

STANDARD TERMS AND CONDITIONS – AUXILIARY SERVICES

Current as at 1 November 2023

Part A: Head Agreement

1. Agreement

- 1.1 The Provider agrees to provide the Activity as set out in this agreement.
- 1.2 MPH N agrees to pay the Provider for providing the Activity as set out in this agreement.

2. Provider's obligations

- 2.1 The Provider must:
 - 2.1.1 perform the Activity with due care and skill to the standard expected of a person skilled in the delivery of the Activity;
 - 2.1.2 comply with MPH N's reasonable directions including in relation to Conflicts;
 - 2.1.3 comply with all Laws that apply to delivery of the Activity; and
 - 2.1.4 effect and maintain all insurances in respect of the Activity required by Law and
 - (a) at least \$20 million for public liability;
 - (b) all insurances specified in the Schedule (if any);
 - 2.1.5 preserve, protect, and enhance the goodwill of the business and reputation of MPH N; and
 - 2.1.6 comply with MPH N's reasonable directions including providing all reasonable assistance necessary for MPH N to comply with the Funding Deed or reasonable direction from the Funding Body.

Requirements

- 2.2 The Provider must comply with the requirements set out in the Schedule.

Planning and management of the Activity

- 2.3 The Schedule may require the Provider to prepare draft plans including:
 - 2.3.1 Activity Plan;
 - 2.3.2 Activity Budget;
 - 2.3.3 Transition Plan; or
 - 2.3.4 Risk Management Plan.
- 2.4 The Provider must:
 - 2.4.1 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
 - 2.4.2 amend draft plans as required by MPH N.

- 2.5 MPHN will approve plans in its discretion. The Provider must perform the Activity in accordance with approved plans.
- 2.6 The Provider must provide updated plans as required by the Schedule.

Key performance indicators and evaluation activities

- 2.7 The Provider must endeavour to meet key performance indicators set out in the Schedule.
- 2.8 The Provider must do the evaluation activities set out in the Schedule and otherwise assist MPHN as requested to evaluate the Activity.
- 2.9 The Provider will, if requested, provide MPHN with access to the Provider's records and comply with reasonable requests to substantiate reports provided to MPHN and information provided can be provided to the Funding Body.

Data collection and reporting

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

Schedule of deliverables and payments

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

Vulnerable persons

- 2.14 If the Activity involves working with a Vulnerable Person, the Provider must comply with any requirements set out in the Schedule or directions from MPHN in relation to working with Vulnerable Persons.

3. Provider's warranties

- 3.1 The Provider warrants to MPHN that:
 - 3.1.1 where it is a corporation, it is duly incorporated;
 - 3.1.2 it has full power and authority to enter and perform this agreement;
 - 3.1.3 it has duly and validly authorised the execution of this agreement;
 - 3.1.4 entering and performing this agreement doesn't and won't 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 MPHN or a 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 in this agreement is correct;
 - 3.1.8 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

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

5. Subcontracting

- 5.1 The Provider must not assign or sub-contract any part of the Activity without the prior written consent of MPH N which may be withheld or conditioned in any manner MPH N sees fit.
- 5.2 The Provider remains solely liable for the provision of the Activity despite any assignment or subcontracting.
- 5.3 The Provider must ensure that:
 - 5.3.1 any Subcontract is consistent with the Provider's obligations to MPH N and includes any provision reasonably required by MPH N;
 - 5.3.2 in any contract with a Subcontractor includes provisions with the effect that:
 - (a) the Provider has a right of termination which is consistent with and takes into account MPH N's rights of termination under this agreement;
 - (b) the Subcontractor is required to comply with the obligations in this agreement relating to intellectual property, data, privacy, confidential information, record keeping, work health and safety and publications, as relevant, as if it were the Provider; and
 - (c) the Subcontractor must have the necessary relevant expertise and the appropriate types and amounts of insurance to perform the Activity.

6. Payments

- 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.

7. Intellectual property and data

- 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 If 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 MPH N owns or controls all MPH N Data from the time it is created and it is MPH N's Confidential Information.
- 7.9 MPH N grants the Provider a licence to use MPH N 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 this agreement and performance of the Provider's obligations under this agreement.
- 7.10 While MPH N Data is in the Provider's possession or is managed by the Provider, the Provider must enable MPH N to access or extract the MPH N Data and the Provider does not gain any other rights to MPH N Data.
- 7.11 The Provider may analyse the MPH N 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 MPH N consent before using MPH N Data for any other purposes, whether in identified or de-identified form.
- 7.12 The Provider must not transfer MPH N Data outside Australia.
- 7.13 The Provider must comply with any requirements of the Funding Body in relation to MPH N Data.
- 7.14 The Provider must manage MPH N Data in accordance with any requirements in the Schedule including policies, standards or accessibility requirements.

8. Privacy

Protection of Personal Information

- 8.1 In undertaking the Activity, the Provider must:
- 8.1.1 not do anything that would cause MPH N or the Funding Body to be in breach of Privacy Laws;
 - 8.1.2 if MPH N 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 MPH N's directions in relation to privacy and Personal Information including comply with any direction from MPH N 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 MPH N 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 consent to disclose Personal Information it collects or stores in connection with the Activity and MPH N may prescribe the form of consent document for this purpose.

Personal Information of the Provider

- 8.3 MPH N 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.
- 8.4 The Provider consents to MPH N 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.
- 8.5 The Funding Body may disclose information about the Provider to and receive information about the Provider to other government agencies or entities.

9. Indemnity and liability

- 9.1 The Provider indemnifies MPH N, its Representatives and the Funding Body against any Loss arising directly or indirectly from the Provider's breach of this agreement, provision of false or misleading information, negligence or wilful act or omission.
- 9.2 MPH N indemnifies the Provider against any Loss arising directly or indirectly from MPH N breach of this agreement, negligence or wilful act or omission.
- 9.3 The Provider must immediately notify MPH N if it becomes aware of any Claim or expected, anticipated, potential or threatened claim that may affect MPH N.

10. Confidential information

- 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 MPH N 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 the 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 If requested by MPH N, the Provider must arrange for its Staff to execute a confidentiality deed imposing similar obligations in this clause on the Staff directly.
- 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 on request by MPH N arrange for Staff including Subcontractors to provide a written undertaking in a form acceptable to MPH N relating to the use and non-disclosure of any information provided by a Funding Body.
- 10.7 The obligations in this clause continue after the expiry or termination of this agreement and in perpetuity, unless some other period is provided elsewhere in this agreement.

11. Access to documents and reporting

- 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. MPH N's Property

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

13. Publications, communication and acknowledgement of support

Publications and communications requiring consent

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

Restrictions on publications and communications.

- 13.2 The Provider must not use MPHNS or the Funding Body's logo in connection with the Activity without MPHNS consent.

- 13.3 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 consent.

- 13.4 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.

- 13.5 Where the Funding Body (or one of them) is the Department, the Provider must ensure that:

- 13.5.1 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.'

- 13.5.2 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'.

- 13.6 Where the Activity includes production of a publication, the Provider must provide MPHNS 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

14. Dispute resolution

- 14.1 Subject to clause 15, 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.
- 14.2 A party claiming that there is a dispute must serve a notice on the other party to the dispute giving details of the dispute.
- 14.3 For 10 Business Days after notice is given the parties must use their best efforts to resolve the dispute.
- 14.4 If the parties are unable to resolve the dispute in accordance with clause 14.3 or a longer period as agreed, the dispute must be referred for mediation at the request of any party to:
 - 14.4.1 a mediator agreed by the parties; or
 - 14.4.2 if the parties are unable to agree, a mediator nominated by the President of the Law Society or their authorised nominee.
- 14.5 Each party must bear its own costs of complying with this clause and the parties must bear the costs of the mediator equally.
- 14.6 Any information disclosed during mediation must be kept confidential and must not be used except to attempt to resolve the dispute by negotiation.
- 14.7 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.
- 14.8 If notice is served in accordance with clause 14.7, any party may start a Claim to resolve the dispute.
- 14.9 If a party breaches this clause, any other party may start a Claim in respect of the dispute at any time.
- 14.10 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.

15. Termination and variation

- 15.1 This agreement terminates on the Completion Date
- 15.2 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.
- 15.3 If MPH N issues a notice reducing the scope of the Activity or terminating this agreement under clause 15.2, the Provider must:
 - 15.3.1 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
 - 15.3.2 continue performing the Activity that are not affected by the notice.
- 15.4 MPH N may terminate or vary this agreement immediately by notice to the Provider if any of the termination events in clause 15.5 occur.

- 15.5 A termination event happens if the Provider:
- 15.5.1 repeatedly or persistently breaches this agreement;
 - 15.5.2 commits a Serious Breach;
 - 15.5.3 breaches any provision of this agreement and MPH N considers that the breach cannot be rectified;
 - 15.5.4 breaches any provision of this agreement and does not rectify the breach within 14 days after receiving MPH N's notice to do so;
- or, if MPH N
- 15.5.5 considers that its decision to enter this agreement was affected by a statement by the Provider's that was incorrect, incomplete, false or misleading;
 - 15.5.6 is satisfied on reasonable grounds that the Provider is unable or unwilling to satisfy the terms of this agreement;
 - 15.5.7 considers that a Conflict has arisen and it cannot be satisfactorily resolved or dealt with;
 - 15.5.8 considers acting reasonably that the objective of this agreement is not being achieved.
- 15.6 Either party may terminate this agreement immediately by notice in writing if an Insolvency Event occurs in respect of the other party.
- 15.7 The Schedule may include provisions in relation to termination.
- 15.8 Upon receipt of a notice of termination or reduction the Provider must:
- 15.8.1 immediately cease performance of any part of the Activity as required by the notice;
 - 15.8.2 take all reasonable steps to minimise Loss to either party from that termination or reduction and to protect MPH N's Property.
- 15.9 If this agreement is terminated prior to the Completion Date, MPH N is only required to make a pro-rata payment for the period up until the date of termination.
- 15.10 Termination of this agreement is without prejudice to any right of action or remedy which has accrued or which may accrue in favour of MPH N.
- 15.11 The Provider must notify MPH N in writing of any actual or anticipated default or error on the part of the Provider in connection with this agreement immediately the Provider becomes aware of such circumstance.
- 15.12 In the event of termination, any amounts paid in advance by MPH N to the Provider for activities yet to be performed must be repaid to MPH N within 7 days of the date of termination.
- 15.13 Where MPH N purports to terminate under clause 15.2 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 15.2 to the extent the conditions for such termination were present at the time of the purported termination.

Variation

- 15.14 Except as otherwise provided by this clause, a variation must be:
- 15.14.1 in writing signed by the parties and in accordance with the variations process described in the Schedule; or

15.14.2 MPH N 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.

16. Notices

- 16.1 A notice must be:
- 16.1.1 in writing;
 - 16.1.2 signed by the party serving it; and
 - 16.1.3 sent to the contact persons noted on the front page of this agreement or as later notified in writing by a party.
- 16.2 Notices may be served by:
- 16.2.1 email;
 - 16.2.2 pre-paid mail; or
 - 16.2.3 personal delivery.
- 16.3 A notice will be taken to have been received:
- 16.3.1 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);
 - 16.3.2 if sent by mail, on the fifth Business Day after posting; or
 - 16.3.3 if delivered personally, on the Business Day it is delivered.
- 16.4 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.

17. General

Acknowledgment

- 17.1 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.

Consent

- 17.2 Where this agreement requires MPH N's consent, MPH N's prior written consent is required.

Variation

- 17.3 Variation of this agreement, except under clause 15, is not effective unless made in writing and signed by each party.

GST

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

Waiver

- 17.5 MPH N's 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.

17.6 A waiver must be in writing and served in accordance with clause 16.

Severability

17.7 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

17.8 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

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

17.10 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

17.11 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.

17.12 Clauses 3, 4, 5.2, 12.3, 12.1, 15, 16, 17, 18 and 19 expressly survive expiry or termination of this agreement.

Good faith

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

Remedy

17.14 Each party acknowledges that:

17.14.1 the other party may suffer financial and other Loss and damage if it breaches this agreement;

17.14.2 monetary damages may be an insufficient remedy; and

17.14.3 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

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

Set off

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

Contra proferentem

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

Entire agreement

17.18 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.

17.19 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.

18. Definitions

18.1 Unless otherwise indicated these terms mean:

ABN	Australian Business Number
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 is carried out
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
Business Day	any day on which banks are open for trading in New South Wales except a Saturday, Sunday or public holiday
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
Completion Date	the date specified in the Schedule or such other date, in the case of an extension or variation to this agreement, when this agreement ends
Confidential Information	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 the Activity diligently, fairly and independently and includes a conflict between the interests of the Provider and MPHN or the Funding Body
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 MPHN in connection with a Funding Deed as well as other arrangements
Funding Deed	a deed or other agreement or arrangement between MPHN and the Funding Body as amended or varied or otherwise in force from time to time pursuant to which MPHN receives funding for the Activity or pursuant to which the Activity or part thereof of are facilitated or enabled
Grant Funds	the amounts received by MPHN 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)
Intellectual Property Rights	any 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"> • 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 • 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) • 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

- the party becoming bankrupt or entering into a scheme of arrangement with creditors
- dying or becoming subject to any provision of a Law relating to mental health

anything analogous to, or of a similar effect to, the circumstances described above

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	means all losses, damages, liabilities, claims and expenses (including legal fees on a solicitor and client basis)
Material	means 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 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)
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 http://creativecommons.org.au/learn-more/licences)
Personal Information	as defined in applicable Privacy Laws
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	Provider as noted on the front page of this agreement and includes the Provider's officers, employees, partners, volunteers or agents
Representatives	persons or organisations acting for or on behalf of MPH N and includes MPH N's employees, agents consultants
Risk Management Plan	a plan in a form approved by MPH N 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 or schedules to this agreement
Serious Breach	includes: <ul style="list-style-type: none"> (a) breach or failure to comply with a Law, professional standard or registration requirement; (b) serious or wilful breach of any material obligation of the agreement or any lawful and reasonable conduct requirement, policy or procedure of MPH N, whether by the Provider or any member of the Provider's Staff; (c) if the Provider is found guilty of a criminal or professional conduct offence; or (d) such conduct of the Provider or the Provider's Staff that in the reasonable opinion of MPH N is likely to bring the reputation of MPH N into disrepute
Staff	includes the Provider, employees, Subcontractors, agents, officers, representatives and key persons
Subcontractor	in respect of an Activity, any contractor, person or organisation who is engaged by the Provider, to undertake any part of the Activity and Sub-contract means the written agreement under which they are engaged
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 MPH N where that data: is generated automatically in the course of operating the Provider's business and systems and does not relate specifically to MPH N or the Funding Body
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"> (a) decommission the Activity in an orderly fashion; (b) transition the delivery of the Activity to another Provider; and ensure the continuity of care for any individual receiving care as a part of the Activity
Vulnerable Person	a person under the age of 18 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

19. Interpretation

- 19.1 Unless otherwise indicated the following rules of interpretation apply:
- 19.1.1 headings are for convenience only and do not affect interpretation;
 - 19.1.2 words importing the singular include the plural and conversely;
 - 19.1.3 a word importing a gender includes the other gender;
 - 19.1.4 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;
 - 19.1.5 a reference to a party is to a party to this agreement, and includes their successors and permitted assigns;
 - 19.1.6 a reference to this agreement is to this document as executed and varied, including the Schedule and any subsequent schedules signed by both MPH N and the Provider;
 - 19.1.7 a reference to a schedule or clause is to a schedule to, or clause of, this agreement;
 - 19.1.8 a reference to law or legislation includes any statutory amendments or replacement and any subordinate or delegated legislation;
 - 19.1.9 a reference to a right or obligation of any 2 or more persons confers that right or imposes that obligation jointly and severally;
 - 19.1.10 "include" and other forms of the word are not words of limitation; and
 - 19.1.11 a reference to "\$" or "dollars" means Australian dollars and a reference to "payment" means payment in Australian dollars.
- 19.2 If there is any conflict or inconsistency, the provisions in this agreement take priority in the following order:
- 19.2.1 the Supplementary Conditions (if any) in the Schedule;
 - 19.2.2 Part A of this agreement;
 - 19.2.3 the balance of the Schedule;
 - 19.2.4 any annexures or attachments to the Schedule
 - 19.2.5 any documents incorporated by reference into the above documents.