

# STANDARD TERMS AND CONDITIONS

Current as at 1 November 2023

## Part A: Head Agreement

### Background:

MPHN receives Grant Funds from Funding Bodies including the Commonwealth and NSW Governments for regional planning and commissioning of high quality, locally relevant and effective health services. Grant Funds are provided under Funding Deeds.

Key objectives of the funding include increasing the efficiency and effectiveness of medical services for patients, particularly those at risk of poor health outcomes, and improving coordination of care to ensure patients receive the right care in the right place at the right time.

MPHN has engaged the Provider to provide the Activity in order to achieve the objectives. The Provider is experienced in providing services similar to the Activity and agrees to provide the Activity on the terms of this agreement.

### 1. Agreement

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- 1.1 The Provider agrees to provide the Activity on the terms and conditions set out in this agreement.
- 1.2 MPHN agrees to pay the Provider for providing the Activity on the terms and conditions set out in this agreement.

### 2. Provider's obligations

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#### Performance

- 2.1 The Provider must:
  - 2.1.1 perform the Activity:
    - (a) in accordance with this agreement and the Schedule;
    - (b) with due care, skill and diligence to the standard expected of a person skilled in the delivery of the Activity at a service quality satisfactory to MPHN;
    - (c) in an efficient, effective, economical and ethical manner in line with the objectives of MPHN as described in the background; and
    - (d) where there is a due date for performance set out in the Schedule, on or before that time;
  - 2.1.2 notify MPHN promptly (and in any case within 2 business days) if:
    - (a) it becomes evident to the Provider that anything, including MPHN's act or omission, may delay performing the Activity;
    - (b) for any reason, whether or not in the Provider's control, it is unable or unwilling to perform the Activity;

- 2.1.3 comply with all Laws that govern, regulate or otherwise apply to delivery of the Activity. Without limiting this, the Provider must comply with Laws relating to Medicare billings, including the principle that a Medicare rebate is not payable in relation to a service directly or indirectly funded from another source;
- 2.1.4 comply with all reasonable directions from MPH N including without limitation, directions to:
  - (a) provide MPH N with data, information and documents requested by MPH N regarding the Activity, including without limitation, information about Staff, Subcontractors and the cost of delivering the Activity;
  - (b) deliver the Activity in a particular way, including as to method, delivery mode, location, time and/or personnel;
  - (c) do something necessary for MPH N to comply with a Funding Deed;
  - (d) engage in contract management and liaison as required by MPH N including without limitation, meetings and reporting;
  - (e) use or otherwise deal with Personal Information in a particular way;
- 2.1.5 cooperate with any third party engaged by MPH N or the Funding Body to review or assess the delivery of the Activity or anything relating to the Activity including by providing personal and other information;
- 2.1.6 provide details of any change in the Provider's details including contact details, registration status, practice location or capacity to comply with this agreement in any way, within 5 Business Days of the change or becoming aware that the change will occur, whichever is earlier;
- 2.1.7 preserve, protect, and enhance the goodwill of the business and reputation of MPH N;
- 2.1.8 provide MPH N with reasonable assistance to:
  - (a) if required, transition the Activity to another Provider; and
  - (b) ensure continuity of care for individuals receiving Health Services as part of the Activity.

### **Credentials and registration**

- 2.2 The Provider must, and must ensure that all Staff, hold and maintain the qualifications, licences, approvals, credentials, professional registrations and membership of professional associations required by Law or this agreement or which would otherwise be held or maintained by a prudent and experienced party performing the Activity.
- 2.3 The Provider must provide MPH N documentary evidence of compliance with clause 2.2 within 7 days of a written request.
- 2.4 If any of the qualifications, licences, approvals, credentials, professional registrations and membership of professional associations required under this agreement are cancelled or not renewed or if there are any circumstances that may result in cancellation or non-renewal, the Provider must immediately notify MPH N and provide all details reasonably requested by MPH N.

### **Insurances**

- 2.5 The Provider must effect and maintain:
- 2.5.1 all insurances in respect of the Activity required by Law; and
  - 2.5.2 all insurances specified in the Schedule (if any);
  - 2.5.3 at least \$20 million for public liability insurance;
  - 2.5.4 at least \$10 million for professional indemnity which continues for at least 7 years after the term of this agreement,
- and must ensure that all Staff effect and maintain or are otherwise covered by the same insurances.
- 2.6 The Provider must provide MPH N evidence satisfactory to MPH N that the requirements in clause 2.5 have been met within 7 days of written request.
- 2.7 The Provider must immediately notify MPH N and provide all details reasonably requested by MPH N if:
- 2.7.1 any of the insurance policies required under this agreement are cancelled or not renewed or if there are any circumstances that may result in an insurance policy being cancelled or not renewed; or
  - 2.7.2 if there are any circumstances giving rise to a Claim under any of the insurance policies required under this agreement.

#### **Clinical governance arrangements**

- 2.8 If the Activity include providing a Health Service to an individual, the Provider must proactively manage clinical governance to MPH N's satisfaction, including (but not limited to) by:
- 2.8.1 adopting standards of practice that are relevant to the Activity;
  - 2.8.2 complying with relevant standards and quality frameworks;
  - 2.8.3 ensuring Staff work to their appropriate scope of practice and within the limits of their qualifications, expertise and experience;
  - 2.8.4 implementing a suitable complaints process;
  - 2.8.5 implementing suitable arrangements for supervising Staff; and
  - 2.8.6 implementing a risk and incident management and reporting process.
- 2.9 The Provider must provide MPH N with all reasonable assistance, including by providing access to documents and to interviews with Staff, to allow MPH N to monitor compliance with clause 2.8.

#### **Planning and management of the Activity**

- 2.10 Unless expressly excluded by the Schedule, the Provider must prepare draft plans including:
- 2.10.1 Activity Plan;
  - 2.10.2 Activity Budget;
  - 2.10.3 Transition Plan; or
  - 2.10.4 Risk Management Plan.
- 2.11 The Provider must:

- 2.11.1 submit draft plans with the contents and at the times set out in the Schedule (or as reasonably required by MPH N) for approval by MPH N; and
- 2.11.2 amend draft plans as required by MPH N.
- 2.12 MPH N will approve plans in its discretion. The Provider must perform the Activity in accordance with approved plans.
- 2.13 The Provider must review plans and provide updated plans to MPH N as required by the Schedule and as otherwise required by MPH N.

**Key performance indicators and evaluation activities**

- 2.14 The Provider must comply with data collection and reporting requirements set out in the Schedule.
- 2.15 The Provider must report against key performance indicators set out in the Schedule.
- 2.16 The Provider will, if requested, provide MPH N with access to the Provider's records and comply with reasonable requests to substantiate reports provided to MPH N and information provided can be provided to the Funding Body.

**Schedule of deliverables and payments**

- 2.17 Where the Schedule includes a schedule of deliverables, reports and payments, the Provider must deliver the Activity according to that schedule.

**Vulnerable persons**

- 2.18 The Provider must:
  - 2.18.1 before engaging, deploying or redeploying a Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person; and
  - 2.18.2 thereafter every three years that the Relevant Person is deployed or redeployed in relation to any part of an Activity that involves working or contact with a Vulnerable Person, do the following:
    - (a) obtain a police check for the relevant person,
    - (b) 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;
    - (c) comply with all other applicable Laws in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
    - (d) comply with any other conditions set out in the Schedule in respect of the Activity.
- 2.19 If a Police Check indicates that a Relevant Person has a Serious Record, the Provider may not deploy or redeploy that Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person.
- 2.20 The Provider must:
  - 2.20.1 if a Police Check indicates that a Relevant Person has a criminal or court record, not engage, deploy or redeploy that Relevant Person in respect of any part of an Activity that involves working with Vulnerable

- Persons unless the Provider has conducted and documented a risk assessment for that Relevant Person in accordance with this agreement;
- 2.20.2 within 24 hours of becoming aware of any Relevant Person being charged or convicted of any Other Offence, or charged with any Serious Offence, conduct and document a risk assessment in accordance with this agreement to determine whether to allow that Relevant Person to continue performing any part of an Activity that involves working with Vulnerable Persons;
  - 2.20.3 on becoming aware of a Relevant Person being convicted of a Serious Offence, immediately cease deploying the Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person;
  - 2.20.4 document the actions the Provider will take as a result of conducting a risk assessment.
- 2.21 The Provider must promptly notify MPHn if the Provider becomes aware of an occurrence specified in clause 2.12 or the Provider conducts a risk assessment in accordance this agreement, except to the extent otherwise specified in the Schedule or agreed in writing by MPHn
- 2.22 The Provider is wholly responsible for any action or inaction in conducting any risk assessment, assessing its outcome and/or deciding to engage, deploy or redeploy a Relevant Person who has:
- 2.22.1 a Criminal or Court Record;
  - 2.22.2 been charged or convicted of any Other Offence;
  - 2.22.3 been charged with a Serious Offence,
- to work on any part of an Activity that involves working or contact with Vulnerable Persons.
- 2.23 In undertaking a risk assessment under this agreement in respect of a Relevant Person, the Provider must take into account the following factors:
- 2.23.1 whether the Relevant Person's Criminal or Court Record (or the offence that the Relevant Person has been charged with, or convicted of is directly relevant to the role that he or she will or is likely to perform in relation to an Activity;
  - 2.23.2 the length of time that has passed since the Relevant Person's charge or conviction and his or her record since that time;
  - 2.23.3 the nature of the offence pertaining to the Relevant Person's charge or conviction and the circumstances in which it occurred;
  - 2.23.4 whether the Relevant Person's charge or conviction involved Vulnerable Persons;
  - 2.23.5 the nature of the Activity for 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;
  - 2.23.6 the particular role the Relevant Person is proposed to undertake or is currently undertaking in relation to an Activity and whether the fact the Relevant Person has a Criminal or Court Record is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;

- 2.23.7 the Relevant Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake, or are currently undertaking, in relation to an Activity; and
  - 2.23.8 any other factors specified the Schedule as factors that the Provider must take into account in conducting a risk assessment for the purpose of this agreement.
- 2.24 After taking into account the required factors in respect of a Relevant Person, the Provider must determine whether it is reasonably necessary to:
- 2.24.1 not engage, deploy or redeploy the Relevant Person in relation to an Activity or any part of an Activity;
  - 2.24.2 remove the Relevant Person from working in any position or acting in any capacity in relation to any part of an Activity that involves working or having contact with Vulnerable Persons;
  - 2.24.3 make particular arrangements or impose conditions in relation to the Relevant Person's role in relation to an Activity (or any part of an Activity) and, where relevant, his or her contact with Vulnerable Persons; and/or
  - 2.24.4 take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.
- 2.25 As and when required by MPH N, the Provider must promptly provide evidence, in a form MPH N requires, that the Provider has complied with the requirements of this agreement.
- 2.26 The Provider must
- 2.26.1 reflect the Provider's obligations under clauses 2.11 to 2.16 in all Subcontracts the Provider enters into; and
  - 2.26.2 ensure the requirements in this clauses 2.11 to 2.16 are included in any sub-subcontracts that are entered into, in relation to any part of an Activity that involves working with Vulnerable Persons.

This requirement does not apply if it is noted as not applying in the Schedule.

### **3. Provider's warranties**

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- 3.1 The Provider warrants that:
- 3.1.1 where it is a corporation it is duly incorporated;
  - 3.1.2 it has full power and authority to enter into and perform the obligations under this agreement;
  - 3.1.3 it has duly and validly authorised the execution, delivery and performance of this agreement;
  - 3.1.4 the execution of, and compliance with, this agreement does not and will not contravene any Law;
  - 3.1.5 it is not bankrupt, insolvent or in the process of being wound up;
  - 3.1.6 all information provided to MPH N or the Funding Body is true, correct and not misleading by omission or otherwise;
  - 3.1.7 it is registered for GST and the Provider's ABN stated in this agreement is correct;

- 3.1.8 it and any Staff are duly qualified and experienced to provide the Activity efficiently;
- 3.1.9 it is not restricted in any way from performing the Activity;
- 3.1.10 it has not been named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 20123 (Cth);
- 3.1.11 delivering the Activity will not breach third party Intellectual Property Rights.

#### **4. Nature of relationship**

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- 4.1 The Provider is an independent contractor. This agreement does not establish any other relationship between the Provider and MPHN.
- 4.2 The Provider has no authority to represent or bind MPHN or expend or commit any funds or resources on behalf of MPHN without MPHN's specific consent and must not do anything which could result in a third party believing that the Provider has such authority.
- 4.3 MPHN is not liable for any of the Provider's or Subcontractor's workers compensation, superannuation and taxation expenses or liabilities.
- 4.4 MPHN is free to engage third parties to perform services identical to or similar to the Activity.

#### **5. Subcontracting**

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##### **Subcontracting**

- 5.1 The Provider:
  - 5.1.1 must not assign or sub-contract any part of the Activity without MPHN's prior written consent, which may be withheld or conditioned in any manner MPHN sees fit;
  - 5.1.2 remains solely liable for the provision of the Activity despite any assignment or Subcontract;
  - 5.1.3 must not purchase or commission services from 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); and
  - 5.1.4 must ensure that the Subcontractor has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work it is engaged to perform.

##### **Seeking permission to subcontract or assign**

- 5.2 If the Provider wishes to subcontract or assign any part of the Activity, the Provider must:
  - 5.2.1 provide MPHN with details of the proposed subcontractor or assignee;
  - 5.2.2 provide MPHN with a draft subcontract or agreement for assignment including all terms on which the subcontract or assignee is to take place and the terms required by the balance of this clause;

- 5.2.3 amend the draft subcontract or agreement for assignment by adding or amending terms as required by MPH N;
- 5.2.4 on approval of the draft subcontract or agreement for assignment, subcontract or assign the part of the Activity;
- 5.2.5 where required by MPH N, replace a subcontractor or assignee (whether or not the original subcontractor or assignee was approved by MPH N), in which case the Provider must, at no additional cost to MPH N and at the earliest opportunity, secure a suitable replacement subcontractor or assignee and seek MPH N consent in relation to the new subcontractor or assignee in accordance with this clause.

#### **Minimum terms of subcontracts**

- 5.3 Notwithstanding any prior approval by MPH N, the Provider must independently ensure that any Subcontract is consistent with the Provider's obligations under this agreement and includes any provision reasonably required by MPH N.
- 5.4 Without limiting the foregoing, the Provider must ensure any Subcontract:
  - 5.4.1 includes a right of termination which is consistent with MPH N's rights of termination under this agreement;
  - 5.4.2 requires the Subcontractor comply with the obligations under clauses 7 (Intellectual Property), 8 (Privacy), 10 (Confidential Information), 14 (Record Keeping), 15 (Work Health and Safety) and 18 (Publications, communication and acknowledgement of support) as if it were the Provider;
  - 5.4.3 requires the Subcontractor acknowledge that it may be considered a 'Commonwealth service provider' for the purpose of the Ombudsman Act 1976 (Cth) and be subject to investigation by the Ombudsman under that Act and that neither MPH N nor the Department will be liable for the cost of any such investigation by the Ombudsman;
  - 5.4.4 prohibits the Subcontractor from sub-contracting any part of the Activity without MPH N's prior written consent which may be withheld or conditioned in any manner MPH N sees fit.

## **6. Payments**

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- 6.1 Subject to the Provider's compliance with this agreement, MPH N will pay Grant Funds to the Provider in accordance with the Schedule within 14 days after the Provider provides MPH N with a tax invoice for that payment.
- 6.2 The Provider must not issue an invoice for payment unless the Activity that relates to the payment as set out in the Schedule have been performed.
- 6.3 Notwithstanding anything in the Schedule, MPH N is not required to pay Grant Funds until MPH N receives the Grant Funds from the Funding Body.

#### **MPH N's right to withhold payments**

- 6.4 MPH N may withhold a payment:
  - 6.4.1 if the Provider does not meet a requirement set out in the Schedule to the extent that all or part of a payment relates to that requirement;
  - 6.4.2 if a deliverable, report or other aspect of the Activity is not delivered, provided or performed when or as required by the Schedule;

- 6.4.3 if a key performance indicator is not met, to the extent of the failure to meet that key performance indicator or as specifically set out in the Schedule;
  - 6.4.4 if the Activity is otherwise not performed as required by this agreement; or
  - 6.4.5 in the circumstances set out in the Schedule.
- 6.5 The Provider must continue to perform the Provider's obligations under this agreement despite any withholding.
- 6.6 Unless the Schedule provides otherwise, the Provider is not entitled to a payment set out in the schedule of deliverables, reports and payments until the prior deliverables, reports and other aspects of the Activity have been delivered, provided or performed.

### **Record keeping**

- 6.7 The Provider must keep financial accounts and records for each Activity.

### **Approved allocations and budget**

- 6.8 The Provider must only use Grant funds as provided by the relevant Approved Activity Budget.
- 6.9 The Provider must seek MPHNS prior written consent to reallocate Grant funds within an Approved Activity Budget except where such reallocation is permitted in the Schedule.

### **Overpayment of Grant funds**

- 6.10 If MPHNS determines it has overpaid Grant Funds to the Provider:
- 6.10.1 the Provider owes a debt to MPHNS in the amount of the overpayment from the time the Grant funds comprising the overpayment is received; and
  - 6.10.2 if the Provider still holds the overpaid Grant Funds, the Provider holds them on trust for MPHNS, and, at MPHNS's discretion:
  - 6.10.3 the Provider must repay the overpayment to MPHNS;
  - 6.10.4 the Provider must pay MPHNS an amount equal to the overpayment to repay the debt due; or
  - 6.10.5 MPHNS may reduce one or more further payments by up to the amount of the overpayment.

### **Interest**

- 6.11 If the Provider is required to pay an amount to MPHNS and does not pay the amount in full by the due date, the Provider must pay Interest on the outstanding amount until it is paid in full.
- 6.12 The Provider acknowledges that any Interest payable under a provision of this agreement represents a reasonable and genuine pre-estimate of loss to MPHNS.
- 6.13 The Provider must, upon MPHNS's request, pay an amount owed or payable to MPHNS, or which MPHNS is entitled to recover from the Provider, without prejudice to any other rights available to MPHNS (whether under this agreement or Law) as

a debt due from the Provider to MPH N without any further proof of the debt by MPH N being necessary.

## **7. Intellectual property and Data**

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- 7.1 The Provider grants the Intellectual Property Rights set out in the Schedule.
- 7.2 The Provider warrants that:
  - 7.2.1 it has all the Intellectual Property Rights required to perform this agreement and to enable MPH N (and the Funding Body) to use Material in accordance with this agreement; and
  - 7.2.2 the rights it grants will not infringe any other person's Intellectual Property Rights.

### **Existing Material**

- 7.3 Intellectual Property Rights in Existing Material remain with a party or licensor making it available.
- 7.4 MPH N licenses the Provider to use MPH N's Existing Material to perform this agreement. The licence is non-exclusive, non-transferable and royalty free.
- 7.5 The Provider licences MPH N (and the Funding Body) to use the Provider's Existing Material to exercise MPH N's rights under this agreement. The licence is non-exclusive, non-transferable and royalty free.

### **Activity material**

- 7.6 Unless otherwise provided in the Schedule, the Provider grants (or must procure for) both MPH N and the Funding Body, a perpetual, irrevocable, royalty free and fee free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit:
  - 7.6.1 the Activity Material for any purpose;
  - 7.6.2 the Existing Material as part of or in conjunction with the Activity Material,and the right for the Funding Body to licence the material for use by the public under an Open Access Licence.

### **Moral rights - consents to be obtained**

- 7.7 Unless otherwise provided by the Schedule, the Provider must obtain from each author of Activity Material and Existing Material a written consent which extends to both MPH N and the Funding Body to allow either to (whether it occurs before or after the consent):
  - 7.7.1 use, reproduce, modify, adapt, publish, distribute, broadcast, communicate or exploit all or any part of the Activity Material or Existing Material without attribution of authorship;
  - 7.7.2 supplement the Activity Material or Existing Material with any other Material;
  - 7.7.3 use the Activity Material or Existing Material in a different context to that originally envisaged;
  - 7.7.4 release the Activity Material or Existing Material to the public under an Open Access Licence,

but not to falsely attribute authorship.

### **MPHN Data**

- 7.8 MPHN owns or controls all MPHN Data from the time it is created and it is MPHN's Confidential Information.
- 7.9 MPHN grants the Provider a licence to use MPHN Data for the purpose of performing this agreement. This licence is non-exclusive, non-transferable and royalty free, and it continues until the later of the termination or expiry of the agreement and performance of the Provider's obligations under this agreement.
- 7.10 While MPHN Data is in the Provider's possession or is managed by the Provider, the Provider must enable MPHN to access or extract the MPHN Data and the Provider does not gain any other rights to MPHN Data.
- 7.11 The Provider may analyse the MPHN Data in de-identified form, without disclosing it to anyone outside the Provider's organisation, in order to improve products and services. The Provider must obtain MPHN consent before using MPHN Data for any other purposes, whether in identified or de-identified form.
- 7.12 The Provider must not transfer MPHN Data outside Australia.
- 7.13 The Provider must comply with any requirements of the Funding Body in relation to MPHN Data.
- 7.14 The Provider must manage MPHN Data in accordance with any requirements in the Schedule including policies, standards or accessibility requirements.

## **8. Privacy**

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### **Protection of Personal Information**

- 8.1 In undertaking the Activity, the Provider must:
  - 8.1.1 not do anything that would cause MPHN or the Funding Body to be in breach of Privacy Laws;
  - 8.1.2 if MPHN provides access to Personal Information, only use that information for performing the Activity;
  - 8.1.3 not transfer Personal Information outside Australia;
  - 8.1.4 comply with MPHN's directions in relation to privacy and Personal Information including comply with any direction from MPHN to transfer the Personal Information (including health information) of each individual who has provided consent under this clause to another provider of Health Services;
  - 8.1.5 tell MPHN as soon as reasonably possible:
    - (a) if it becomes aware of a breach or possible breach of any of its obligations under this clause 8;
    - (b) if it is required to disclose Personal Information under Privacy Laws;
- 8.2 The Provider must obtain a Consent Document from any individual the Provider collects or otherwise receives Personal Information from (including patients, clients and staff) in connection with the Activity.
- 8.3 A Consent Document must tell the individual that the Provider may disclose their Personal Information held by the Provider to:

- 8.3.1 the Funding Body or MPHNN;
  - 8.3.2 another person appointed to evaluate, review, investigate, manage or monitor the Activity or circumstances relating to the Activity;
  - 8.3.3 another party engaged by the Funding Body, MPHNN or the Provider to provide a health service,
- and include a record as to whether the individual consents to such disclosure.
- 8.4 MPHNN may prescribe a form of Consent Document from time to time and if so the Provider must use that form.
  - 8.5 Consent Documents for individuals who do not consent to disclosure of Personal Information as set out in clause 8.3 must be kept in such a way as to facilitate those individuals' Personal Information being separated from other records in the event of a transfer of information to another provider of Health Services.

#### **Personal information of the Provider**

- 8.6 MPHNN may disclose the Provider's identity and Personal Information to the Funding Body and the Funding Body may publish the information including the existence of this agreement.
- 8.7 The Provider consents to MPHNN disclosing Personal Information about its employees, agents, contractors or other personnel to the Funding Body and acknowledges that this information may be used or disclosed by the Funding Body to administer, monitor, review, promote and evaluate programmes or funding.
- 8.8 The Funding Body may disclose information about the Provider to and receive information about the Provider from other government agencies or entities.

### **9. Indemnity and liability**

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- 9.1 The Provider indemnifies MPHNN and its Representatives against any Loss:
  - 9.1.1 arising directly or indirectly from the Provider's breach of this agreement, provision of false or misleading information, negligence or wilful act or omission;
  - 9.1.2 in connection with an allegation of employment, or deemed employment, of any of the Provider's Staff for any purpose during or under this agreement; or
  - 9.1.3 in connection with use in any way of Activity Material or Existing Material including any infringement of the Intellectual Property Rights of any person.
- 9.2 For the avoidance of doubt and without limiting its own rights, MPHNN holds the benefit of the above indemnities on trust for its Representatives.
- 9.3 MPHNN indemnifies the Provider against any Loss arising directly or indirectly from MPHNN breach of this agreement, negligence or wilful act or omission.
- 9.4 The Provider must immediately notify MPHNN if it becomes aware of any Claim or expected, anticipated, potential or threatened claim that may affect MPHNN.

### **10. Confidential information**

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- 10.1 The Provider must not, and must ensure that its Staff do not, disclose the terms of this agreement or any Confidential Information or Personal Information of or relating to MPHNN or the Funding Body.

- 10.2 Nothing in this agreement prohibits disclosure of Confidential Information which:
- 10.2.1 is in the public domain other than by a breach of this agreement by the Provider;
  - 10.2.2 is required to be disclosed by Law or by legal direction of an Authority;
  - 10.2.3 is required to be disclosed by the Funding Body under a Law and the Funding Deed requires MPH N to disclose the information;
  - 10.2.4 is disclosed to a legal or financial adviser of the Provider, provided that those persons have professional obligations of confidentiality and that they are told that the information is Confidential Information; or,
  - 10.2.5 is disclosed pursuant to and according to the conditions of written consent provided by MPH N.
- 10.3 The Provider must take reasonable steps to ensure Staff are subject to confidentiality obligations including having Staff execute a confidentiality deed or agreement if required by MPH N.
- 10.4 Despite the provisions of this agreement, the Provider expressly consents to the provision of a copy of this agreement and any other contract between the Provider and a Subcontractor or any other Confidential Information to the Funding Body.
- 10.5 If the Provider discloses Confidential Information under clause 10.2.2, the Provider must also tell the recipient that it is confidential and tell MPH N about the disclosure.
- 10.6 The Provider must, at MPH N's request, arrange for Staff to provide a written undertaking in a form acceptable to MPH N relating to the use and non-disclosure of information provided by MPH N or the Funding Body.
- 10.7 The obligations in this clause continue after the expiry or termination of the agreement and in perpetuity, unless some other period is provided elsewhere in this agreement.

## **11. Access to documents**

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- 11.1 Where the Funding Body receives a request under a Law for access to a document created by or in the possession of the Provider or a Subcontractor that relates to the performance of this agreement (and not to the entry into this agreement), MPH N may at any time by notice require the Provider to provide or arrange for the provision of the document at no cost.
- 11.2 In this clause, 'document' has the same meaning as in the Freedom of Information Act 1982 (Cth).
- 11.3 The Provider must promptly provide any document or record reasonably requested by MPH N in order to monitor or evaluate the Activity.

## **12. Provider's Staff**

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- 12.1 Conduct of the Provider's Staff is conduct of the Provider under this agreement.
- 12.2 The Provider must ensure that its Staff comply with this agreement and do not cause, by act or omission, the Provider to breach the agreement.
- 12.3 The Provider must use reasonable endeavours to obtain written consent from its Staff or any other person under its direction or engaged in relation to the Activity to the disclosure of personal information to MPH N or the Funding Body.

## **13. Conflicts**

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- 13.1 The Provider warrants that, to the best of its knowledge and after making diligent inquiry, no Conflict exists or is likely to arise in connection with or arising from this agreement or any part of the Activity.
- 13.2 If a Conflict arises, or is likely to arise, the Provider must:
  - 13.2.1 immediately tell MPH N about the Conflict including making a full disclosure of all relevant information about the Conflict and setting out the steps that the Provider proposes to take to resolve or deal with the Conflict; and
  - 13.2.2 take such steps as proposed or as reasonably required by MPH N at MPH N's discretion.
- 13.3 The Provider must:
  - 13.3.1 not undertake or continue any Activity or other conduct where to do so could reasonably be expected to generate a Conflict;
  - 13.3.2 if requested by MPH N, notify MPH N of any interests of the Provider of the nature specified by MPH N from time to time, for inclusion in MPH N's register of Provider interests (however titled).

## **14. Record keeping for reporting requirements**

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### **Record keeping and provision of records**

- 14.1 The Provider must:
  - 14.1.1 keep proper accounts and records in relation to the Activity in accordance with accounting principles generally applied in commercial practice and as required by law, during the Term and for a period of 7 years after the Term;
  - 14.1.2 keep proper clinical records in relation to the Activity in accordance with normal clinical practice or as required by this agreement;
  - 14.1.3 provide MPH N with documentary evidence of the Provider's compliance with this agreement within 7 days of written request by MPH N;
  - 14.1.4 comply with reporting requirements and all similar requirements reasonably required by MPH N, including providing all assistance necessary or convenient to facilitate MPH N monitoring the Activity and complying with its obligations to a Funding Body in connection with the Activity and providing records, documents and information about or relating to the Activity; and
  - 14.1.5 allow MPH N, the Funding Body and persons authorised by them to access the Provider's premises and take copies of Material or other accounts, records or financial documents located on the premises and any other premises where the Provider undertakes the Activity for purposes associated with this agreement or any review of the Provider's performance of this agreement.

## **15. Work health and safety**

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- 15.1 The Provider must, at its own cost:
  - 15.1.1 comply with all Laws relating to WHS;

- 15.1.2 ensure, so far as is reasonably practicable, the health and safety of Staff and other workers engaged by or caused to be engaged by the Provider or who are influenced or directed by the Provider, and other persons;
  - 15.1.3 ensure as far as reasonably practical, that all officers (as defined in WHS Laws) comply with their obligations under WHS Laws; and
  - 15.1.4 have in place a health and safety system (including policies and procedures) as would reasonably be expected of a prudent and experienced contractor providing services similar to the Activity.
- 15.2 If an event occurs in connection with the Activity that is a notifiable incident as defined in the WHS Law, the Provider must:
- 15.2.1 immediately report the matter to MPHN including all relevant details known to the Provider; and
  - 15.2.2 provide all reasonable information required by MPHN, including any reports from Authorities.

## **16. Complaint and Incident Management**

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- 16.1 The Provider must notify MPHN verbally and in writing of any Notifiable Complaint or Notifiable Incident relating to the Activity as soon as practicable and within 24 hours.
- 16.2 The Provider must, at MPHN's request, help MPHN investigate any Notifiable Complaint or Notifiable Incident and the circumstances giving rise to the complaint or incident, including by:
- 16.2.1 providing a summary of the complaint or incident, the circumstances giving rise to it and any action taken;
  - 16.2.2 answering any questions MPHN asks about the complaint or incident;
  - 16.2.3 providing documentary evidence about the complaint or incident, the circumstances giving rise to the complaint or incident (and surrounding circumstances) and any action taken by the Provider in response.

### **Notifiable Complaints**

- 15.2 Any complaint relating to one of the following is a **Notifiable Complaint**:
- 16.2.1 access to a service (e.g. eligibility, geographic access, physical access for those with a disability);
  - 16.2.2 breach of rights (e.g. privacy, confidentiality, consent, discrimination) – this includes breaches in person and via use of clinical records;
  - 16.2.3 competence or performance of Staff; or,
  - 16.2.4 any complaint that involves potential contact with the media and/or a local, state or national councillor or parliamentarian.

### **Notifiable Incidents**

- 15.4 Any incident that results in one of the following is a **Notifiable Incident**:
- 16.2.5 death of a patient (from any cause);
  - 16.2.6 self-harm to a patient;

- 16.2.7 harm to a patient (whether intentional or accidental) resulting in inpatient hospital admission or permanent injury;
- 16.2.8 misconduct of Staff or a practitioner relating to the Activity;
- 16.2.9 privacy or confidentiality breach; or
- 16.2.10 complete loss of a service.

## **17. MPHNS property**

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- 17.1 When using or dealing with any MPHNS Property, the Provider must exercise due care and comply with any reasonable policy or procedure notified by MPHNS.
- 17.2 MPHNS may, at any time, inspect, access or take possession of any MPHNS Property that is held or otherwise controlled by the Provider.
- 17.3 The Provider must deliver all MPHNS Property in the Provider's control or possession, or any specified part of it, to MPHNS (or otherwise deal with it as requested by MPHNS) at the end of the Term or as otherwise requested by MPHNS.

## **18. Publications, communication and acknowledgement of support**

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### **Publications and communications requiring consent**

- 18.1 The Provider must obtain MPHNS's consent before making or publishing any material, advertising, announcement or statement about or in connection with the Activity.

### **Restrictions on publications and communications**

- 18.2 The Provider must not use MPHNS's or the Funding Body's logo in connection with the Activity without MPHNS's consent.
- 18.3 The Provider must not, and must ensure that its Staff do not, correspond directly with the Funding Body on any matter involving the Activity or this agreement without MPHNS's consent.
- 18.4 The Provider must liaise with MPHNS to agree a communications plan at least 8 weeks before any public launch or similar event including the release of a publication or report that is prepared in the course of performing the Activity and must, where directed by MPHNS, invite the Funding Body representative. The Provider must comply with any requirement of the Funding Body in relation to publications and communications.
- 18.5 Where the Funding Body (or one of them) is the Department, the Provider must ensure that:
  - 18.5.1 the following disclaimer is included in a prominent position on any website produced as part of the Activity:

'While the Australian Government Department of Health has contributed to the funding of this website, the information on this website does not necessarily reflect the views of the Australian Government and is not advice that is provided, or information that is endorsed, by the Australian Government. The Australian Government is not responsible in negligence or otherwise for any injury, loss or damage however arising from the use of or reliance on the information provided on this website.'

- 18.5.2 the following disclaimer is prominently included in any Material produced as part of the Activity that contain health advice, is published or disseminated to the public:

“While the Australian Government helped fund this document, it has not reviewed the content and is not responsible for any injury, loss or damage however arising from the use of or reliance on the information provided herein.”

or

‘While the Australian Government Department of Health has contributed to the funding of this material, the information contained in it does not necessarily reflect the views of the Australian Government and is not advice that is provided, or information that is endorsed, by the Australian Government. The Australian Government is not responsible in negligence or otherwise for any injury, loss or damage however arising from the use of or reliance on the information provided herein’.

- 18.6 Where the Activity includes production of a publication, the Provider must provide MPH N with a final copy of the publication prior to it being published and must comply with the Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.0 and the World Wide Web Access: Disability Discrimination Act Advisory Notes Version 4.0 (2010) issued by the Australian Human Rights Commission.

#### **Acknowledgement of support**

- 18.7 The Provider must acknowledge the financial and other support that it receives from MPH N and the Funding Body in relation to the Activity:
- 18.7.1 in all publications, promotional and advertising materials and public announcements, made or carried out by the Provider or otherwise on behalf of MPH N and in any product, process or invention developed as a result of the Activity;
- 18.7.2 in a form that is approved by the Funding Body before the publication of the acknowledgement,
- except to the extent that the Provider is notified otherwise by MPH N or the Funding Body.
- 18.8 Without limiting this clause 17, the Provider must comply with any branding or publication guidelines provided by MPH N in relation to the Activity.

### **19. Dispute resolution**

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- 19.1 A party must not start any Claim in respect of a dispute arising under this agreement unless it has complied with this clause, except to seek urgent interlocutory relief.
- 19.2 A party claiming that there is a dispute must serve a notice on the other party to the dispute giving details of the dispute.
- 19.3 For 10 Business Days after notice is given the parties must use their best efforts to resolve the dispute.
- 19.4 If the parties are unable to resolve the dispute in accordance with clause 18.3 or a longer period as agreed, the dispute must be referred for mediation at the request of any party to:

- 19.4.1 a mediator agreed by the parties; or
- 19.4.2 if the parties are unable to agree, a mediator nominated by the President of the Law Society or their authorised nominee.
- 19.5 Each party must bear its own costs of complying with this clause and the parties must bear the costs of the mediator equally.
- 19.6 Any information disclosed during mediation must be kept confidential and must not be used except to attempt to resolve the dispute by negotiation.
- 19.7 If the dispute is not resolved within 25 Business Days after the appointment of a mediator, any party who is not in breach of this clause may terminate the mediation process by serving notice on the other parties and the mediator.
- 19.8 If notice is served in accordance with clause 18.7, any party may start a Claim to resolve the dispute.
- 19.9 If a party breaches this clause, any other party may start a Claim in respect of the dispute at any time.
- 19.10 Unless otherwise agreed or determined under a dispute resolution process under this clause, the parties must continue to perform their obligations under this agreement despite the operation of this clause.

## **20. Termination and variation**

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- 20.1 This agreement terminates on the expiry of the Term or when terminated under this clause
- 20.2 The Payments under this agreement are subject to the Funding Deed. If the Funding Body does anything that changes the Funding Deed or affects this agreement or the Activity, MPH N may in its sole discretion, by notice to the Provider, terminate or vary this agreement. A variation under this clause will not terminate this agreement:
- 20.3 If MPH N issues a notice reducing the scope of the Activity or terminating the agreement under clause 19.2, the Provider must:
  - 20.3.1 stop performing the Activity as specified in the notice and take steps to minimise losses, costs and expenses resulting from the reduction in scope or termination; and,
  - 20.3.2 continue performing the Activity or part of an Activity that is not affected by the notice.
- 20.4 MPH N may terminate the agreement immediately by notice to the Provider or terminate all or part of an Activity if any of the termination events in clause 20.5 occur.
- 20.5 A termination event happens if the Provider:
  - 20.5.1 repeatedly or persistently breaches this agreement;
  - 20.5.2 commits a Serious Breach;
  - 20.5.3 breaches any provision of this agreement and MPH N considers that the breach cannot be rectified;
  - 20.5.4 breaches any provision of this agreement and does not rectify the breach within 14 days after receiving MPH N's notice to do so;
  - 20.5.5 fails to submit a report in the form, and containing the information, required by this agreement and fails to rectify this within 14 days of being notified to do so by MPH N;

- 20.5.6 submits a report that is incomplete or that MPHNN, acting reasonably, considers is inadequate and fails to rectify this within 14 days of being notified to do so by MPHNN;
- or, if MPHNN
- 20.5.7 considers that its decision to enter this agreement was affected by a statement in the Provider's proposal that was incorrect, incomplete, false or misleading;
- 20.5.8 is satisfied on reasonable grounds that the Provider is unable or unwilling to satisfy the terms of this agreement;
- 20.5.9 considers that a conflict has arisen and it cannot be satisfactorily resolved or dealt with;
- 20.5.10 considers that an Activity poses a threat to the health, safety or well-being of any person; or
- 20.5.11 considers, in respect of an Activity, that the Provider's purposes and actions are no longer compatible with the aim of the Activity;
- 20.5.12 considers acting reasonably that the objective of this agreement is not being achieved.
- 20.6 Either party may terminate this agreement immediately by notice in writing if an Insolvency Event occurs in respect of the other party.
- 20.7 Upon receipt of a notice of termination or reduction the Provider must:
  - 20.7.1 immediately cease performance of any Activity as required by the notice, except to the extent that doing so could reasonably be expected to cause or contribute to immediate harm to any person;
  - 20.7.2 take all reasonable steps to minimise Costs to either party from that termination or reduction and to protect MPHNN's Property; and
  - 20.7.3 in the case of reduction in the scope of Activity under this agreement, continue to perform any part of this agreement not affected by the notice.
- 20.8 If this agreement terminates or there is a reduction in the scope of Activity the Provider agrees to do all things reasonably necessary or convenient to assist MPHNN in the effective further management of any persons affected by the termination or reduction and will not be entitled to any compensation as a result of the reduction or termination or assistance provided under this clause 19.
- 20.9 Termination of this agreement is without prejudice to any right of action or remedy which has accrued or which may accrue in favour of MPHNN.
- 20.10 The Provider must notify MPHNN in writing of any actual or anticipated default or error on the part of the Provider in connection with this agreement immediately if the Provider becomes aware of such circumstance.
- 20.11 In the event of termination, any amounts paid in advance by MPHNN to the Provider for Activity yet to be performed must be repaid to MPHNN within 7 days of the date of termination.
- 20.12 Where MPHNN purports to terminate under clause 19.5 and the termination is found by a competent authority not to be a proper termination under that clause, then the termination will be deemed to be a termination under clause 19.2 to the extent the conditions for such termination were present at the time of the purported termination.

## Variation

- 20.13 Except as otherwise provided by this clause, a variation must be:
- 20.13.1 in writing signed by the parties and in accordance with the variations process described in the Schedule; or
  - 20.13.2 MPHN may notify the Provider in writing of a mandatory variation. If the Provider is unwilling or unable to comply with this agreement as varied, the Provider may by notice in writing within 14 days, terminate this agreement with termination taking effect 14 days later. If the Provider does not terminate this agreement the Provider is deemed to have accepted the variation.

## 21. Restrictive covenant

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- 21.1 The Provider acknowledges that the restrictions in this clause are reasonable and necessary to protect the Confidential Information and trade connections of MPHN and that damages may not be an adequate remedy for breach of any of them.
- 21.2 The Provider must not during the term and for 12 months from the termination or expiry of the term entice, encourage, induce or in any other way without limitation assist any of MPHN's Staff to leave MPHN's employment or engagement (or attempt to do so).
- 21.3 Nothing in this agreement shall prevent the Provider from providing further or ongoing health care to any Patient following termination of this agreement where medically appropriate health care is requested by the Patient.
- 21.4 The Provider must take all lawful and reasonable steps to ensure that its Staff (past, present or future) do not engage in any conduct which, if undertaken by or for the Provider, would cause the Provider to breach this clause 20.

## 22. Notices

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- 22.1 A notice must be:
  - 22.1.1 in writing;
  - 22.1.2 signed by the party serving it; and
  - 22.1.3 sent to the contact persons noted on the front page of this agreement or as later notified in writing by a party.
- 22.2 Notices may be served by:
  - 22.2.1 email;
  - 22.2.2 pre-paid mail; or
  - 22.2.3 personal delivery.
- 22.3 A notice will be taken to have been received:
  - 22.3.1 if sent by email, on the date shown on the transmission receipt if available or otherwise on the date the email is sent (unless notice of incomplete transmission is received);
  - 22.3.2 if sent by mail, on the fifth Business Day after posting; or
  - 22.3.3 if delivered personally, on the Business Day it is delivered.
- 22.4 A notice must be served between 9am and 5pm on a Business Day or it will be taken to have been received on the following Business Day.

## **23. General**

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### **Acknowledgment**

23.1 The Provider acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the Ombudsman Act 1976 (Cth) and subject to investigation by the Ombudsman under that Act at the cost of the Provider.

### **Consent**

23.2 Where this agreement requires MPHNS consent, MPHNS prior written consent is required.

### **GST**

23.3 All money payable under this agreement is exclusive of GST unless specified.

### **Waiver**

23.4 MPHNS failure to exercise, or delay in exercise of, a right or power does not operate as a waiver of that right or power and does not preclude the future exercise of that right or power.

23.5 A waiver must be in writing and served in accordance with clause 21.

### **Amendment**

23.6 An amendment of this agreement must be in writing and signed by the parties.

### **Severability**

23.7 If any part of this agreement is or becomes invalid, illegal or unenforceable, that part will be excised from this agreement and will not affect the validity of the remaining clauses.

### **Jurisdiction**

23.8 This agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

### **Counterparts**

23.9 This agreement may be executed in counterparts. All executed counterparts constitute one document.

23.10 If this agreement is executed in counterparts each party must send the original it has signed to the other party within 5 Business Days.

### **Survival**

23.11 All terms of this agreement that are capable of operating after expiry or termination will do so, except and only to the extent expressly stated otherwise in this agreement.

23.12 Clauses 2.1.7, 3, 4, 5.1.2, 1, 7, 8, 9, 10, 13, 16.3, 17, 19, 20, 21, 22, 23 and 24 expressly survive expiry or termination of this agreement.

### **Good faith**

23.13 Each party agrees to act in good faith in any action required by, or permitted under, this agreement.

## Remedy

23.14 Each party acknowledges that:

23.14.1 the other party may suffer financial and other loss and damage if it breaches this agreement;

23.14.2 monetary damages may be an insufficient remedy; and

23.14.3 a party may seek injunctive or interlocutory relief to prevent a breach of this agreement and compel specific performance of the other party's obligations, in addition to any other remedy.

## Independent advice

23.15 Each party has had the opportunity to seek independent legal and financial advice before signing this agreement.

## Set off

23.16 MPH N may set-off against any amount payable by MPH N under this agreement, any debt or sum owing to MPH N by the Provider.

## Contra proferentem

23.17 This agreement is not to be construed against a party on the basis that they were responsible for preparing it.

## Entire agreement

23.18 This agreement constitutes the entire agreement between the parties and supersedes all prior communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this agreement.

23.19 The Provider represents and warrants that it has not relied on any representation or conduct of MPH N in connection with this agreement, other than the express terms of this document.

## 24. Definitions

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24.1 Unless otherwise indicated these terms mean:

ABN	Australian Business Number
Activity	the activity described in the Schedule
Activity Budget	a revenue and operating expenses budget and an annualised revenue and operating budget in a form approved by MPH N
Activity Material	means Material created in the course of the Activity (not including MPH N Data or Existing Material) or which is required to be provided to MPH N or the Funding Body as part of the Activity or Material derived from that Material
Activity Plan	a plan in a form approved by MPH N which identifies how the Activity will be delivered
Approved Activity Budget	an Activity Budget approved by MPH N
Approved Annual Activity Plan	an Annual Activity Plan approved by MPH N

Authority	any governmental authority, semi governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity that has jurisdiction where the Activity are carried out
Business Day	any day on which banks are open for trading in New South Wales except a Saturday, Sunday or public holiday
Child	an individual under the age of 18 years
Claim	any action, claim, suit, demand, proceedings, whether actual or threatened, including any statutory procedure for the recovery of money
Commencement Date	as specified in the Schedule
Commonwealth Material	any Material: (a) provided by the Department for the purpose of this agreement; or (b) copied or derived from Material referred to in paragraph (a) of this definition, including any Intellectual Property Rights in that Material
Completion Date	the date specified in the Schedule or such other date, in the case of an extension or variation to this agreement
Confidential Information	any information provided by MPH N or any of its personnel to the Provider or any of its Staff, or otherwise obtained by the Provider or any of its Staff, whether obtained before or after execution of this agreement, in relation to the Activity or this agreement. It includes: (a) any information relating to any person, including patients and staff which is protected by laws relating to privacy; (b) financial information or internal management information; (c) marketing information including customer and supplier details and marketing plans of MPH N; (d) trade secrets, know-how, plans, strategic plans or business operations or systems; and (e) information which is capable of protection at law or equity as confidential information.
Conflict	any matter, circumstance, interest or activity involving or affecting the Provider or Provider's Staff which may or may appear to impair the Provider's (including Provider's Staff) ability to perform an activity diligently, fairly and independently and includes a conflict between the interests of the Provider and MPH N or the Funding Body
Consent Document	A consent document pursuant to clause 8
Costs	includes all Loss, damage, costs, contributions and expenses, including legal costs and expenses incurred in commencing, defending or settling any Claim
Criminal or Court Record	a record of an Other Offence
Department	Commonwealth Department of Health, or such entity as may replace it from time to time
Existing Material	means Material that is developed before this agreement starts including adaptation modification or development of those materials in

	the course of performing this agreement or material that is developed independently of this agreement
Funding Body	the persons or entities that provide funding to MPH N in connection with a Funding Deed as well as other arrangements
Funding Deed	a deed or other agreement between MPH N and the Funding Body or any one of them amended or varied or otherwise in force from time to time pursuant to which MPH N receives funding for the Activity or pursuant to which the Activity or part of it is facilitated or enabled MPH N
Grant Funds	the amounts received by MPH N from the Funding Body which are payable to the Provider for the provision of the Activity in accordance with the Schedule and the agreement
GST	as defined in the GST Law being A New Tax System (Goods and Services Tax) Act 1999 (Cth);
Health Service	as defined in the Privacy Act
Intellectual Property Rights	all rights in copyright, patents, registered and unregistered trademarks, designs, trade secrets, trade, business or company names, confidential or other proprietary rights or any rights to apply for or register such rights (whether in Australia or anywhere else in the world)
Insolvency Event	includes in relation to a party: <ul style="list-style-type: none"> <li>(a) coming under a form of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or having an order made placing the party under external administration;</li> <li>(b) being unable to pay all the party's debts as and when they become payable or failing to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);</li> <li>(c) where proceedings are initiated with a view to obtaining an order for winding the party up, or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for winding the party up;</li> <li>(d) the party becoming bankrupt or entering into a scheme of arrangement with creditors;</li> <li>(e) dying or becoming subject to any provision of a law relating to mental health; and,</li> <li>(f) anything analogous to, or of a similar effect to, the circumstances described above.</li> </ul>
Interest	interest calculated on a daily compounding basis at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia)
Law	includes Acts, Ordinances, regulations, by-laws, orders, awards, and proclamations in the Jurisdiction where the Activity is being carried out, certificates, licences, consents, permits, approvals, industry codes of practice published by recognised industry bodies, Australian Standards and requirements of government, semi governmental and professional bodies
Law Society	the Law Society of New South Wales or any body or authority which replaces it or exercises its functions

Loss	all losses, damages, liabilities, claims and expenses (including legal fees on a solicitor and client basis)
Material	any thing in relation to which Intellectual Property Rights arise
MPHN	firsthealth Ltd trading as the Murrumbidgee Primary Health Network, and includes its directors officers employees, contractors and agents
MPHN Data	means any data or information in any form that is provided to a Provider by or on MPHN's behalf or which is stored, process or generated by MPHN or by a Provider on MPHN's behalf in the course of performing this agreement but excludes Systems Metadata
MPHN Material	any Material: (a) provided by MPHN for the purpose of this agreement; or (b) copied or derived from Material referred to in paragraph (a) of this definition, including any Intellectual Property Rights in that Material
MPHN Property	includes MPHN's Material and any property or assets (whether tangible or intangible) made accessible or provided to the Provider by MPHN in connection with this agreement (whether owned by MPHN or not)
Month	a calendar month
Open Access Licence	a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Funding Body or Australian Government open access licence and any creative commons attribution licence (see <a href="http://creativecommons.org.au/learn-more/licences">http://creativecommons.org.au/learn-more/licences</a> )
Other Offence	In relation to any Relevant Person, a conviction, finding of guilt, on the spot fine 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 other prohibited substance; (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 in paragraphs a to c.
Party	a party to this agreement, unless the context suggests otherwise
Patient	an individual in respect of whom Activity are performed by the Provider under this agreement and includes a client
Personal Information	as defined in applicable Privacy Laws
Police Check	a formal enquiry made to the relevant police authority in each Australian State or Territory in which the Provider knows that the Relevant Person has resided that is designed to obtain details of their criminal conviction or finding of fault in all places (within and outside Australia)
Privacy Act	Privacy Act (Cth) 1988, including any Regulations made under it

Privacy Laws	the laws governing privacy as applicable in New South Wales and the Commonwealth of Australia, including any associated rules, codes of practice and guidelines made under those laws
Provider	the Provider noted on the front page of this agreement and includes the Provider's officers, Staff, partners, volunteers, or agents
Relevant Person	a natural person who is actual or potential Staff, volunteer, agent of a Provider
Representatives	persons or organisations acting for or on behalf of MPHNN and includes MPHNN's employees, agents or consultants
Risk Management Plan	a plan in a form approved by MPHNN that identifies risks the Provider may encounter in delivering the Activity and identifies how the Provider will mitigate and manage those risks
Schedule	is the schedule to this agreement
Serious Breach	includes: <ul style="list-style-type: none"> <li>(a) breach or failure to comply with a law, professional standard or registration requirement;</li> <li>(b) serious or wilful breach of any material obligation of the agreement or any lawful and reasonable conduct requirement, policy or procedure of MPHNN, whether by the Provider or any member of the Provider's Staff;</li> <li>(c) if the Provider is found guilty of a criminal or professional conduct offence; or</li> <li>(d) such conduct of the Provider or the Provider's Staff that in the reasonable opinion of MPHNN is likely to bring the reputation of MPHNN into disrepute.</li> </ul>
Serious Offence	<ul style="list-style-type: none"> <li>(a) a crime or offence involving the death of a person;</li> <li>(b) a sex related offence or a crime, including sexual assault (whether against an adult or child), child pornography, or an indecent act involving a child;</li> <li>(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</li> <li>(d) an attempt to commit a crime described in (a) to (c) above</li> </ul>
Serious Record	a conviction or any finding of guilt regarding a Serious Offence
Staff	includes the Provider's employees, Subcontractors, agents, officers and representatives
Subcontract	the agreement under which a Subcontractor is engaged
Subcontractor	in respect of an Activity, any contractor, person or organisation who is engaged by the Provider to undertake any part of the Activity;
Supplementary Conditions	the terms and conditions expressly stated as such in the Schedule
Systems Metadata	means data which is embedded in the Provider's systems and unable to be separated and transferred to MPHNN where that data: is generated automatically in the course of operating the Provider's business and systems and does not relate specifically to MPHNN or the Funding Body

Term	the period commencing on the Commencement Date and expiring on the earlier of the Completion Date or the date of termination
Transition Plan	a plan in a form approved by MPH N which clearly identifies how the Provider will, if required: <ul style="list-style-type: none"> <li>(a) decommission the Activity in an orderly fashion;</li> <li>(b) transition the delivery of the Activity to another Provider; and</li> <li>(c) ensure the continuity of care for any individual receiving care as a part of the Activity;</li> </ul>
Vulnerable Person	a Child or an individual aged 18 years or above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason including age, physical or mental illness, trauma or disability, pregnancy, the influence or past or existing use of alcohol, drugs or substances or any other reason
WHS	work health and safety

## 25. Interpretation

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- 25.1 Unless otherwise indicated the following rules of interpretation apply:
- 25.1.1 headings are for convenience only and do not affect interpretation;
  - 25.1.2 words including defined terms importing the singular include the plural and conversely;
  - 25.1.3 a word importing a gender includes the other gender;
  - 25.1.4 a reference to a person includes an individual, partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;
  - 25.1.5 a reference to a party is to a party to this agreement, being MPH N and the Provider and includes their successors and permitted assigns;
  - 25.1.6 a reference to this agreement is to this document as executed and varied, including the schedules and any subsequent schedules signed by both MPH N and the Provider;
  - 25.1.7 a reference to a schedule or clause is to a schedule to, or clause of, this agreement;
  - 25.1.8 a reference to law or legislation includes any statutory amendments or replacement and any subordinate or delegated legislation;
  - 25.1.9 a reference to a right or obligation of any 2 or more persons confers that right or imposes that obligation jointly and severally;
  - 25.1.10 “include” and other forms of the word are not words of limitation; and
  - 25.1.11 a reference to “\$” or “dollars” means Australian dollars and a reference to “payment” means payment in Australian dollars.
- 25.2 If there is any conflict or inconsistency, the provisions in this agreement take priority in the following order:
- 25.2.1 the Supplementary Conditions (if any) in the Schedule;
  - 25.2.2 Part A of this agreement;
  - 25.2.3 the balance of the Schedule;

25.2.4 any annexures or attachments to the Schedule

25.2.5 any documents incorporated by reference into the above documents.

Subject to change