations, know-how, patents, patent applications, registered and unregistered trade marks, service marks, registered and unregistered designs, copyrights, circuit layouts, domain names, internet addresses, computer programs or software or brand names.

"Interest" means interest calculated on a daily compounding basis at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia).

"Key People" means the individuals (if any) listed in Item 3.

"Key Performance Indicators" means the key performance indicators (if any) set out in Item 9, as may be varied or replaced by CCQ from time to time in accordance with the Agreement.

"Law" means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and equity as applicable from time to time.

"Loss" means any loss of any kind whatsoever, whether actual, contingent or prospective, including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage.

"Milestone" means a milestone (if any) for the Activity as set out in Item 8 and/or Item 9.

"National Board" means a national board established under the *Health Practitioner Regulation National Law Act 2009* (Qld) or, where a Professional who is a Health Professional is not regulated by a national board established under the *Health Practitioner Regulation National Law Act 2009* (Qld), the entity or body as determined by CCQ from time to time.

"Other Contributions" means, in respect of the Activity, any financial or in-kind resources (with in-kind resources valued at market rates) other than the Funding, which are specified in Item 8 and are contributed, or required to be contributed, by Provider or another person for the Activity.

"Other Offence" means, in relation to any Relevant Person, a conviction, finding of guilt, on-the-spot fine for, or court order relating to:

- (a) an apprehended violence or protection order made against the Relevant Person;
- (b) the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or any other prohibited substance;

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- (c) violence against a person or the injury, but excluding the death, of a person; or
- (d) an attempt to commit a crime or offence, or to engage in any conduct or activity, described on paragraphs (a) to (c) of this defined term.

"Participating Professional" means a Professional who is, or may be, involved in any way (whether directly or indirectly) in the provision of Client Services under the Agreement.

"Personal Information" has the meaning given to it in the Privacy Act.

"Police Check" means a formal inquiry made to the relevant police authority in each Australian State or Territory in which Provider or CCQ knows or reasonably believes the Relevant Person has resided that is designed to obtain details of the Relevant Person's criminal conviction or a finding of guilt in all places.

"Privacy Act" means *Privacy Act 1988* (Cth) and **"Privacy Law"** means the Privacy Act and any other Law or enforceable codes and guidelines regulating the collection, use and/or disclosure of Personal Information that apply to Provider or by which Provider is bound.

"Privacy Commissioner" means the office established under the Privacy Act and includes any other person that may, from time to time, perform the functions of that office.

"Professional" means a Health Professional or other professional engaged or nominated by Provider to provide Client Services under the Agreement.

"Programme" means the Commonwealth's "Primary Health Networks Programme" and any replacement programme that the Commonwealth may specify from time to time.

"Provider" means the person identified as "Provider" in the relevant Services Order.

Recipient Created Tax Invoice or **RCTI** has the meaning given in GSTR 2000/10. **"Related Party"** means:

- (a) an entity that controls or has significant influence over CCQ at any time;
- (b) an entity that CCQ controls or has significant influence over at any time, including any subsidiary of CCQ;
- (c) a person who is a member of CCQ's board of directors;
- (d) a member of the board of an entity referred to in paragraph (a) or (b) above;
- (e) any Representative of CCQ other than in their capacity as an employee of CCQ; or
- (f) a spouse or immediate family member of:
 - (i) any of CCQ's Representatives; or
 - (ii) a person referred to in paragraph (c) or (d) above, who is not themselves an employee of CCQ.

"Relevant Person" means a natural person who is an actual or potential officer, employee, volunteer, agent, contractor or subcontractor of Provider.

"Reports" means the reports Provider is required to provide under Item 8 and/or Item 9 or as otherwise directed by CCQ in writing from time to time.

"Representative" means any director, officer, employee, agent, volunteer, contractor or subcontractor of a party. For the avoidance of doubt, for the purposes of the Agreement:

- (a) neither Provider nor any of its contractors, subcontractors or sub-subcontractors (including any Professional) is a "Representative" of CCQ; and
- (b) any Subcontractor or Sub-subcontractor (including a Professional) retained by Provider to

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perform any work directly or indirectly relating to the Activity (including any Client Services) is a "Representative" of Provider.

"Serious Offence" means:

- (a) a crime or offence involving the death of a person;
- (b) a sex-related offence or crime, including sexual assault whether against an adult or Child; Child pornography, or an indecent act involving a Child;
- (c) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services; or
- (d) an attempt to commit a crime or offence, or to engage in any conduct or activity, described paragraphs (a) to (c) of this defined term.

"Serious Record" means a conviction or any finding of guilt regarding a Serious Offence.

"Services Order" means a services order executed by CCQ and Provider for the performance of the relevant Activity by Provider in such form approved by CCQ from time to time.

"Standards" means any standards for the provision of services identical or substantially similar to Client Services, including as may be imposed by the relevant National Board (if applicable).

"Subcontractor" means, in respect of the performance of any work directly or indirectly relating to the Activity (including any Client Services), any person who is engaged by Provider to deliver all or any part of such work unless CCQ agrees in writing with Provider that the person is not a "Subcontractor" for the purposes of the Agreement, and **"Subcontract"** means the written agreement between Provider and the relevant Subcontractor.

"Sub-subcontractor" means, in respect of the performance of any work directly or indirectly relating to the Activity (including any Client Services), any person who is engaged by a Subcontractor (or another subcontractor of the Subcontractor) to deliver all or any part of such work, and **"Sub-subcontract"** means the written agreement under which that person is so engaged.

"Trust" has the meaning given in Item 1 (as applicable).

"Trust Deed" means the trust deed described in Item 1 (as applicable).

"Trustee" means (if applicable) the person or persons named in the Trust Deed as trustees and includes successors and assignees of such persons from time to time. If there is more than one, Trustee means each of them individually and every two or more of them jointly.

"Undepreciated" means, in relation to an Asset, the value of the Asset that has not been depreciated in accordance with Australian Accounting Standards (being the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth)).

"Vulnerable Person" means a Child or 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, illness, trauma or disability, pregnancy, the influence, or use, of alcohol, drugs or substance use or any other reason.

"WHS Act" means *Work Health and Safety Act 2011* (Cth).

"WHS Law" means the WHS Act and any "corresponding WHS law" as defined in section 4 of the WHS Act.

"Working With Children Check" means a formal inquiry made to the relevant State authority to determine whether a person is suitable to perform child-related work which would ordinarily involve direct contact with a Child.

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Interpretation

- 1.2 In the interpretation of the Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 A reference in the Agreement to "the parties" means the parties to the Agreement, being CCQ and Provider, and a reference to "a party" is a reference to either of them.
 - 1.2.2 Headings are inserted for convenience only and do not affect the interpretation of the Agreement.
 - 1.2.3 A reference in the Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales.
 - 1.2.4 If the day on which any act, matter or thing is to be done under the Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.5 A reference to "dollars" or "\$" means Australian dollars and all amounts payable under the Agreement are payable in Australian dollars.
 - 1.2.6 A reference to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in the Agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part or attachment is a reference to a clause, part or attachment of or to the Agreement.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender.
 - 1.2.12 A reference to the word "include" or "including" is to be interpreted without limitation.
 - 1.2.13 Any schedules, attachments or annexures to the Services Order form part of the Agreement (without limiting clause 23).
 - 1.2.14 A word or expression that is used or defined in the applicable WHS Law and is not otherwise defined in the Agreement has the meaning given to it under the applicable WHS Law.
 - 1.2.15 A word or expression defined in the GST Act and not otherwise defined in the Agreement has the same meaning given to it in the GST Act.
 - 1.2.16 Where Item 8 specifies that the Activity includes the provision of Client Services, a reference in the Agreement to the "Activity" is also a reference to the relevant Client Services.
 - 1.2.17 A reference in the Agreement to a numbered "Item" mean the applicable numbered item in the relevant Services Order.

2 ABOUT THE AGREEMENT

The Activity

- 2.1 The Agreement sets out the terms and conditions on which CCQ will provide Provider with Funding in consideration of Provider's performance of the Activity.

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- 2.2 Provider must perform, or (where authorised by CCQ), procure the performance of, the Activity, subject to the terms and conditions of the Agreement.

Provider's acknowledgements

- 2.3 Provider acknowledges that CCQ's provision of Funding to Provider under the Agreement is non-exclusive and does not restrict CCQ's right to:
- 2.3.1 engage other persons to perform, or (where authorised by CCQ), procure the performance of, the Activity or activities similar to the Activity;
 - 2.3.2 conduct a competitive tender process or other procurement process among person (including Provider) that CCQ has entered into a contract with; or
 - 2.3.3 perform any activity (including activities similar to the Activity) or any services, including to avoid doubt Client Services or other services similar to Client Services, itself.
- 2.4 Where no Grant Funding is payable under the Agreement, Provider acknowledges and agrees that CCQ is under no obligation to acquire services (including, if applicable, Client Services) from Provider that attract a minimum level of charges, or to pay any minimum fee to Provider under the Agreement.

Provider is independent contractor

- 2.5 The relationship between the parties is that of principal and independent contractor. No party is an agent, representative or partner of any other party by virtue of the Agreement. Provider must not represent itself as an agent, representative or partner of CCQ in any circumstances, except to the extent expressly set out in the Agreement. Payments made by CCQ to Provider in respect of Provider's performance of the Activity, or (where authorised by CCQ) Provider's procuring the performance of the Activity, are not wages or salary. Provider acknowledges and agrees that:
- 2.5.1 Provider must not represent itself or hold itself out as being an employee, representative, partner or agent of CCQ or the Commonwealth or as providing services to third parties for and on behalf of CCQ or the Commonwealth, and must ensure that none of its Representatives does any of those things;
 - 2.5.2 neither CCQ nor any of its Representatives is responsible for the payment of any income, profit and salary tax payable in respect of the payments received by Provider or the payments made by Provider to any of its Representatives;
 - 2.5.3 neither Provider nor any of its Representatives is entitled to payment from CCQ in respect of any annual leave, sick leave, severance pay, long service leave or any other entitlement which an employee may have in respect of his or her employment;
 - 2.5.4 Provider and (as applicable) its Representatives are responsible for and must pay all fees, charges and costs incurred in or incidental to the performance of the Activity (including, as applicable, performance of Client Services and including, unless CCQ agrees otherwise in writing, any costs related to clinical supervision); and
 - 2.5.5 each Client who receives Client Services under or as a consequence of the Agreement is in a direct contractual relationship with Provider or (as applicable) a Representative of Provider, and is not in a direct contractual relationship with CCQ.

3 TERM

- 3.1 The Agreement starts on the commencement date set out in Item 2 and will remain in force until the End Date, unless terminated earlier or extended in accordance with the Agreement.
- 3.2 If any option period is set out in Item 2, CCQ may by written notice to Provider extend the term of the Agreement for a duration determined by CCQ that does not exceed that option period (or one or more of those option periods) on the same terms and conditions set out in the Agreement (save for this clause 3.2

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and any necessary changes to Items 1 to 9 in accordance with clause 3.2.2). Such notice:

3.2.1 must be given not less than 20 business days before the expiry of the then current term;

3.2.2 must be accompanied by a document setting out any necessary updates relating to Items 1 to 9, as determined by CCQ acting reasonably, and the Provider is deemed to have irrevocably agreed to such amendment to the Agreement; and

3.2.3 may be subject to any conditions specified in the notice.

3.3 If the term of the Agreement (including any extension) ends, any dealings between the parties after the end of the term of the Agreement are on a day to day basis and continue to be governed by the Agreement. Either party may terminate the holding over period at any time in accordance with clause 21.1.

4 CONDUCT OF THE ACTIVITY

Provider's conduct of the Activity

4.1 Provider must conduct the Activity in accordance with the terms of the Agreement and, if relevant, any other requirements set out in any Guidelines or any policies issued or specified by CCQ from time to time.

4.2 Without limiting clause 4.1, at all times during the term of the Agreement, Provider must perform (or, where authorised by CCQ, procure the performance of) the Activity:

4.2.1 within the term of the Agreement and so as to meet the Milestones, any timeframes specified in the Guidelines and other timeframes (if any) specified in Item 8 and/or Item 9;

4.2.2 promptly, carefully, efficiently, ethically, to the highest possible standard (and, at a minimum, to any applicable Standards) and so as to provide value for money;

4.2.3 exercising all due care, skill and judgement, in a professional and cost-effective manner and in accordance with accepted professional and business practices;

4.2.4 where applicable, in a manner that achieves integrated, person-centred care and team-based care, and ensure that continuity of care is maintained through secure communication with the Client and their nominated Health Professional team using My Health Record and local health pathways; and

4.2.5 subject to the other provisions of the Agreement, in accordance with any reasonable and lawful direction of a person having day-to-day control of any premises at which any part of the Activity (including, if applicable, Client Services) is conducted.

4.3 If, at any time during the term of the Agreement, Provider is engaged by the public sector or another Commonwealth-funded program or any other funder, Provider must ensure that Provider's provision of such services does not impact on Provider's performance of the Activity or (where authorised by CCQ) Provider's procuring the performance of the Activity.

Cultural safety

4.4 At all times during the term of the Agreement, Provider must:

4.4.1 perform (or, where authorised by CCQ, procure the performance of) the Activity (including, if applicable, Client Services) in a culturally safe environment that recognises the crucial role that culture plays within Aboriginal and Torres Strait Islander communities;

4.4.2 comply with all requirements notified by CCQ from time to time (whether or not in the form of Guidelines) regarding cultural safety-related matters, and ensure that its Representatives do the same.

Conflicts

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- 4.5 Without limiting clause 26.4, Provider warrants that, to the best of Provider's knowledge after making diligent inquiry, at the commencement date of the Agreement no Conflict exists or is likely to arise in Provider's, or any of Provider's Representative's, performance of the Agreement or in respect of the performance of the Activity (or, where authorised by CCQ, procuring the performance of the Activity).
- 4.6 If, during the term of the Agreement, a Conflict arises, or appears likely to arise, in respect of Provider or any of Provider's Representatives, Provider must:
- 4.6.1 immediately notify CCQ in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps Provider proposes that Provider or Provider's relevant Representatives will take to resolve or otherwise deal with the Conflict; and
 - 4.6.2 take such steps as have been proposed by Provider or (at CCQ's discretion) as CCQ may reasonably require, to resolve or otherwise deal with the Conflict.
- 4.7 Provider must not, and will use Provider's best endeavours to ensure that any of Provider's Representatives do not, engage in any activity or obtain any interest during the course of the Agreement that is likely to conflict with or restrict Provider or any of Provider's Representatives in performing the Activity fairly and independently.

Key People

- 4.8 Provider must ensure that the Key People (if any) are directly involved in the performance of the Activity at all times in the manner (if any) specified in Item 3. If Provider engages any people other than the Key People to assist with the performance of the Activity, they must be supervised by and report directly to the Key People. Provider must notify CCQ in writing immediately if any Key People are unable to, or do not directly assist with the performance of the Activity in the manner (if any) specified in Item 3.
- 4.9 Provider must not remove or replace any Key People without CCQ's prior written consent. If it is necessary to replace any of the Key People, Provider must immediately notify CCQ in writing and arrange for replacement by a person of comparable experience and competence. to be approved by CCQ, which approval must not be unreasonably withheld.

Contract Administrators

- 4.10 Each party must appoint the Contract Administrator named in Item 4 as its authorised representative under the Agreement. Each Contract Administrator will be responsible for the day-to-day administration of the Agreement on behalf of the party appointing them.
- 4.11 The Contract Administrators must be available and able to be contacted during normal business hours. A party must notify the other party immediately in writing if its Contract Administrator is removed or replaced, together with the contact details of its new Contract Administrator, or of any change to its Contract Administrator's contact details.
- 4.12 Each party will be responsible for the acts, omissions and defaults of its Contract Administrator.

Key Performance Indicators

- 4.13 Provider must meet the performance requirements and Key Performance Indicators (if any) at all times during the term of the Agreement. CCQ will have regard to the performance requirements and Key Performance Indicators in any review it conducts of Provider's performance under clause 4.14 and Provider must comply with any revised or additional performance requirements and Key Performance Indicators required by CCQ as a result of any review.
- 4.14 Provider acknowledges and agrees that:
- 4.14.1 each component of the Activity (including each deliverable) performed or delivered by Provider are subject to assessment and acceptance by CCQ against the Key Performance

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Indicators and the other performance requirements set out in the Agreement;

- 4.14.2 if CCQ considers that all or any components of the Activity do not meet the performance requirements and Key Performance Indicators, CCQ may notify Provider of this in writing (providing reasons) within 10 business days of assessing Provider's performance of the Activity or receiving the relevant deliverable from Provider;
- 4.14.3 within 10 business days of receiving a notice from CCQ under clause 4.14.2, Provider must:
- 4.14.3.1 take all necessary steps to perform the Activity (or relevant component of the Activity) or deliver the relevant deliverable in the manner required under the Agreement;
 - 4.14.3.2 provide CCQ with written notice confirming that Provider has met its obligations under clause 4.14.3.1; and
 - 4.14.3.3 otherwise provide CCQ with all reasonable assistance to enable CCQ to perform a further assessment and acceptance process against the Key Performance Indicators and the other performance requirements set out in the Agreement in respect of the Activity (or relevant component of the Activity) or the relevant deliverable performed or delivered (as the case may be) by Provider in accordance with clause 4.14.3.1; and
- 4.14.4 CCQ's rights under this clause 4.14 do not limit its other rights under the Agreement, including the right to immediately terminate this Agreement where this Agreement provides such a right, or limit any of Provider's other obligations under the Agreement.

Reviews

- 4.15 CCQ or its nominee may conduct reviews of the performance of the Activity to assess Provider's performance, to seek improvements in the performance of the Activity, to resolve any issues that may arise, or as otherwise may be required in order to comply with the Funding Agreement.
- 4.16 Provider must promptly (and at its own cost), and must ensure that its Representatives promptly:
- 4.16.1 cooperate in the review process, including providing (or, if Provider is not the occupier of the premises, procuring that the occupier promptly provides) access to any premises at which records and material associated with the Agreement or (if applicable) Client Services are stored or where any work directly or indirectly relating to the Activity is undertaken to permit CCQ or its nominee to inspect and copy such records and material at no charge (subject always to the Law);
 - 4.16.2 provide all other assistance reasonably requested by CCQ or its nominee in respect of any review or inquiry relating directly or indirectly to the Activity; and
 - 4.16.3 comply with all lawful recommendations that result from any review, including any performance audit undertaken by the Department or its nominees.

Compliance

- 4.17 At all times during the term of the Agreement, Provider must, and must ensure that its Representatives:
- 4.17.1 hold all authorisations, qualifications, permits, registrations, certifications and licences required under any Law to perform the Activity;
 - 4.17.2 continually comply with the requirements of all Laws of any kind applying to the performance of the Activity;
 - 4.17.3 continually comply with any code of ethics, regulations or industry standards relevant to the

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performance of the Activity;

- 4.17.4 continually comply with any Guidelines, and any Departmental or Commonwealth policy of which CCQ gives Provider notice; and
- 4.17.5 promptly comply with all lawful and reasonable directions from CCQ regarding the performance of the Activity.

Capacity to perform Activity

- 4.18 Provider must immediately notify CCQ in writing of any matter which does, or which has the potential at any time to, have an adverse effect on Provider's ability to perform its obligations under the Agreement. If any such matter arises during the term of the Agreement, Provider must, at Provider's sole expense, take such action as may be necessary to avoid or manage the adverse effect or potential adverse effect, including any action that CCQ requires in writing to ensure that the matter is avoided or managed in a manner satisfactory to CCQ.

Branding and acknowledgement of support

- 4.19 Provider must comply with all requirements notified by CCQ from time to time (whether or not in the form of Guidelines) regarding branding, co-branding, acknowledgement of support and other publicity-related matters that are in any way related to the Activity or this Agreement, and must ensure that its Representatives do the same.

5 REPORTS, INFORMATION AND RECORDS

Reports

- 5.1 Provider must deliver Reports to CCQ in relation to the Activity. Reports must be provided regularly in a timely fashion and in accordance with any requirements as CCQ may specify in writing from time to time. The Reports must include all information referred to in Item 8 and/or Item 9 and any other information CCQ may reasonably require to be included from time to time, including after any change in Law or any Guidelines.
- 5.2 If CCQ terminates the Agreement, Provider must provide an audited financial report for the Activity which contains all information specified by CCQ, within 20 business days of written notice by CCQ.
- 5.3 Provider must ensure that, if required by CCQ in writing from time to time, all Reports comply with:
 - 5.3.1 the Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.0; and
 - 5.3.2 the *World Wide Web Access: Disability Discrimination Act Advisory Notes version 4.0* (2010) issued by the Australian Human Rights Commission.
- 5.4 All Reports generated by Provider will be the property of CCQ. Provider may retain a copy of the Reports for internal record keeping purposes only.

Information

- 5.5 In addition to the Reports to be delivered under clause 5.1, CCQ may require Provider to provide it with information concerning any aspect of the Activity (including, to avoid doubt, information concerning the experience, expertise, skill, competence, qualifications, training, authorisations, permits, registrations, certifications and licences of Provider or any of its Representatives) which CCQ may reasonably require, subject always to the Law. Provider must provide the information within five business days of receiving a request to do so (or such longer period as CCQ may permit in writing).

Records

- 5.6 Provider must keep full and accurate records, accounts and documentation in relation to the Activity (including receipts, proof of purchase and invoices) in accordance with good business practice, in

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accessible and readable electronic form, whether or not hard copies are also maintained. Provider must do so during the term of the Agreement and for 7 years after the Agreement ends, or such longer period as may be required by Law.

- 5.7 Subject to the Law, on request by CCQ, Provider must promptly make all documents and records relating to the Activity available to CCQ or its nominees for inspection and copying at no charge, and must ensure that each of its Representatives does the same to the extent that the Representative has created or is in the possession or control of any such document.

6 CLIENT SERVICES **Application**

- 6.1 This clause 6 applies if any part of the Activity involves the provision of Client Services.

Provider's conduct of the Activity

- 6.2 Provider must ensure that all Client Services are provided in accordance with the terms of the Agreement, the Programme requirements and any other requirements set out in any Guidelines or any policies issued by CCQ from time to time.

Provider's notification obligations

- 6.3 Provider must immediately notify CCQ in writing of any matter which does, or which has the potential at any time to, have an adverse effect on:

- 6.3.1 the credentials of any Participating Professional who is a Health Professional (including, where applicable, Provider);
- 6.3.2 the ability of Provider to deliver, or (where authorised by CCQ) procure the delivery of, Client Services safely, effectively and in accordance with the Agreement; or
- 6.3.3 the professional indemnity or public liability insurance status of any Participating Professional who is a Health Professional (including, where applicable, Provider).

- 6.4 Without limiting clause 6.3, Provider must notify CCQ in writing as soon as possible but no later than five business days of any of the following occurring with respect to Provider or a Participating Professional who is a Health Professional (including, where applicable, Provider):

- 6.4.1 if applicable:
 - 6.4.1.1 that Professional receives notification that the relevant National Board or other accrediting body has decided to investigate him or her;
 - 6.4.1.2 the relevant National Board or other accrediting body requires that Professional to undergo a health assessment or performance assessment;
 - 6.4.1.3 that Professional is cautioned, reprimanded, required to give an undertaking, has his or her registration suspended or cancelled, surrenders his or her registration or otherwise ceases to be registered or is suspended from registration by the relevant National Board; or
 - 6.4.1.4 any conditions, limitations or restrictions are imposed by the relevant National Board in relation to that Professional's practice;
- 6.4.2 an adverse finding is made against Provider or that Professional by any registration, disciplinary, investigative or professional body;
- 6.4.3 Provider's or that Professional's appointment to, accreditation at or scope of clinical practice at any health service, hospital or day procedure centre is altered in any way, whether at the request of Provider or a Professional or otherwise;

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- 6.4.4 that Professional suffers or incurs an illness or disability which will or may adversely affect the Professional's ability to provide Client Services;
 - 6.4.5 Provider or that Professional is charged with or convicted of a breach of any Law that regulates the provision of health care or health insurance;
 - 6.4.6 Provider or that Professional ceases to hold professional indemnity insurance sufficient to meet (as applicable) the requirements of the relevant National Board or as may be required under clause 18 of the Agreement; or
 - 6.4.7 Provider or that Professional is the subject of a written or verbal complaint raised by a Client or a Client's representative, whether or not that complaint has been investigated or resolved.
- 6.5 Any notice given by Provider under clause 6.3 or 6.4 must include a reasonable level of detail about the relevant matter, development or complaint. This does not limit Provider's other obligations under the Agreement.

Complaints

- 6.6 Provider must implement a procedure for addressing complaints from Clients and their representatives in connection with Client Services delivered by or on behalf of Provider. The procedure must be simple for complainants to understand and follow (including being available in relevant languages other than English), fair, free of charge for complainants, easy to access and set out in a document which is available for viewing by any person on request and free of charge (such as on Provider's website).
- 6.7 In providing Client Services, Provider must not cease providing a person with goods or services, refuse a person access to those goods or services, or otherwise recriminate against any person, because they have made a complaint to or about Provider in connection with the provision of Client Services. This does not preclude Provider from taking necessary action to ensure safety and prevent harm to any person, and does not limit any other obligations to which Provider may be subject.

Records of Client Services

- 6.8 Provider must keep (and, to the extent necessary, ensure that Participating Professionals keep) full and detailed records in relation to all Client Services in accordance with good clinical and business practice), in accessible and readable electronic form, whether or not hard copies are also maintained. Provider must do so during the term of the Agreement and for 7 years after the Agreement ends (or such longer period as may be required by Law).
- 6.9 Subject to the Law, on request by CCQ, Provider must promptly make all documents and records relating to Client Services available to CCQ or its nominees for inspection and copying at no charge, and must ensure that each of its Representatives does the same to the extent that the Representative has created or is in the possession or control of any such document.

7 SUBCONTRACTING

- 7.1 Provider must not subcontract any of Provider's obligations under the Agreement without CCQ's prior written approval. Provider must comply with any conditions imposed by CCQ in relation to Subcontracting.
- 7.2 CCQ approves the Subcontractors (if any) specified in Item 6 to perform the part of the Activity specified in that Item 6.
- 7.3 If CCQ requests, Provider must provide CCQ with details of all Subcontractors, and any Sub-subcontractors, engaged in any way in the performance of the Activity.
- 7.4 CCQ may, at any time under direction from, or request by, the Department or where CCQ (acting reasonably) otherwise considers it necessary:

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- 7.4.1 revoke its approval of a Subcontractor or Sub-subcontractor; and/or
- 7.4.2 require Provider to:
- 7.4.2.1 replace a Subcontractor (whether or not the Subcontractor was originally approved by CCQ); or
 - 7.4.2.2 require the relevant Subcontractor to arrange for the replacement of a Sub-subcontractor,
- in which case Provider must secure, at no additional cost to CCQ and at the earliest opportunity, a suitable replacement Subcontractor or require the Subcontractor to arrange for a suitable replacement Sub-subcontractor. The replacement Subcontractor or Sub-subcontractor must be a person acceptable to CCQ in its absolute discretion, except to the extent CCQ agrees otherwise in writing.
- 7.5 Unless CCQ agrees otherwise in writing, where a Subcontractor that is specified in Item 6 or is otherwise approved by CCQ under clause 7.1 is unable to perform the Subcontracted work, Provider must notify CCQ in writing of this inability no later than five business days after Provider becomes aware of it. Provider must also notify CCQ in writing of any inability of a Sub-subcontractor to perform the part of the Activity that has been Sub-subcontracted to it within five business days after Provider becomes aware of that inability.
- 7.6 Provider must:
- 7.6.1 have a Subcontract with each Subcontractor; and
 - 7.6.2 unless CCQ agrees otherwise in writing, ensure in respect of all of Provider's Subcontracts (including any that CCQ was not required to approve under clause 7.1) that:
 - 7.6.2.1 each Subcontract gives effect to, and is not inconsistent with, Provider's obligations and CCQ's rights under the Agreement;
 - 7.6.2.2 without limiting the operation of clause 7.6.2.1, each Subcontract contains a right of termination to take account of CCQ's rights of termination and reduction under the Agreement and Provider must, where CCQ considers appropriate, make use of that right in the event of a termination or reduction in scope of the Programme or the Agreement;
 - 7.6.2.3 each Subcontractor has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work it is engaged by Provider to perform;
 - 7.6.2.4 each Subcontractor is prohibited under its Subcontract with Provider from any further subcontracting in respect of the performance of the Activity or the relevant part of the Activity, whether by it or a Sub-subcontractor, without CCQ's prior written consent; and
 - 7.6.2.5 each Subcontract requires the Subcontractor to acknowledge that it may be considered a "Commonwealth service provider" for the purposes of the *Ombudsman Act 1976* (Cth) and may be subject to investigation by the Ombudsman under that Act, and in that event must bear its own costs in relation to any such investigation.
- 7.7 If CCQ requests a copy of a Subcontract or a Sub-subcontract, Provider must provide a copy of the Subcontract or Sub-subcontract to CCQ within five business days after CCQ's request and at no additional expense to CCQ.
- 7.8 If CCQ consents to the engagement of a Sub-subcontractor under clause 7.6.2.4, unless CCQ agrees

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otherwise in writing Provider must ensure that the Sub-subcontract with that Sub-subcontractor imposes requirements on that Sub-subcontractor that are substantially the same as those imposed on a Subcontractor under clause 7.6.2. For this purpose, references in clause 7.6.2 to:

7.8.1 "Provider" are to be read as references to the entity engaging the Sub-subcontractor;

7.8.2 "Subcontractor" are to be read as references to the Sub-subcontractor being engaged; and

7.8.3 "Subcontract" are to be read as references to the Sub-subcontract under which the Sub-subcontractor is being engaged.

7.9 Provider must not enter into a Subcontract under the Agreement with a Subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

8 WORKPLACE HEALTH AND SAFETY

8.1 Without limiting clause 4.2, Provider must:

8.1.1 ensure that the work conducted by Provider and any of Provider's Representatives in respect of the Agreement complies with all applicable legislative requirements, standards and policies and requirements of the Agreement that relate to the health and safety of any person;

8.1.2 comply with obligations under applicable WHS Law and must ensure, so far as is reasonably practicable, that officers (as defined under applicable WHS Law) and workers also comply with their obligations under WHS Law. This clause 8.1.2 is not limited by clause 8.1.1;

8.1.3 at all times ensure that workers engaged or caused to be engaged by Provider exercise reasonable and necessary precautions which are appropriate to the nature of the work and the conditions under which the work is carried out; and

8.1.4 ensure that workers engaged or caused to be engaged by Provider receive adequate induction and training to ensure that work performed in relation to the Activity is undertaken in a manner that minimises the risk to their own health and safety and the health and safety of others, and that such workers will not undertake any work for which they have not received adequate training.

8.2 Provider must ensure, so far as is reasonably practicable, the health and safety of the following workers while they are engaged in performing work in any way relating to the Activity:

8.2.1 workers engaged or caused to be engaged by Provider; and

8.2.2 workers whose activities in carrying out work are influenced or directed by Provider.

8.3 Provider also must ensure, so far as is reasonably practicable, that the health and safety of other persons (including CCQ's Representatives and, as applicable, the Commonwealth's Representatives) is not put at risk as a result of work performed in relation to the Activity.

9 VULNERABLE PERSONS

9.1 Provider must comply, and must ensure that each of Provider's Representatives comply, with:

9.1.1 any obligations under any Laws relating to working or contact with Vulnerable Persons or Police Checks; and

9.1.2 all other obligations that may be specified by CCQ from time to time regarding the performing work in any way relating to the Activity that involves working, or contact, with Vulnerable Persons.

9.2 As and when required by CCQ, Provider must promptly provide evidence, in a form CCQ requires, that

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Provider has complied with the requirements of this clause 9.

10 PERSONNEL

- 10.1 Provider must engage sufficient employees with the necessary skills, expertise, qualifications, training, authorisations, permits, registrations, certifications and licences to perform the Activity. If requested by CCQ, Provider must submit a list of the names of all employees engaged by Provider in the performance of the Activity.
- 10.2 CCQ may at any time request Provider to withdraw (or cause to be withdrawn, if not under the direct supervision or control of Provider) any person from being involved in any way in the performance of the Activity if CCQ has reasonable grounds for making the request. On request, Provider must promptly (and in any event within five business days' of CCQ's request):
- 10.2.1 arrange for the relevant person to cease being involved in any way in the performance of the Activity; and
 - 10.2.2 replace the person (or cause the person to be replaced) with a person of suitable ability, experience and qualifications within a reasonable time period specified by CCQ and at no additional cost to CCQ.
- 10.3 Provider must ensure that its Representatives do not do, or omit to do, anything which if done or omitted to be done by Provider, would breach the Agreement.

11 FUNDING, INVOICES AND PAYMENT

Payment of Funding

- 11.1 Subject to CCQ receiving and retaining sufficient funding from the Department and Provider's continual compliance with the Agreement, CCQ will pay the Funding to Provider for the Activity at the times and in the manner specified in Item 9.
- 11.2 Subject to the other terms of the Agreement, CCQ will make a payment of Funding for the Activity within 10 business days after the later of the following to occur:
- 11.2.1 CCQ receives the necessary funds from the Department; and
 - 11.2.2 Provider satisfies the preconditions (if any) specified in Item 9 for that payment.
- 11.3 Provider acknowledges and agrees that:
- 11.3.1 CCQ is not responsible for providing, and will not provide, any money for the Activity in excess of the Funding specified for the Activity in Item 9; and
 - 11.3.2 any payment of Funding to Provider is merely payment on account and is not taken to be:
 - 11.3.2.1 evidence of the value of the Activity (or relevant component of the Activity) or any deliverables performed or delivered by Provider;
 - 11.3.2.2 an admission of liability on the part of CCQ; or
 - 11.3.2.3 approval by CCQ of Provider's performance of its obligations under the Agreement.

Invoices and payment

- 11.4 If Item 9 specifies that CCQ will not issue Provider with Recipient Created Tax Invoices:
- 11.4.1 Provider must submit valid Tax Invoices to CCQ in accordance with the requirements set out in Item 9. CCQ will pay all correctly rendered invoices in accordance with the Agreement. CCQ may withhold payment of any amount that it disputes, acting honestly and reasonably, until the dispute has been resolved to CCQ's satisfaction.

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- 11.4.2 Unless otherwise stated in Item 9, the amount payable is exclusive of GST but inclusive of all costs and expenses incurred by Provider.
- 11.5 Otherwise, CCQ will issue Provider with "Recipient Created Tax Invoices" as follows:
- 11.5.1 When any consideration becomes due to Provider in respect of a Taxable Supply, subject to clause 11.5.2 CCQ will issue a RCTI to Provider in a form required by Law for the Supply to which the payment relates, in accordance with GSTR 2000/10, this clause 11 and the requirements set out in Item 9 detailing the payments to be made by CCQ in relation to Provider's performance of the Activity. CCQ may withhold payment of any amount that it disputes, acting honestly and reasonably, until the dispute has been resolved to CCQ's satisfaction.
- 11.5.2 CCQ will not issue a RCTI if either party has failed to comply with any of the requirements of GSTR 2000/10, in which case clauses 11.4.1 and 11.4.2 will apply.
- 11.5.3 Subject to clause 11.5.2, Provider must not issue a Tax Invoice in respect of payments made by CCQ in accordance with the Agreement.
- 11.5.4 Provider must provide its Australian Business Number to CCQ and this must be disclosed on the RCTI.
- 11.5.5 CCQ will issue the original or a copy of a recipient created adjustment note to Provider within 28 days of the adjustment that occurs in respect of supplies for which a RCTI was issued and will retain the original or a copy.
- 11.5.6 For the purpose of the Agreement, CCQ and Provider agree that they are parties to a RCTI agreement as set out in clause 13(e) of GSTR 2000/10. Each party warrants that it is registered for GST and that it will notify the other party if it ceases to be registered.
- 11.5.7 Unless otherwise stated in Item 9, the amount payable is exclusive of GST but inclusive of all costs and expenses incurred by Provider. The performance of the Activity constitutes a Taxable Supply and attracts GST.

12 GRANT FUNDING AND ASSETS

Application

- 12.1 This clause 12 applies if any Grant Funding is paid or payable under the Agreement.

CCQ's rights to withhold or reduce the Funding

- 12.2 Without limiting clause 12.3, where Provider has not met a Milestone for the Activity by the date specified for that Milestone in Item 8 and/or Item 9, CCQ may withhold, in whole or part, the Funds remaining payable under the Agreement for the Activity until such time (if any) that the Milestone is completed to CCQ's satisfaction.
- 12.3 CCQ may, in its absolute discretion and in addition to any other rights it has under the Agreement or at Law:
- 12.3.1 withhold (either permanently or temporarily) or reduce one or more Funding payments under the Agreement where Provider has breached a provision of the Agreement, including to avoid doubt where Provider has failed to meet a Milestone or Key Performance Indicator as required under the Agreement; and
- 12.3.2 reduce the amount of the Funding payable for the Activity under the Agreement:
- 12.3.2.1 by the amount of any monetary or in-kind contributions other than the Funding and the Other Contributions (if any) identified in Item 8 that Provider receives, or is entitled to receive, for the Activity, including any contributions to which clause 12.21 applies; and

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- 12.3.2.2 by the amount of any money that Provider owes to CCQ, or money in respect of which Provider is required to provide, but has not provided, a declaration or other financial acquittal report, under the Agreement.

- 12.4 Provider must continue to perform Provider's obligations under the Agreement despite any withholding or reduction of some or all of the Funding.

Provider's use of the Grant Funding

- 12.5 Provider must use the Grant Funding provided for the Activity:
 - 12.5.1 subject to clause 12.13.5, solely for the Activity; and
 - 12.5.2 in accordance with the Agreement.
- 12.6 Provider must not Commit or spend any part of the Grant Funding for the Activity beyond the End Date, except as otherwise agreed in writing by CCQ and subject to the following:
 - 12.6.1 Provider may pay an amount of Grant Funding to a third party after the End Date for the Activity provided that the amount was Committed for the Activity before the End Date in accordance with the Budget (if any) and the Agreement;
 - 12.6.2 if there is a Budget, Provider may only spend the Grant Funding for the Activity on the preparation of the Reports to the extent that the Budget for that Activity provides for the Grant Funding to be used for that purpose; and
 - 12.6.3 if there is no Budget, Provider may use a reasonable amount of the Grant Funding for the preparation of the Reports that are due after the End Date.
- 12.7 Except to the extent that CCQ has otherwise agreed in writing, Provider must immediately deposit and hold the Grant Funding in an Australian bank account that is controlled solely by Provider and enables the tracking of Grant Funds to demonstrate how Provider spent the Grant Funds in undertaking the Activity. Provider must notify CCQ in writing as soon as practicable if the details of this bank account change.
- 12.8 Provider must keep separate financial accounts and records for the Activity that:
 - 12.8.1 identify all receipts and payments for the Activity; and
 - 12.8.2 enable the preparation of any declaration required under clause 5.1 and any other financial Report required for the Activity under clause 5.1 and Item 8 and/or Item 9 except to the extent otherwise notified by CCQ in writing.
- 12.9 If CCQ considers that Provider is in breach of the Agreement, or CCQ is considering reducing the scope of the Agreement or terminating the Agreement under clause 20, CCQ may direct Provider by written notice to suspend Provider's Commitment and expenditure of some or all of the Grant Funding as specified in the notice, and Provider must fully comply with that notice immediately.

Prohibited use of the Grant Funding

- 12.10 Except to the extent that CCQ has otherwise agreed in writing, Provider must not use any of the Grant Funding provided for the Activity:
 - 12.10.1 for any travel or expenses related to travel other than as permitted under the Budget (if any) or Guidelines;
 - 12.10.2 to pay fines or penalties;
 - 12.10.3 to cover the costs of any legal action or proceedings or to settle or agree to consent orders in relation to, or otherwise resolve, any proceeding or application for reinstatement and/or wrongful dismissal by a current or former employee;

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- 12.10.4 to lend or gift money or Assets to any person;
 - 12.10.5 to provide redundancy payments, advances, commissions, bonuses, performance based benefits or similar benefits to any person;
 - 12.10.6 for a sale and lease back arrangement;
 - 12.10.7 to lease an item of property that Provider owns;
 - 12.10.8 for the purpose of establishing a subsidiary or other commercial entity or activity;
 - 12.10.9 to pay Provider any fee or charge that is calculated on a basis other than the costs Provider actually incurs in the performance of the Activity (including the proportion of any general operational overhead or expense of Provider that is reasonably required for Provider's performance of the Activity);
 - 12.10.10 to purchase a car or other vehicle; or
 - 12.10.11 to provide for the future replacement of any asset or to Dispose of, acquire or provide for the future replacement of any land, building or other real property.
- 12.11 Except to the extent that CCQ has otherwise agreed in writing, Provider must not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:
- 12.11.1 the Grant Funding for the Activity;
 - 12.11.2 the Agreement or any of CCQ's obligations under the Agreement; or
 - 12.11.3 any Assets, land, building or other real property or rights in Developed Intellectual Property.

Budget

- 12.12 Where there is a Budget for the Activity:
- 12.12.1 Provider must only spend the Grant Funding specified in that Budget on the Activity and in accordance with that Budget, save that money may be moved between line items in the Budget if and to the extent permitted under Item 1 of Item 9; and
 - 12.12.2 Provider must seek CCQ's prior written approval for any Grant Funding reallocation within, or outside of, that Budget.

Unspent or misspent Grant Funding

- 12.13 If at any time CCQ determines or reasonably suspects that:
- 12.13.1 Provider has received Grant Funding for the Activity that has not been spent or Committed for the Activity in accordance with the Agreement, including as a result of Provider having a surplus and/or underspend for the Activity;
 - 12.13.2 CCQ has made an overpayment of Grant Funds to Provider; or
 - 12.13.3 Provider has spent or Committed an amount of Grant Funding other than for the Activity and in accordance with the Agreement, then at CCQ's discretion:
 - 12.13.4 Provider must repay those Grant Funds to CCQ within 20 business days of receiving written notice from CCQ requiring Provider to do so;
 - 12.13.5 Provider must deal with those Grant Funds as directed by CCQ in writing; or
 - 12.13.6 CCQ may reduce one or more further Grant Funding payments for the Activity by up to the amount of those Grant Funds.

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- 12.14 If, after CCQ applies clause 12.13 to an amount of Grant Funding that was provided to Provider for the Activity and, subject to the other provisions of the Agreement, Provider demonstrates to CCQ's satisfaction that Provider requires some or all of that amount (in addition to the part of the Grant Funding that remains payable for the Activity) to complete the Activity, CCQ will repay the required amount to Provider within 10 business days after CCQ is satisfied that the amount is required.

Interest and debt

- 12.15 If Provider is required to pay an amount to CCQ under the Agreement and does not repay that amount in full by the applicable date, Provider must pay Interest on the outstanding amount until it is paid to CCQ in full, except to the extent that CCQ notifies Provider otherwise in writing.
- 12.16 Provider acknowledges and agrees that:
- 12.16.1 any Interest payable under the Agreement represents a reasonable and genuine pre-estimate of loss to CCQ; and
 - 12.16.2 Provider must, immediately upon CCQ's written request, pay an amount owed or payable to CCQ or which CCQ is entitled to recover from Provider under the Agreement, without prejudice to any other rights available to CCQ (whether under the Agreement or Law) as a debt due by Provider to CCQ without further proof of the debt by CCQ being necessary.

Other Contributions

- 12.17 Provider must ensure that any Other Contributions specified in Item 8 are obtained or provided for the Activity at the times and in the amounts specified. If no times are specified in Item 8 for the provision of an Activity's Other Contributions, Provider must ensure that those Other Contributions are obtained or provided in sufficient time to enable the Activity to be completed in accordance with the Agreement.
- 12.18 Provider must use the Other Contributions specified in Item 8 for an Activity for that Activity and in accordance with any Budget.
- 12.19 If Provider does not obtain or provide an amount of Other Contributions for an Activity by the date (if any) specified in Item 8 for that amount, or Provider is otherwise unable to obtain or provide that amount of Other Contributions in time to enable completion of the Activity, then CCQ may:
- 12.19.1 withhold payment of some or all of the Grant Funding for that Activity until Provider has obtained or provided that amount of Other Contributions;
 - 12.19.2 reduce the amount of the Grant Funding payable under the Agreement; or
 - 12.19.3 terminate the Agreement in accordance with clause 21.2.
- 12.20 Subject to CCQ notifying Provider otherwise in writing, Provider must notify CCQ in writing within 10 business days after entering into any arrangement or agreement under which Provider receives, or is entitled to receive, any additional monetary or in-kind contributions for the Activity that are not specified as Other Contributions for the Activity in Item 8. The notice must include the amount of any such additional contributions and the purpose for which they will be used.
- 12.21 Any additional contributions referred to in clause 12.20 that Provider becomes entitled to receive for the Activity constitute Other Contributions for the Activity for the purposes of the Agreement, and Item 8 will be deemed to be varied accordingly on the earlier of the date that Provider receives the additional contributions or the date that Provider notifies CCQ of those contributions under clause 12.20.

Assets

- 12.22 Provider may only use an amount of the Grant Funding provided for the Activity to Acquire an Asset for that Activity if CCQ has given its prior written consent to Provider using that amount of the Grant Funding for the Acquisition of that specific Asset.

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12.23 If clause 12.22 applies, Provider must comply with all other terms and conditions relating to the Acquisition, use and Disposal of Assets that CCQ may specify in writing from time to time. To avoid doubt, this may include terms and conditions relating to:

12.23.1 how Provider must deal with Assets; and

12.23.2 payments that Provider must make to CCQ with respect to Assets, and all such amounts payable to CCQ will be deemed to be money that forms part of the Funding (and all of CCQ's rights under the Agreement and at Law regarding the Funding will apply to those amounts).

13. INTELLECTUAL PROPERTY

Existing Intellectual Property

13.1 Provider acknowledges and agrees that all Intellectual Property and other information that CCQ provides or makes available to Provider remains the property of CCQ or the Department (as the case may be).

13.1.1 Provider must not use or disclose such Intellectual Property or information for any purpose other than for the purpose of performing its obligations under the Agreement.

13.1.2 Without limiting clause 13.1.1, to the extent that CCQ sub-licences to Provider any Intellectual Property made available to CCQ under or in respect of the Funding Agreement or a Programme, Provider must ensure that it uses such Intellectual Property strictly in accordance with any terms or conditions specified by CCQ or its nominee from time to time.

Developed Intellectual Property

13.2 Provider acknowledges and agrees that all Developed Intellectual Property will vest in, and is assigned to, CCQ on creation. Provider must, at its own expense, execute all documents and do all things required to give effect to this clause 13.2, including obtaining as soon as possible and providing to CCQ legally effective releases or assignments to CCQ from any of Provider's Representatives in respect of any Developed Intellectual Property. If CCQ is prohibited from using anything that Provider provides under the Agreement because of a third party's Intellectual Property rights, Provider must promptly and at its own expense:

13.2.1 obtain for CCQ the right to continue using such material;

13.2.2 replace it with a non-infringing substitute that functions the same in CCQ's reasonable opinion; or

13.2.3 modify it to make it non-infringing without loss of functionality.

Licence to use Developed Intellectual Property

13.3 CCQ grants Provider a personal, non-exclusive, non-transferable and non-assignable licence to use the Developed Intellectual Property in connection with the performance of its obligations under the Agreement. No other right is given to Provider or its Representatives to use any Developed Intellectual Property except in connection with the performance of Provider's obligations under the Agreement. Provider further must ensure that the Developed Intellectual Property is used strictly in accordance with any conditions or restrictions that CCQ may specify from time to time.

Provider's existing Intellectual Property

13.4 CCQ acknowledges and agrees that Provider continues to own all of its Intellectual Property existing at the date of the Agreement, or coming into existence during the term of the Agreement other than Developed Intellectual Property.

Licence to use Provider's existing Intellectual Property

13.5 If any material, matter or thing forming part of Provider's Intellectual Property is incorporated in or

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attached to any Developed Intellectual Property, Provider grants CCQ a perpetual, irrevocable, transferable, royalty free and licence fee free, worldwide licence (including the right to sub-licence to the Department or any other person) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Developed Intellectual Property (including using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising and exploiting such intellectual property rights).

Moral rights

- 13.6 Provider must procure the irrevocable consent of its Representatives who are individuals not to enforce any and all moral rights that those individuals may have, presently or in the future, arising from the performance of work directly or indirectly relating to the Activity and/or the Developed Intellectual Property including by executing any moral rights consent required by CCQ (in which case Provider must provide CCQ with an executed copy of each such consent within five business days of CCQ's request).
- 13.7 Without limitation, Provider warrants that CCQ may:
- 13.7.1 exercise any and all rights without identifying any person as the individual responsible for creating any particular material; and
 - 13.7.2 modify, alter, adapt, distort or otherwise change any Developed Intellectual Property or material as permitted under the Agreement.

No infringement

- 13.8 Provider represents and warrants to CCQ on a continuing basis that CCQ will not infringe any Intellectual Property rights of a third party by performing its obligations or exercising its rights under the Funding Agreement or the Agreement on the basis of or using any material or thing provided by or on behalf of, Provider including:
- 13.8.1 any existing Intellectual Property of Provider;
 - 13.8.2 any Developed Intellectual Property; and
 - 13.8.3 any report, document or information.
- 13.9 Provider must not infringe the intellectual property rights of CCQ or a third party in connection with performing the Activity. Provider continually indemnifies CCQ against any Loss that CCQ incurs or suffers, as a direct or indirect result of a breach of the intellectual property rights of CCQ or a third party in connection with the performance of the Activity.

14. CONFIDENTIALITY

Obligations of confidence

- 14.1 Where Provider receives Confidential Information under the Agreement, in addition to its obligations at Law, Provider must, and must ensure that its Representatives:
- 14.1.1 keep the Confidential Information confidential;
 - 14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of the Agreement (including, as applicable, for the benefit and care of Clients);
 - 14.1.3 not, without CCQ's written consent, disclose Confidential Information to any person other than its Representatives who need the information for the purposes of the Agreement; and
 - 14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure, including but not limited to any security measures specified by CCQ from time to time.

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Further permitted use and disclosure

- 14.2 Despite clause 14.1, Provider may use or disclose Confidential Information to the minimum extent necessary to:
- 14.2.1 comply with any Law or binding directive of a regulator or a court order; or
 - 14.2.2 obtain professional advice in relation to matters arising under or in connection with the Agreement.

Return of Confidential Information

- 14.3 Provider must immediately on demand, or on completion or termination of the Agreement, return to CCQ, or destroy if requested by CCQ, any documents in its possession, power or control containing Confidential Information. Provider must not retain copies of any Confidential Information in any form, except to the extent required by Law or to comply with clause 5.6 (including any requirement to retain Client records). If requested by CCQ, Provider must give evidence to CCQ of the destruction of such documents.

Equitable remedies

- 14.4 Provider acknowledges that a breach of the confidentiality obligations set out in the Agreement by Provider may cause CCQ irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at Law (including in equity), CCQ may seek specific performance or injunctive relief (as appropriate) against any breach or threatened breach by Provider and Provider irrevocably consents to an application for such relief.

15. PRIVACY, DATA BREACHES AND CYBER INCIDENTS

- 15.1 Provider must:
- 15.1.1 comply with Privacy Law in respect of any Personal Information it collects in connection with the Agreement or the performance of the Activity;
 - 15.1.2 in performing, or (where authorised by CCQ) procuring the performance of, the Activity, including, as applicable, Client Services:
 - 15.1.2.1 not do any act or engage in any practice which, if done or engaged in by an agency (including the Department), would be a breach of an Australian Privacy Principle;
 - 15.1.2.2 comply with the obligations contained in the Australian Privacy Principles that apply to Provider, and with Privacy Law generally; and
 - 15.1.2.3 take all necessary and reasonable data governance and cybersecurity measures which a prudent provider of goods or services similar to the Activity would take in accordance with good industry practice to protect the confidentiality, integrity, and availability of any Data, including implementing appropriate technical and organisational measures to prevent unauthorised access, use, or disclosure of such Data, and provide within five business days any information requested by CCQ about the measures which Provider is using under this clause 15.1.2.3;
 - 15.1.3 use or disclose Personal Information obtained during the course of or in connection with performing the Activity under the Agreement only for the purposes of the Agreement;
 - 15.1.4 facilitate, where reasonable, compliance with Privacy Law by CCQ in respect of all Personal Information Provider discloses to CCQ under the Agreement;
 - 15.1.5 without limiting Provider's obligations under clauses 15.2 and 15.3, immediately notify CCQ

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and (if required by CCQ in its absolute discretion) the Department in writing if Provider becomes aware of a breach or possible breach of any of Provider's obligations under this clause 15;

- 15.1.6 immediately inform CCQ in writing of any complaint that Provider receives concerning the use, disclosure, storage, transfer or handling of Personal Information and comply with any reasonable direction of CCQ in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Personal Information; and
 - 15.1.7 ensure that each Subcontract and Sub-subcontract contains equivalent provisions to this clause 15.
- 15.2 If Provider is aware of any actual or suspected unauthorised access to, or disclosure or loss of, any Personal Information obtained by Provider in connection with the Agreement, Provider must:
- 15.2.1 notify CCQ as soon as possible about that event, but in any case within one business day;
 - 15.2.2 comply with its obligations under Privacy Law in relation to that event;
 - 15.2.3 provide CCQ with all information requested by CCQ about the event as soon as possible, but in any case within one business day of request;
 - 15.2.4 if requested by CCQ, allow CCQ to participate in Provider's assessment of the event; and
 - 15.2.5 not issue any notifications relating to such event without CCQ's prior written consent.
- 15.3 Provider must:
- 15.3.1 without limiting Provider's obligations under this clause 15, carry out regular vulnerability scans and attack/penetration testing and promptly carry out any required remediation at Provider's own expense;
 - 15.3.2 if a Cyber Incident arises:
 - 15.3.2.1 notify CCQ in writing promptly (and in any event, no longer than 12 hours after becoming aware of the Cyber Incident) and by telephone as soon as possible after it becomes aware of any Cyber Incident, and as soon as practicable (and at least within five business days) confirm the details in writing. A notice under this clause 15.3.2.1 must provide CCQ with as much time as possible to mitigate any risks arising in connection with the Cyber Incident;
 - 15.3.2.2 promptly comply with any directions issued by CCQ in connection with the Cyber Incident (including to resolve the Cyber Incident), including in relation to preserving and protecting Data where Data is within Provider's possession or control; and
 - 15.3.2.3 ensure that each of Provider's Representatives who has access to Data or any access to any information system of Provider or CCQ used in connection with the Activity complies with this clause 15.3.
- 15.4 Provider warrants to CCQ on a continual basis that:
- 15.4.1 any Personal Information that Provider discloses to CCQ under the Agreement has been collected and disclosed in accordance with Privacy Law; and
 - 15.4.2 CCQ is authorised to use any such Personal Information for the purposes of the Funding Agreement, the Programme and the Agreement, including that Provider has duly notified and obtained any necessary consents from the individuals whose personal information is being disclosed to provide that Personal Information to CCQ and for CCQ to use that Personal Information for the purposes of the Funding Agreement, the Programme and the

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Agreement.

15.5 Provider's obligations under this clause 15 are in addition to, and do not restrict, any obligations Provider may have under Privacy Law and that would apply to Provider but for the application of this clause 15.

15.6 Provider expressly consents to CCQ publishing (including in media releases, annual reports, social media and on its website), information about Provider, including its identity and the existence and nature of the Agreement.

16. WARRANTY AND ACKNOWLEDGEMENTS

16.1 Provider represents and warrants to CCQ continually throughout the term of the Agreement that:

16.1.1 the Activity will be provided with due care and skill and in accordance with the requirements of the Agreement;

16.1.2 Provider, and (if applicable) each of its Representatives, holds all licences, permits, consents and authorisations required under any Law in relation to the performance of the Activity and will continue to do so at all times during the term of the Agreement; and

16.1.3 Provider and each of its Representatives (as applicable) have the experience, expertise, skill, competence, qualifications, training, authorisations, permits, registrations, certifications and licences to perform the Activity and will have at all times the capacity and other resources necessary, to perform the Activity and properly discharge Provider's obligations under the Agreement.

16.2 CCQ If a Provider enters into the Agreement in its capacity as Trustee, the Provider also represents and warrants to CCQ continually throughout the term of the Agreement that:

16.2.1 it is a validly appointed trustee of the Trust;

16.2.2 it has the right to be indemnified out of, and a lien over, the assets of the Trust except where the Trustee is fraudulent, negligent or in breach of trust;

16.2.3 the Agreement does not conflict with the operation or terms of the Trust or the Trust Deed;

16.2.4 the Agreement constitutes valid and enforceable obligations of the Trust;

16.2.5 it has full and valid power and authority under the Trust to enter into the Agreement and to carry out the transactions contemplated by the Agreement (including all proper authorisations and consents);

16.2.6 it enters into the Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and

16.2.7 unless it has advised CCQ otherwise in writing, it is the sole trustee of the Trust.

16.3 Provider represents and warrants to CCQ on a continuing basis that all information, representations, warranties and undertakings made or given by it to CCQ before or after the date of the Agreement, whether in any quotation, tender, correspondence, negotiations, report or otherwise, are true, complete and accurate in all respects. Provider must promptly notify CCQ in writing if Provider learns of any errors or omissions in the information provided to CCQ.

16.4 Provider acknowledges and agrees on a continuing basis that CCQ in entering into the Agreement is relying on the warranties, representations, undertakings and acknowledgements contained in the Agreement.

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17. LIABILITY AND INDEMNITY

- 17.1 Provider will be liable for, and must continually indemnify CCQ and each of CCQ's Representatives ("those indemnified") against, all Loss suffered or incurred by CCQ or any of those indemnified (including, to avoid doubt, Loss suffered or incurred by CCQ in respect of any claim made or action taken by the Commonwealth under or in relation to the Funding Agreement) as a result of a breach or threatened breach of the Agreement by Provider, or anything that Provider or Provider's Representatives do or fail to do under or in connection with the Agreement where there was fault (including any negligent or other tortious or unlawful act or omission) on the part of the person whose conduct gave rise to that Loss, except to the extent that the Loss was caused by or contributed to by the conduct of CCQ. To the maximum extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against Provider under or in connection with the Agreement. CCQ holds the benefit of this clause 17.2 on trust for all those indemnified and Provider acknowledges and agrees that CCQ may enforce this clause on all or any of their behalf. It is not necessary for CCQ (or any of those indemnified) to incur expense or make payment before CCQ enforces a right of indemnity conferred by the Agreement.
- 17.2 Except as required by Law, CCQ's liability shall be limited to the amounts paid to Provider under the Agreement. This clause 17.2 applies regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract, statute, tort (including negligence) or otherwise.

18. INSURANCE

- 18.1 Provider must maintain the insurances specified in Item 7 during the term of the Agreement. The insurances must be with a reputable and solvent authorised Australian insurer, be on terms reasonably acceptable to CCQ and cover Provider and CCQ against any liability arising out of or in connection with the performance of Provider's obligations under the Agreement. Provider must comply with and observe the terms of all insurance policies and must not do anything which could result in any policy being rendered void or voidable.
- 18.2 Provider must deliver to CCQ evidence satisfactory to CCQ that Provider has a particular insurance policy and that the policy is current within 24 hours of a written request by CCQ to do so.
- 18.3 Provider must provide CCQ with full details of any material claim under any of the insurances specified in Item 7 as soon as Provider becomes aware of the claim.

19. DISPUTE RESOLUTION

- 19.1 If a Dispute arises, either party may at any time give written notice to the other party requesting that a meeting take place to seek to resolve the Dispute.
- 19.2 If notice is given under clause 19.1:
- 19.2.1 nominated senior representatives of both parties must meet within two business days of the notice and endeavour to resolve the Dispute;
 - 19.2.2 if such meeting does not take place or if after two business days of the meeting the Dispute remains unresolved, either party may refer the Dispute to the CEO of CCQ and CEO of Provider;
 - 19.2.3 if a Dispute is referred to the CEO of CCQ and CEO of Provider, such persons must meet within three business days of the Dispute being referred to them and endeavour to resolve the Dispute; and
 - 19.2.4 if such meeting does not take place or if after five business days of the meeting the Dispute remains unresolved, the parties must refer the Dispute to mediation, to be conducted on the following terms:
 - 19.2.4.1 the parties must ask the Chair of the Resolution Institute ACN 008 651 232 or

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- his or her nominee to appoint a mediator, unless the parties agree upon the identity of the mediator;
- 19.2.4.2 the parties must mediate the Dispute in accordance with principles agreed between them or, if no agreement can be reached, the principles determined by the mediator in the mediator's absolute discretion; and
- 19.2.4.3 unless the parties agree otherwise, the mediator's fee and any other costs of the mediation will be met by the parties equally, and each party must pay its own costs of preparing for and participating in the mediation.
- 19.3 The parties must promptly do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution of the Dispute.
- 19.4 Subject to clause 19.6, no party may commence legal proceedings in respect of a Dispute unless it has complied with clause 19.2 (including to avoid doubt while any negotiation occurring under clause 19.2 or mediation held under clause 19.2 is in process).
- 19.5 Each party must continue to perform its obligations under the Agreement during a Dispute.
- 19.6 Nothing in this clause 19 restricts or limits the right of either party to obtain interlocutory relief, or to immediately terminate the Agreement where the Agreement provides such a right.

20. SUSPENSION OF PAYMENTS AND REDUCTION IN SCOPE

Default by Provider

- 20.1 If Provider defaults in the performance of its obligations under the Agreement, CCQ may give notice to it to remedy the default specifying details of the default.

Failure to remedy default

- 20.2 If Provider fails to remedy the default specified in a notice under clause 20.1 within two business days after receipt of the notice, CCQ may suspend payment under the Agreement until the default has been remedied. If CCQ suspends payment under this clause 20.2 and any part of the Activity involves the provision of Client Services, CCQ may immediately suspend or terminate any access granted to Provider and its Representatives to relevant electronic platforms (including Fixus).

Suspension by Department

- 20.3 CCQ may immediately suspend all payments under the Agreement by written notice to Provider if the Department requires CCQ to suspend dealings with Commonwealth Funding under the Funding Agreement or if the Department fails to provide CCQ with the necessary Commonwealth Funding to allow CCQ to provide one or more Funding payments to Provider at the time or times contemplated under the Agreement.

Reduction in scope

- 20.4 CCQ may immediately reduce the scope of the Agreement by written notice to Provider, including if the Department requires CCQ to do so.

Obligations of Provider

- 20.5 Suspension of payment or reduction in scope under this clause 20 will not in any way affect the continuing obligations of Provider under the Agreement and will be without prejudice to any other rights that CCQ may have against Provider as a result of any default of Provider's part.

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21. TERMINATION

Termination during holding over period

- 21.1 Either party may terminate the Agreement at any time by 20 business days' written notice to the other party if the Agreement continues on a day to day basis after the term of the Agreement ends as referred to in clause 3.3.

Termination by CCQ

- 21.2 CCQ may, in its absolute discretion and at any time, terminate the Agreement at any time by 20 business days' written notice to Provider. If CCQ exercises its right of termination under this clause 21.2 it does not have to provide Provider with reasons for doing so.
- 21.3 CCQ may immediately terminate the Agreement by written notice if any of the following occurs:
- 21.3.1 The Funding Agreement or the Programme is terminated or the Department requires CCQ to immediately suspend dealings with any Commonwealth Funding provided under the Funding Agreement.
 - 21.3.2 The Department varies the amount of Commonwealth Funding provided to CCQ, or the timetable for payment under the Funding Agreement, and such variation means that, in CCQ's opinion, it is not reasonably practicable for CCQ to continue to engage Provider to perform the Activity.
 - 21.3.3 Provider is in breach of its obligations under the Agreement (including any warranty under clause 13, clause 16 or clause 26) and does not remedy the breach, to the extent that it can be remedied, for five business days after receiving a written notice from CCQ specifying the breach and requiring it to be remedied.
 - 21.3.4 Provider is in breach of an essential term of the Agreement or Provider commits a breach of the Agreement which cannot be remedied. The essential terms of the Agreement include clauses 4.1, 4.2, 4.5, 4.6, 4.12, 4.13, 4.15, 4.16, 4.17, 5.1, 5.5, 5.6, 5.7, 6, 7, 8, 9, 10, 12.5 to 12.12, 12.15, 12.16.2, 12.17, 12.18, 12.20, 12.22, 12.23, 13, 14, 15, 18, 22.1, 26 and 27.14.
 - 21.3.5 Provider commits multiple or recurring breaches of the Agreement, whether or not remedied.
 - 21.3.6 Provider fails to maintain any insurance policy that Provider is required to maintain under clause 18.1 on the terms specified in clause 18.
 - 21.3.7 Provider is the subject of an Insolvency Event, unless such termination would be contrary to Law.
 - 21.3.8 There is a change in the person or persons in effective control of Provider, including any change in the underlying beneficial ownership of Provider.

Termination by Provider

- 21.4 Provider may immediately terminate the Agreement by written notice to CCQ if either of the following occurs:
- 21.4.1 CCQ is in breach of its obligations under the Agreement and does not remedy the breach (to the extent that it can be remedied) for 20 business days after receiving a written notice from Provider specifying the breach and requiring it to be remedied.
 - 21.4.2 CCQ is the subject of an Insolvency Event, unless such termination would be contrary to Law.
- 21.5 Provider may terminate the Agreement by written notice to CCQ in accordance with clause 26.3.

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22. OBLIGATIONS ON REDUCTION IN SCOPE OR TERMINATION

Obligations of Provider

- 22.1 Provider must, promptly upon receipt of a notice of reduction in scope issued under clause 20.4 or notice of termination issued under clause 21:
- 22.1.1 stop or reduce the performance of Provider's obligations, as specified in the notice;
 - 22.1.2 take all available steps to minimise the losses, costs and expenses resulting from the reduction or termination;
 - 22.1.3 continue performing the Activity (or the relevant part of the Activity) not affected by the notice, except to the extent that CCQ notifies Provider otherwise in writing;
 - 22.1.4 where a notice of reduction in scope is issued under clause 20.4, immediately return to CCQ, or comply with CCQ's directions regarding, the part of the Funding specified in clause 22.2; and
 - 22.1.5 where a notice of termination is issued under clause 21, immediately return to CCQ, or comply with CCQ's directions regarding, the part of the Funding specified in clause 22.4.

Consequences of reduction in scope

- 22.2 If the scope of the Agreement is reduced under clause 20.4:
- 22.2.1 CCQ is entitled to recover from Provider (or direct the use of) any Funds that:
 - 22.2.1.1 have been provided to Provider for part of the Activity that has been removed by the reduction in scope; and
 - 22.2.1.2 have not been spent or Committed for the Activity in accordance with the Agreement as at the date that notice of reduction in scope is received; and
 - 22.2.2 CCQ's liability to pay any part of the Funding for the Activity will, except to the extent CCQ agrees otherwise in writing at the time, reduce in accordance with the reduction in scope of the Activity. Provider will not be entitled to any compensation in respect of the reduction in scope, including compensation for Provider's loss of prospective profits, loss of opportunity or loss of any benefits that would have been conferred on Provider if the reduction in scope had not occurred.

Consequences of termination or expiration

- 22.3 When the Agreement ends, whether by expiration of the term of the Agreement or on earlier termination, and without limiting clause 22.1, Provider must (as directed by CCQ in writing from time to time), return all of CCQ's equipment, information, documents, records and other property used by it to perform its obligations under the Agreement or otherwise in the possession, custody or control of Provider or any of its Representatives, except to the extent required by Law and to the extent required to comply with clause 5.6. Provider must do so immediately following the provision of all services and Reports that Provider is required to provide under the Agreement, and at Provider's sole cost.
- 22.4 If the Agreement is terminated under clause 21, CCQ is entitled to recover from Provider (or direct the use of) any part of the Funding provided for the Activity that:
- 22.4.1 has not been spent or Committed by Provider as at the date that the notice of termination is received; or
 - 22.4.2 has, in CCQ's opinion, been spent or Committed by Provider other than for the Activity and in accordance with the Agreement.
- 22.5 If the Agreement expires or is terminated under clause 21 for any reason:

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- 22.5.1 each party retains its rights under the Agreement and at Law in respect of any breach of the Agreement by the other party;
 - 22.5.2 without limiting clauses 22.5.3 or 27.11, CCQ is only liable to:
 - 22.5.2.1 make a payment of Funds that was due and payable to Provider under the Agreement prior to the date of the notice of termination; and
 - 22.5.2.2 if CCQ terminated the Agreement under clause 21.2 (but not otherwise), reimburse any reasonable expenses that Provider unavoidably incurs that relate directly and entirely to the termination of the Agreement and are not covered by clause 22.5.2.1;
 - 22.5.3 CCQ will not be liable to pay, in respect of the Activity, amounts under clause 22.5.2 which:
 - 22.5.3.1 cannot be sourced from immediately available funds in CCQ's possession that have been provided to CCQ by the Department with respect to the Activity;
 - 22.5.3.2 represent compensation for Provider's loss of prospective profits, loss of opportunity or loss of any benefits that would have been conferred on Provider if the termination had not occurred; or
 - 22.5.3.3 would, added to Funds already paid or payable to Provider under the Agreement for the Activity, together exceed the maximum total amount of the Funding set out in Item 9; and
 - 22.5.4 subject to the Law, Provider must promptly provide to CCQ such records or other information in the possession, custody or control of Provider (or any of its Representatives) relating to the Activity, as directed by CCQ in writing from time to time.
- 22.6 CCQ's liability to pay any compensation under clause 22.5.2 is subject to:
- 22.6.1 Provider's strict compliance with the Agreement; and
 - 22.6.2 Provider's substantiation of any amount claimed under clause 22.5.2.2 to CCQ's satisfaction.

Provider's transition out obligations

- 22.7 Clause 22.7 applies if Item 8 specifies that the Activity includes the provision of Client Services.
- 22.8 When the Agreement ends (whether by expiration of the term of the Agreement or on earlier termination) promptly upon written request by CCQ, Provider must provide all reasonable assistance to CCQ at Provider's sole cost in the orderly transfer of the Activity (or relevant part of the Activity) to CCQ or another service provider nominated by CCQ, and must ensure that Provider's Representatives do the same. Reasonable assistance will include:
- 22.8.1 preparing an appropriately detailed transition out plan in relation to the Activity (or relevant part of the Activity) promptly on request by CCQ;
 - 22.8.2 novating or assigning or securing the novation or assignment of such third party contracts (including any Subcontracts) relevant to the Activity as are specified by CCQ;
 - 22.8.3 subject to Law, promptly providing information and materials in Provider's possession or control that CCQ or its nominee may reasonably require to minimise disruption to the provision of the Activity (or relevant part of the Activity); and
 - 22.8.4 consulting, cooperating and coordinating with CCQ's transition manager (if any) for a reasonable period to ensure Client safety and care and otherwise minimise disruption to the provision of the Activity (or relevant part of the Activity), including:
 - 22.8.4.1 subject to reasonable notice and compliance with Provider's reasonable

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workplace and security policies, permitting the transition manager to access premises at which any work directly or indirectly related to the Activity is or was performed to conduct interviews, inspect equipment and (subject to Law) inspect and copy any documents, information and data at no charge; and

22.8.4.2 promptly providing all other assistance reasonably requested by the transition manager.

22.9 Nothing in clause 22.8 limits the Provider's other obligations under the Agreement.

Accrued rights and continuing obligations

22.10 The termination or ending of the Agreement does not affect any accrued rights.

22.11 This clause, and clauses 1 (Definitions and interpretation), 4.15 and 4.16 (Reviews), 5.1 and 5.2(Reports), 5.5(Information), 5.6 and 5.7 (Records), 6.8 and 6.9 (Records of Client Services), 11.3 (Payment of Funding), 12.3 (CCQ's rights to withhold or reduce the Funding), 12.13 (Unspent or misspent Funding), 12.15 and 12.16 (Interest and debt), 12.23 (Assets), 13 (Intellectual Property), 14 (Confidentiality), 15 (Privacy, data breaches and Cyber Incidents), 17 (Liability and indemnity), 18 (Insurance), 22 (Obligations at end of agreement), 24 (Goods and services tax), 26 (Commonwealth requirements), 27 (Miscellaneous) and any other clause that makes provision for the continued operation of the Agreement or goes to the interpretation of the Agreement, continues to apply despite the termination or expiration of the Agreement (for whatever reason).

23. PRIORITY

23.1 In the event of any inconsistency, the Agreement must be interpreted in accordance with the following order of priority:

23.1.1 the terms and conditions set out in these standard terms and conditions; then

23.1.2 the relevant Services Order; then

23.1.3 any schedules, annexures or attachments to the relevant Services Order; and then

23.1.4 any other documents or information incorporated by reference into the Agreement.

24. GOODS AND SERVICES TAX

24.1 Nothing in this clause 24 limits clause 11.5.

24.2 All consideration provided under the Agreement is exclusive of GST, unless it is expressed to be GST-inclusive. Where a party ("**GST Supplier**") makes a taxable supply to another party ("**GST Recipient**") under or in connection with the Agreement, the GST Recipient must pay to the GST Supplier an additional amount equal to the GST payable on the supply. The additional amount must be paid by the GST Recipient at the later of:

24.2.1 the date when any consideration for the taxable supply is first paid or provided; and

24.2.2 the date when a RCTI is issued by CCQ or, if no RCTI is issued by CCQ, subject to clause 11.5, the date when the GST Supplier issues a tax invoice to the GST Recipient.

24.3 If an adjustment event varies the amount of GST payable by the GST Supplier in respect of a supply under the Agreement, then if clause 11.5.5 applies, CCQ will adjust the amount payable by the GST Recipient to take account of the adjustment event. Otherwise, the GST Supplier will adjust the amount payable by the GST Recipient to take account of the adjustment event. Any payment will be made by the GST Recipient to the GST Supplier or by the GST Supplier to the GST Recipient within 10 business days of the GST Supplier (or CCQ, as applicable) becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease (as appropriate) of the additional amount payable under clause 24.1. If clause 11.5.5 applies, CCQ will issue Provider with the original or a copy of a recipient

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created adjustment note in accordance with that clause. Otherwise, the GST Supplier will issue an adjustment note to the GST Recipient within 10 business days of becoming aware of the adjustment event. Otherwise, the GST Supplier will issue an adjustment note to the GST Recipient within 10 days of becoming aware of the adjustment event.

- 24.4 Subject to an express provision in the Agreement to the contrary, any payment, amount, reimbursement or indemnity required to be made to a party (the "**Payee**") under the Agreement that is calculated by reference to a cost, expense, liability or other amount paid or payable by the Payee to a third party ("**Expense**") will be calculated by reference to that Expense inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Expense. The Payee is assumed to be entitled to a full input tax credit on an Expense unless it demonstrates otherwise before the date the payment, amount, reimbursement or indemnity is required to be made.

25. NOTICES

- 25.1 A notice, consent, information, application or request that must or may be given or made to a party under the Agreement is only given or made if it is in writing and delivered or posted to that party at its address set out in Item 5 or emailed to that party at its email address set out in Item 5. If a party gives the other party 3 business days' notice of a change of its address or email address, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

- 25.2 The following notices must not be sent by email:

25.2.1 any notice of termination; and

25.2.2 any other notice specifically excluded by CCQ in writing from time to time.

- 25.3 A notice, consent, information, application or request is to be treated as given or made at the following time:

25.3.1 if it is delivered, when it is left at the relevant address;

25.3.2 if it is sent by post, three business days after it is posted; or

25.3.3 if it is sent by email, on the earlier of:

25.3.3.1 the sender receiving an automated message confirming delivery; or

25.3.3.2 provided no automated message is received stating that the email has not been delivered, 3 hours (being between 8.30 am and 5.00 pm on a business day) after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent.

- 25.4 If a notice, consent, information, application or request is delivered, or an error free transmission report or acknowledgement in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

26. COMMONWEALTH REQUIREMENTS

Operation of this clause

- 26.1 The rights and obligations set out in this clause 26 are in addition to, and do not restrict Provider's obligations under, the other provisions of the Agreement.

General

- 26.2 Provider:

26.2.1 acknowledges that CCQ is bound by obligations to the Commonwealth under the Funding Agreement and that the acts or omissions of Provider and, if applicable, Provider's Representatives (including any breach of the Agreement by Provider) may:

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- 26.2.1.1 cause CCQ to suffer or incur Loss, including as a result of claims by third parties and/or suspension or termination of the Funding Agreement by the Commonwealth; and
 - 26.2.1.2 trigger a breach by CCQ of its own obligations under the Funding Agreement, which in turn may entitle the Department to suspend or terminate the Funding Agreement and accordingly entitle CCQ to terminate the Agreement in accordance with clause 20.
- 26.2.2 acknowledges that the Department's obligation to provide CCQ with Commonwealth Funding is conditional and the Department retains broad rights to defer, reduce, not pay or revoke Commonwealth Funding under the Funding Agreement;
- 26.2.3 acknowledges that CCQ's reporting and record-keeping obligations under the Funding Agreement may be varied from time to time, in which case Provider's reporting and record-keeping obligations under the Agreement may be similarly varied by written notice to Provider;
- 26.2.4 must promptly comply (and ensure that its Representatives promptly comply) with all lawful and reasonable directions of CCQ from time to time, and otherwise promptly do all things necessary to assist CCQ to comply with the Funding Agreement (at Provider's sole expense unless CCQ agrees otherwise in writing), including providing CCQ or its nominees with information, documents or data;
- 26.2.5 must not make any statement to or via the media in relation to the Agreement or the performance of the Activity which Provider believes (or an organisation in Provider's position should have realised) will, or may, negatively impact upon Provider meeting its obligations under the Agreement, and must notify CCQ in writing immediately upon it or any of its Representatives being contacted by a media representative in relation to any aspect of the Agreement or the Activity;
- 26.2.6 must allow CCQ and any Commonwealth Official to:
 - 26.2.6.1 access premises at which any documents, information or data in any way relating to the Agreement is stored or at which any work directly or indirectly related to the Activity are performed, and (subject to Law) inspect and copy any such documents, information and data at no charge; and
 - 26.2.6.2 interview its Representatives,
from time to time upon three business days' notice to Provider, or immediately if CCQ or the Commonwealth Official believes that any work in any way relating to the Activity (including any Client Services) poses a risk to the safety, health or well-being of any person or there is a suspected or actual breach of Law. These rights may be exercised from time to time, without limiting the Commonwealth Official's other functions, rights, powers or entitlements;
- 26.2.7 acknowledges that Provider and any of its Representatives may be considered a "Commonwealth service provider" for the purposes of the *Ombudsman Act 1976* (Cth) and may be subject to investigation by the Ombudsman under that Act, and in that event must bear their own costs in relation to any such investigation (as neither CCQ nor the Department will be liable for any such costs);
- 26.2.8 must promptly notify CCQ in writing (providing full information) if Provider:
 - 26.2.8.1 learns of any errors or omissions in any information, document or data provided by or on behalf of Provider to CCQ; or

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- 26.2.8.2 becomes aware of anything that may adversely impact upon the performance of the Activity or CCQ's enjoyment of rights and performance of obligations under the Agreement or the Funding Agreement; and
 - 26.2.9 remains fully responsible for the performance of the Agreement and the Activity and will not be relieved of that responsibility because of any involvement by CCQ in the performance of the Agreement or the Activity, any Subcontracting or Sub-subcontracting or acceptance by CCQ of any report, document or information provided by or on behalf of Provider.
- 26.3 Where CCQ honestly and reasonably determines that an amendment to the Agreement is necessary or desirable to ensure compliance with the Funding Agreement or to better achieve the aims of the Programme, CCQ may (in CCQ's absolute discretion):
 - 26.3.1 consult with Provider regarding the proposed amendment;
 - 26.3.2 if reasonably required, adjust the amounts payable by CCQ to Provider under the Agreement; and
 - 26.3.3 provide Provider with an amended version of the Agreement,in which event Provider is deemed to have irrevocably agreed to such amendment to the Agreement if Provider does not terminate the Agreement by written notice to CCQ within 10 business days after the date on which CCQ provided Provider with the amended version in accordance with clause 26.3.3. To avoid doubt, clause 22 will apply if Provider exercises its right of termination under this clause 26.3.

Conflicts

- 26.4 Provider acknowledges that the Funding Agreement strictly regulates CCQ's ability to pay grant funds or transfer assets to Related Parties and certain other persons without the Department's prior written consent, and that Provider's Representatives may from time to time constitute Related Parties in a way that is not transparent to CCQ. Within two business days of request by CCQ, Provider must provide CCQ with full details of each Related Party or suspected Related Party that is known to Provider at the time, at no charge. Provider represents and warrants that any information provided by or on behalf of Provider under this clause 26.4 will be provided to the best of Provider's knowledge after making diligent inquiry.

Workplace health and safety

- 26.5 In addition to its obligations under clause 8, Provider must consult, cooperate and coordinate with CCQ, the Department and other "duty holders" (as that term is used in the WHS Act) in relation to Provider's work health and safety duties.
- 26.6 If a "Health Management Adviser" is appointed to CCQ under the Funding Agreement and an event occurs in relation to Provider's work under the Agreement that leads, or could lead, to the death, injury or harm to, or illness of, any person or a dangerous incident as defined in the applicable WHS Law ("**Notifiable Incident**"), Provider must:
 - 26.6.1 immediately report the matter to CCQ, including all relevant details that are known to Provider;
 - 26.6.2 as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - 26.6.2.1 its cause; and
 - 26.6.2.2 what adverse effects (if any) it will have on Provider's performance, or (where authorised by CCQ) procuring of the performance, of the Activity, including adverse effects on health and safety;
 - 26.6.3 as soon as possible after the Notifiable Incident, take all reasonable steps to:

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- 26.6.3.1 remedy the effects of the Notifiable Incident on health and safety; and
 - 26.6.3.2 ensure (including by instituting procedures and systems) that the kinds of events or circumstances which led to the Notifiable Incident do not reoccur;
 - 26.6.4 within three business days after the Notifiable Incident, give CCQ a written report detailing the Notifiable Incident, including the results of the investigations required under clause 26.6.2, and a statement of the steps Provider has taken or proposes to take, as required by this clause 26.6;
 - 26.6.5 within 60 business days after the Notifiable Incident, give CCQ a written report giving full details of Provider's actions in relation to the Notifiable Incident;
 - 26.6.6 provide CCQ with a copy of any report from the government agency investigating the Notifiable Incident within five business days after Provider receives a copy of that report; and
 - 26.6.7 fully co-operate with any investigation by any government agency with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 26.7 Unless CCQ agrees otherwise in writing, Provider must not enter into any Subcontract unless the Subcontract requires the Subcontractor to comply with provisions equivalent to those contained in clause 8 and clauses 26.5 and 26.6.

Vulnerable Persons

- 26.8 Unless CCQ agrees otherwise in writing, clauses 26.9 to 26.17 apply to the performance of the Activity (including, as applicable, Client Services) that involve working, or contact, with Vulnerable Persons (in addition to the obligations set out in clause 9).
- 26.9 Provider must:
- 26.9.1 before engaging, deploying or redeploying a Relevant Person in relation to the performance of the Activity that involves working or contact with a Vulnerable Person; and
 - 26.9.2 thereafter every three years that the Relevant Person is deployed or redeployed in relation to the performance of the Activity, or upon the lapsing of the Relevant Person's previous Working With Children Check, as applicable), that involve working or contact with a Vulnerable Person,
- do the following:
- 26.9.3 unless CCQ agrees otherwise in writing, obtain a Police Check for the Relevant Person and confirm that the Relevant Person holds a current and valid Working With Children Check;
 - 26.9.4 confirm that no applicable Commonwealth, State or Territory Law prohibits the Relevant Person from being engaged in a capacity where they may have contact with Vulnerable Persons;
 - 26.9.5 comply with all other applicable Laws of the place in which that part of the Activity is being provided in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
 - 26.9.6 comply with any other conditions specified by CCQ from time to time regarding Vulnerable Persons.
- 26.10 If a Police Check indicates that a Relevant Person has a Serious Record, Provider must not deploy or redeploy that Relevant Person in relation to the performance of the Activity that involves working or contact with a Vulnerable Person.
- 26.11 Provider must:

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- 26.11.1 if a Police Check indicates that a Relevant Person has a Criminal or Court Record, not engage, deploy or redeploy that Relevant Person in relation to the performance of the Activity that involves working with Vulnerable Persons unless Provider has conducted and documented a risk assessment for that Relevant Person in accordance with clauses 26.13 to 26.15;
 - 26.11.2 within 24 hours of becoming aware of any Relevant Person being charged or convicted of any Other Offence, or charged with any Serious Offence, comply with clause 26.9.5 and conduct and document a risk assessment in accordance with clauses 26.13 to 26.15 to determine whether to allow that Relevant Person to continue performing any part of the Activity that involves working with Vulnerable Persons;
 - 26.11.3 on becoming aware of a Relevant Person being convicted of a Serious Offence, comply with clause 26.9.5 and immediately cease to deploy the Relevant Person in relation to the performance of any part of the Activity that involves working or contact with a Vulnerable Person; and
 - 26.11.4 document the actions Provider will take as a result of conducting a risk assessment.
- 26.12 Provider must promptly notify CCQ in writing if Provider becomes aware of an occurrence specified in clause 26.11 or Provider conducts a risk assessment in accordance with clauses 26.13 to 26.15 .
- 26.13 Provider acknowledges and agrees that Provider is wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person who has:
- 26.13.1 a Criminal or Court Record;
 - 26.13.2 been charged or convicted of any Other Offence; or
 - 26.13.3 been charged with an Serious Offence,
- to be involved in any way in the performance of any part of the Activity that involves working or contact with Vulnerable Persons.
- 26.14 In undertaking the risk assessment under clause 26.13 in respect of a Relevant Person, Provider must take into account the following factors:
- 26.14.1 whether the Relevant Person's Criminal or Court Record (or the offence that the Relevant Person has been charged with, or convicted of, as specified in clause 26.11.2) is directly relevant to the role that he or she will or is likely to perform in relation to the performance of any part of the Activity;
 - 26.14.2 the length of time that has passed since the Relevant Person's charge or conviction and his or her record since that time;
 - 26.14.3 the nature of the offence pertaining to the Relevant Person's charge or conviction and the circumstances in which it occurred;
 - 26.14.4 whether the Relevant Person's charge or conviction involved Vulnerable Persons;
 - 26.14.5 the nature of the Activity in relation to which the Relevant Person is employed or engaged and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;
 - 26.14.6 the particular role the Relevant Person is proposed to undertake or is currently undertaking in relation to the performance of any part of the Activity, and whether the fact the Relevant Person has a Criminal or Court Record (or has been charged or convicted as specified in clause 26.11.2) is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;

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- 26.14.7 the Relevant Person's suitability based on his or her merit, experience and references to perform the role he or she is proposed to undertake, or is currently undertaking, in relation to the performance of the Activity; and
 - 26.14.8 any other factors specified by CCQ from time to time as factors that Provider must take into account in conducting a risk assessment for the purpose of this clause 26.
- 26.15 After taking into account the factors set out in clause 26.14 in respect of a Relevant Person, Provider must determine whether it is reasonably necessary to:
- 26.15.1 not engage, deploy or redeploy the Relevant Person in relation to the performance of the Activity;
 - 26.15.2 remove the Relevant Person from working in any position or acting in any capacity in relation to the performance of the Activity that involve working or having contact with Vulnerable Persons;
 - 26.15.3 make particular arrangements or impose conditions in relation to the Relevant Person's role in relation to the performance of the Activity and, where relevant, his or her contact with Vulnerable Persons; and/or
 - 26.15.4 take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom that aspect of the Activity relates.
- 26.16 As and when required by CCQ, Provider must promptly provide evidence, in a form CCQ requires, that Provider has complied with the requirements of clauses 26.8 to 26.17.
- 26.17 Unless CCQ agrees otherwise in writing, Provider must:
- 26.17.1 Reflect Provider's obligations under clause 9 and clauses 26.8 to 26.16 in all Subcontracts that Provider enters into; and
 - 26.17.2 ensure those requirements are included in any Sub-subcontracts that are entered into, in relation to the performance of any part of the Activity that involves working with Vulnerable Persons.

Privacy

- 26.18 The rights and obligations set out in clauses 26.19 to 26.24 are in addition to, and do not restrict Provider's obligations under clause 15, or any obligations Provider may have under Privacy Law and that would apply to Provider but for the application of clause 15 or clauses 26.19 to 26.24.
- 26.19 Provider must ensure that each Subcontract contains equivalent provisions to clauses 26.20 to 26.24.
- 26.20 Provider must, in performing, or (where authorised by CCQ) procuring the performance of, the Activity, comply with any of the Department's directions, guidelines, determinations or recommendations to the extent that they are consistent with the requirements set out in clause 15 and clauses 26.20 to 26.24.
- 26.21 Provider expressly consents to:
- 26.21.1 the disclosure of its identity to the Department; and
 - 26.21.2 the Department publishing (including in media releases, annual reports and on the Department's website), information about Provider, including its identity and the existence and nature of the Agreement.
- 26.22 Without limiting clause 26.19, Provider must ensure that any Subcontract contains equivalent obligations to those specified in clause 26.21 (on the part of the relevant party), including the consent by the relevant party (if an individual) to the disclosure of his or her Personal Information to the Department.
- 26.23 Provider acknowledges and agrees that:

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- 26.23.1 Personal Information may be collected from or about Provider and its Representatives and may be used or disclosed to administer, monitor, review, promote and evaluate the Funding Agreement, the Programme and any other grant programmes administered by the Department and for directly-related purposes;
- 26.23.2 for the purposes set out in clause 26.23.1, the Department may:
- 26.23.2.1 collect, use and disclose the Personal Information of Provider and its Representatives; and
 - 26.23.2.2 disclose information about Provider and its Representatives to, and receive information about Provider and its Representatives from, any Commonwealth or other entity that maintains the Department's electronic on-line grant management system or has a directly-related policy interest or a role in administering the Programme;
- 26.23.3 If Provider provides a "health service" (as defined in the Privacy Act) to an individual, Provider must:
- 26.23.3.1 comply with the requirements in the Privacy Act regarding the collection, use and disclosure of the individual's Health Information or other "sensitive information" (as that term is defined in the Privacy Act);
 - 26.23.3.2 use best endeavours to obtain the written consent of the individual to transfer of Personal Information (including Health Information) relating to them collected or held by Provider in connection with that service being transferred to another Australian health provider which is contracted by the Commonwealth or CCQ to provide similar health services to them;
 - 26.23.3.3 keep a record of the written consent provided by each individual in accordance with clause 26.23.3.2;
 - 26.23.3.4 ensure that records of individuals who do not consent are kept in such a way as to facilitate them being separated from other records in the event of a transfer of information to another Australian health provider;
 - 26.23.3.5 make any other notification, and provide any other information, to the individual that is required by the Privacy Act or Privacy Law; and
 - 26.23.3.6 otherwise comply with Privacy Law in respect of the provision of the health service; and
- 26.23.4 Provider must promptly comply with any direction from CCQ from time to time to transfer the Personal Information (including Health Information) of each individual who has provided consent under clause 26.23.3.2 to another Australian health provider who is contracted by the Commonwealth or CCQ to provide similar health services to that individual.

26.24 Provider acknowledges and agrees that it may be treated as a contracted provider for the purpose of the Privacy Act.

27. MISCELLANEOUS

- 27.1 The Agreement is not to be construed against a party merely because that party was responsible for preparing it (or any part of it).
- 27.2 Except as otherwise set out in the Agreement, CCQ may give or withhold an approval or consent to be given under the Agreement in its absolute discretion and subject to any conditions determined by it. CCQ is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions. Where the Agreement refers to a matter being to the "satisfaction" of

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CCQ, this means to the satisfaction of CCQ in its absolute discretion.

- 27.3 Provider must not assign or transfer any of its rights or obligations under the Agreement, or attempt or purport to do so, without the prior written consent of CCQ.
- 27.4 Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing the Agreement and any document related to the Agreement.
- 27.5 Subject to clause 16.3, the Agreement contains everything the parties have agreed on in relation to the matters it deals with, and no party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before the Agreement was executed, save as permitted by Law. To avoid doubt:
- 27.5.1 any other terms and conditions and any other materials which Provider may purport to apply or which are endorsed in any correspondence or other documents (whether before or after the date of the Agreement) are excluded and do not apply; and
- 27.5.2 upon Provider's acceptance of a Services Order (whether in writing, orally or by conduct), Provider agrees to these standard terms and conditions applying to the agreement created by that Services Order.
- 27.6 The Agreement is properly executed if each party executes either a Services Order or identical copies of that Services Order. In the latter case, the Agreement takes effect when the separately executed documents are exchanged between the parties, unless the parties have provided for an earlier commencement date in Item 2 to that Services Order.
- 27.7 The rights of CCQ under the Agreement are cumulative and are in addition to any other rights available to CCQ whether those rights are provided for under the Agreement, any other document or by Law. CCQ may exercise a right, power or remedy separately or concurrently with another right, power or remedy available to it at Law or under the Agreement. A single or partial exercise of a right, power or remedy by CCQ does not prevent a further exercise of that or of any other right, power or remedy and a failure by CCQ to exercise, or delay by CCQ in exercising, a right, power or remedy does not prevent its exercise.
- 27.8 The parties must promptly do and perform all acts and things and execute all documents as may from time to time be required, and do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete the Agreement and all transactions incidental to it.
- 27.9 The Agreement is governed by the law of Queensland. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts, either for forum non conveniens or on any other basis.
- 27.10 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in the Agreement or by express written agreement between the parties.
- 27.11 CCQ may set off any amount it owes Provider under the Agreement against any amount that Provider owes CCQ under the Agreement.
- 27.12 Each provision of the Agreement is individually severable. If a clause or part of a clause of the Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- 27.13 Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of the Agreement.

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- 27.14 It is an essential term of the Agreement that an obligation must be performed, and a right or power must be exercised, by Provider within the time specified.
- 27.15 Without limiting clause 3.2 or clause 26.3, no variation of the Agreement (including to avoid doubt a purported variation to or replacement of the relevant Services Order) will be of any force or effect unless it is in writing and signed by each of CCQ and Provider.
- 27.16 The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 27.17 To the maximum extent permitted by Law, all conditions and warranties that would be implied (by Law, custom or otherwise), including any implied term of good faith, are expressly excluded.