

Private & Confidential

SERVICES AGREEMENT CON[####]

between

WA Primary Health Alliance (WAPHA)

and

Insert Contractor Name (Contractor)

for

[Insert Agreement Title]

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AGREEMENT

Parties to the Agreement:

WA Primary Health Alliance
ABN: 11 602 416 697
Level 2, 1 Hood Street, SUBIACO WA 6008
(WAPHA)

Insert Contractor Name
ABN: Insert ABN
Insert Street Address
(Contractor)

Introduction:

- A. WA Primary Health Alliance Ltd (WAPHA) is responsible for operating the three Primary Health Networks (PHN's) in Western Australia. WA Primary Health Alliance will commission healthcare services via the Primary Health Networks.
- B. The Contracted Provider is a supplier of such services and has represented that it has the requisite skills, resources and experience necessary to supply them.
- C. The Contracted Provider agrees to supply the Services to WAPHA in accordance with the terms and conditions of this Contract.

The Parties agree that by signing this document they enter into the Agreement, which comprises this document and any Schedules and Appendices and any other documents incorporated by reference:

Signed for and on behalf of WAPHA by its duly authorised representative:

Signed for and on behalf of the Contractor by its duly authorised representative:

Signature

Signature

Print Name

Print Name

Date

Date

In the presence of:

In the presence of:

Witness Signature

Witness Signature

Print Witness Name

Print Name

Date

Date

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STANDARD SCHEDULE

Item 1.	Term (clause 3)	
Commencement Date:	Insert date	
End Date:	Insert date	
Item 2.	Contact Details (clause 27.10):	
Party	WAPHA	Contractor
Contact person	Learne Durrington	Insert Name
Telephone	08 6272 4900	Insert Number
Email	learne.durrington@wapha.org.au	Insert Email
Address	Level 2, 1 Hood Street SUBIACO WA 6008	Insert Street Address INSERT SUBURB WA POST CODE
Item 3.	Invoicing Requirements (clauses 17, 19 and 21)	
Frequency of Invoices	Upon satisfactory completion of each Deliverable or as otherwise reasonably directed by WAPHA.	
Invoice Content	<p>Invoices must be addressed to WAPHA's address in Item 2 of the Standard Schedule and include the following information:</p> <ul style="list-style-type: none"> (a) the number of this Agreement; (b) the relevant milestone (c) the correct invoice amount; (d) details of the work that is the subject of the invoice, including the period of time during which the work was carried out; (e) substantiation of approved out of pocket expenses to the reasonable satisfaction of WAPHA; (f) payment method details (either the Contractor's postal address details or EFT bank account details and email address for remittance advice); (g) contact person (including address, email address and telephone number) for accounts queries; and (h) additional information stipulated in the Activity Schedule. <p>If a Supply to which the invoice relates is a Taxable Supply, the invoice must be in the form of a Tax Invoice.</p>	
Submission	<p>Invoices are to be submitted to accounts@wapha.org.au.</p> <p>The subject of the email is to have included in it:</p> <ul style="list-style-type: none"> (a) the name of the Contactor; (b) the Agreement Number; and (c) the word "invoice." 	
Time for Payment	<p>20 Business Days after receipt of:</p> <ul style="list-style-type: none"> (a) a correctly rendered invoice; (b) any supporting documentation reasonably requested by WAPHA; and (c) the funding payment from the Commonwealth corresponding to the delivery of the relevant Services to which the invoice relates. 	
Item 4.	Insurance (clause 16)	
Minimum amount of workers' compensation insurance	As required by Law.	

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Minimum amount of professional indemnity insurance for the Contractor	Not less than \$10 million per claim.
Minimum amount of public liability insurance for the Contractor	Not less than \$20 million per claim.
Minimum amount of professional indemnity insurance for Clinicians	Not less than \$10 million per claim.
Item 5.	Jurisdiction (clauses 1.1 and 27.11)
Jurisdiction	State of Western Australia
Item 6.	Extension of Term (clause 3.3)
Additional Period(s)	Insert Extension Options
Item 7.	Specifications (clause 26)
Specifications	<p>1. Credentials and Registration</p> <p>1.1 The Contractor must, and must ensure that all Clinicians:</p> <ul style="list-style-type: none"> (1) hold such qualifications and other credentials; and (2) maintain, during any period in which they provide Clinical Services under this Agreement, such professional registrations and membership of professional associations, <p>as required by Law or which would otherwise be held or maintained by a prudent and experienced party in the position of the Contractor or Clinician (as relevant), from time to time.</p> <p>1.2 Without limiting section 1.1 of this Item 7 of the Standard Schedule, where any qualification, credential, registration or membership:</p> <ul style="list-style-type: none"> (1) would not have been required under section 1.1 of this Item 7 of the Standard Schedule at the Commencement Date or the first provision of Clinical Services (as relevant); but (2) would subsequently be required under section section 1.1 of this Item 7 of the Standard Schedule at any point during the Term, <p>the Contractor must, and must ensure that all Clinicians, hold that qualification or maintain that registration or membership on the terms of section 1.1 of this Item 7 of the Standard Schedule.</p> <p>2. Practice Accreditation</p> <p>2.1 Subject to section 2.2 of this Item 7 of the Standard Schedule, the Contractor:</p> <ul style="list-style-type: none"> (1) where the Contractor is itself a professional practice, must be and remain for the Term; or (2) where the Contractor is an individual member of a professional practice, must ensure that the professional practice of which the Contractor is a constituent is and remains for the Term, <p>accredited or certified under all relevant standards and quality frameworks applicable to such a professional practice.</p> <p>2.2 Where relevant standards or quality frameworks contemplated by section 2.1 of this Item 7 of the Standard Schedule do not apply to the relevant professional practice at the date of this Agreement, but subsequently come to apply during the Term, the Contractor:</p> <ul style="list-style-type: none"> (1) where the Contractor is itself a professional practice, must do; or

(2) where the Contractor is an individual member of a professional practice, must ensure that the professional practice of which the Contractor is a constituent does,

all things reasonably necessary to become accredited or certified under those standards or quality frameworks, and to remain so for the Term.

3. Clinical Governance Arrangements

3.1 The Contractor must, and must ensure that all Clinicians:

- (1) maintain for the Term arrangements satisfactory to WAPHA (acting reasonably) to ensure that clinical governance is proactively managed; and
- (2) comply with the arrangements contemplated by this section 3 of this Item 7 of the Standard Schedule in the delivery of the Services.

3.2 The clinical governance arrangements contemplated by section 3.1 of this Item 7 of the Standard Schedule must include:

- (1) adoption of standards of practice relevant to the Services;
- (2) staff working to their appropriate scope of practice and within the limits of their qualifications, expertise and experience;
- (3) a suitable complaints process;
- (4) suitable arrangements for the supervision and oversight of individual practitioners;
- (5) a risk and incident management and reporting process; and
- (6) adherence to any policies or procedures communicated by WAPHA to the Contractor in writing from time to time.

3.3 Without limiting section 6 of this Item 7 of the Standard Schedule, the Contractor must, and must ensure that all Clinicians, provide WAPHA all reasonable assistance, including by providing access to documents and to interview Personnel, to allow WAPHA to monitor compliance with the clinical governance arrangements described in sections 3.1 and 3.2 of this Item 7 of the Standard Schedule.

4. Consent to Treatment

4.1 The Contractor must, and must ensure that all Clinicians, when:

- (1) obtaining patient or guardian consent to Clinical Services; and
- (2) documenting that consent,

do so in accordance with the standards required by clause 4 of the Agreement.

5. Health and Safety

5.1 The Contractor must have in place a health and safety system (including relevant policies and procedures):

- (1) as would be reasonably expected of a prudent and experienced contractor providing services similar to the Services; and
- (2) otherwise as reasonably required by PHN.

6. Proof of Compliance

The Contractor must provide WAPHA with documentary evidence of the Contractor and its Clinicians' compliance with this Item 7 of the Standard Schedule as and within the reasonable timeframes required by WAPHA.

TERMS AND CONDITIONS

1. Definitions and interpretations

1.1 Definitions

In this Agreement:

- (1) **Activity** means the Activity described in Item B of the Activity Schedule. If more than one Activity is described in Item B, a reference to an Activity is a separate reference to each Activity described in Item B. Each Activity includes the provision of the Activity Material for that Activity.
- (2) **Activity End Date** means the Activity End Date specified in Item B of the Activity Schedule for an Activity, being the date by which the Activity (other than provision of any Activity Reports due after the Activity End Date) is to be completed.
- (3) **Activity Material** means, in respect of an Activity, any Material (including any Intellectual Property Rights in that Material):
 - (a) created for the purpose of the Activity;
 - (b) provided, or required to be provided, to WAPHA in respect of the Activity (including reports and any other Material that is required to be provided to WAPHA in respect of the Activity); or
 - (c) derived at any time from the Material referred to in paragraphs (a) or (b) of this definition, including any modifications that may be required under clause 9.5(2)(b) but excluding WAPHA Material.
- (4) **Activity Period** means the period between the Activity Start Date and the Activity End Date, during which an Activity (other than provision of any Activity Reports due after the Activity End Date) is to be completed.
- (5) **Activity Schedule** means an Activity Schedule attached to and forming part of this Agreement, and includes any annexures or attachments to the Schedule. If more than one Activity Schedule is included, a reference to an Activity Schedule is a separate reference to each Activity Schedule of this Agreement.
- (6) **Activity Start Date** means the Activity Start Date specified in Item B of the Activity Schedule for an Activity, being the date the Activity is to commence.
- (7) **Agreement** means this document and includes any schedules, appendices and annexures.
- (8) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- (9) **Child** means an individual under the age of 18;
- (10) **Claim** includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at Law or in equity, including for payment of money (including damages) or for an extension of time, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability, breach or for restitution.
- (11) **Clinical Services** means any aspect of the Activity which is of a clinical nature, including any diagnosis, advice or treatment in respect of the health or wellbeing of any person.
- (12) **Clinician** means any Personnel who provides any Clinical Services in connection with this Agreement.
- (13) **Commencement Date** means the date specified in Item 1 of the Standard Schedule.
- (14) **Committed** means, at a particular date, any portion of the Fees for an Activity that:
 - (a) the Contractor is contractually and irrevocably obliged to pay to a third party in respect of any part of an Activity; and
 - (b) are identified in a written contractual arrangement between the Contractor and that third party.
- (15) **Commonwealth** means the Commonwealth of Australia and includes the Department of Health.
- (16) **Confidential Information:**

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- (a) means all information of whatever description, whether in permanently recorded form or not and whether or not belonging to a third party, which is:
 - (i) by its nature confidential; or
 - (ii) designated by WAPHA as confidential; or which
 - (iii) a Party knows or ought to know is confidential,
- (b) but does not include information:
 - (i) that is independently created or rightfully known by, or in the possession or control of, the other Party and not subject to an obligation of confidentiality on the other Party; or
 - (ii) which is or becomes public knowledge (otherwise than as a result of a breach of this Agreement or any other confidentiality obligation); or
 - (iii) required to be disclosed by Law.
- (17) **Criminal or Court Record** means any record of any Other Offence.
- (18) **Day** means a calendar day.
- (19) **Deliverable Date** means any fixed date to be met by the Contractor in performing any of its obligations under this Agreement, as specified in Item F of the Activity Schedule as extended in accordance with this Agreement.
- (20) **Deliverables** means any Activity Material or other item or element of the Activity to be supplied by the Contractor to WAPHA under this Agreement including as specified in Item F of the Activity Schedule.
- (21) **End Date** means the date specified in Item 1 of the Standard Schedule.
- (22) **Existing Material** means in respect of an Activity, all Material in existence prior to the Activity Start Date for that Activity that is:
 - (a) incorporated in;
 - (b) supplied with, or as part of; or
 - (c) required to be supplied with, or as part of, the Activity Material for that Activity and also includes:
 - (i) any Contractor Material specified for the Activity in Item J of the Activity Schedule; and
 - (ii) any Intellectual Property Rights in the above Material,but excludes WAPHA Material.
- (23) **Fees** means fees payable in accordance with clause 18 and Item C and Item F of the Activity Schedule in respect of an Activity.
- (24) **Intellectual Property Rights** or **IPR** means all intellectual property rights, including:
 - (a) plant breeder's right, patents, copyright, rights in circuit layouts, registered designs, trade marks (including goodwill in those marks), domain names and any right to have Confidential Information kept confidential;
 - (b) any application or right to apply for registration of any of the rights referred to in clause 1.1(24)(a); and
 - (c) all rights of a similar nature to any of the rights in clauses 1.1(24)(a) and 1.1(24)(b) which may subsist in Australia or elsewhere,whether or not such rights are registered or capable of being registered.
- (25) **Jurisdiction** means the State or Territory specified in Item 5 of the Standard Schedule.
- (26) **Law** means:

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- (a) any statute, regulation or subordinate legislation of the Commonwealth, the Jurisdiction or local or other government in force in the Jurisdiction, irrespective of where enacted; and
- (b) the common law and the principles of equity as applied from time to time in the Jurisdiction.
- (27) **Losses** means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a Party).
- (28) **Material** includes software, firmware, documented methodology or process, property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
- (29) **Moral Rights** has the meaning given by the Copyright Act 1968 (Cth).
- (30) **Notice** has the meaning given in clause 27.10.
- (31) **Other Offence** means, in relation to any Relevant Person, a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
- (a) an apprehended violence or protection order made against the Relevant Person;
- (b) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property;
- (c) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, a prohibited narcotic or any other prohibited substance;
- (d) a crime or offence involving violence against or the injury, but not the death, of a person;
- (e) a crime or offence involving dishonesty that is not covered by clause 1.1(41)(c); or
- (f) an attempt to commit a crime or offence described in clauses 1.1(31)(a) to 1.1(31)(e).
- (32) **Parties** means the parties to this Agreement being WAPHA and the Contractor and includes their lawful successors and assigns. Any reference to a Party will include, where applicable, any subsidiary controlled by a Party or by the same persons who control that Party.
- (33) **Performance Criteria** means the requirements set out in Item B of the Activity Schedule for each Activity and Deliverable.
- (34) **Personal Information** has the same meaning as in the Privacy Act 1988 (Cth).
- (35) **Personnel** means any natural person who is an employee, officer, agent or professional adviser of a Party and, in the case of the Contractor, of a subcontractor.
- (36) **PHN** means the Primary Health Network via which the WAPHA Commonwealth funding is administered and includes Perth North PHN, Perth South PHN and Country WA PHN.
- (37) **Police Check** means a formal inquiry made to the relevant police authority in each Australian State or Territory that is designed to obtain details of the Relevant Person's criminal conviction or a finding of guilt in all places (within and outside Australia) in which the Contractor knows the Relevant Person has resided.
- (38) **Prior Services** means any early services in respect of the subject matter of this Agreement performed by the Contractor before the Commencement Date and includes any services described as "Prior Services" in Item I of the Activity Schedule.
- (39) **Related Body Corporate** has the same meaning as in the Corporations Act 2001 (Cth).
- (40) **Relevant Person** means a natural person who is an actual or potential officer, employee, volunteer, agent or contractor of the Contractor's organisation.
- (41) **Serious Offence** means:
- (a) a crime or offence involving the death of a person;
- (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;

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- (c) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services; or
 - (d) an attempt to commit a crime or offence described in clauses 1.1(41)(a) to 1.1(41)(c).
- (42) **Serious Record** means a conviction or any finding of guilt regarding a Serious Offence.
- (43) **Services** means the services forming part of an Activity (including, if applicable, Clinical Services) and includes any Deliverables.
- (44) **Specified Personnel** means the Contractor's subcontractors or Personnel specified in Item H of the Activity Schedule.
- (45) **Standard Schedule** means the Schedule entitled "Standard Schedule" attached to and forming part of this Agreement.
- (46) **Term** has the meaning given in clause 3.1.
- (47) **Variation** means any change to the Activity, including any addition, increase, decrease, omission or deletion in, to or from the Activity.
- (48) **Vulnerable Person** means:
- (a) a Child; or
 - (b) 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 part or existing use, of alcohol, drugs or substances or any other reason.
- (49) **WAPHA Funding Agreement** means means the Standard Funding Agreement (March 2015) between the Department and the PHN (published on the Department's website) and the activity schedules for the Program, and any other Department terms and conditions incorporated by reference, as varied from time to time.
- (50) **WAPHA Material** means any Material:
- (a) provided to the Contractor by WAPHA for the purposes of this Agreement; or
 - (b) copied or derived at any time from the Material referred to in paragraph a of this definition, including any Intellectual Property Rights in that Material.
- (51) **WAPHA Representations** means any representations (including by silence) made by WAPHA to the Contractor in respect of the scope or nature of the Activity or any matters the subject of this Agreement.

1.2 Interpretation

- (1) A provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (2) If an act must be done on a specified Day that is not a Business Day, it must be done on or by the next Business Day.
- (3) Words in the singular include the plural and vice versa.
- (4) Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (5) If a period of time is specified and dates from a given Day or the Day of an act or event, it is to be calculated exclusive of that Day.
- (6) Headings are inserted for convenience and do not affect the interpretation of this Agreement.
- (7) To the extent that the Parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Agreement.
- (8) A reference to:

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- (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (b) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (c) a right includes a benefit, remedy, discretion or power;
 - (d) time is to local time in the place where WAPHA's contact person as defined in Item 2 of the Standard Schedule is located;
 - (e) "\$" or "dollars" is a reference to Australian currency;
 - (f) the word "includes", and any variants of that word, will be read as though followed by the words "without limitation";
 - (g) a Party's knowledge is to a standard of knowledge that can be reasonably expected of a Party having made proper enquiries;
 - (h) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the Parties; and
 - (i) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions.
- (9) If there is any conflict or inconsistency between the provisions in documents forming part of this Agreement the documents shall take priority in the following order:
- (a) the Standard Schedule included in this Agreement;
 - (b) the Terms and Conditions of this Agreement; and
 - (c) an Activity Schedule attached to this Agreement.

2. Context of This Agreement

This Agreement is made between WA Primary Health Alliance Ltd (WAPHA) and the Contractor for the performance of each Activity specified in the Activity Schedule. There may be multiple Activity Schedules which may each contain one or more Activities for which Fees are provided under this Agreement.

3. Term of Agreement

3.1 Subject to clause 3.3, this Agreement begins on the Commencement Date and ends on the End Date unless terminated earlier in accordance with clauses 22 or 24.3 (the Term).

3.2 Notwithstanding clause 3.1, all Prior Services are deemed to form part of the Activity and:

- (1) all warranties and acknowledgments that apply to the Activity will apply to the Prior Services; and
- (2) all Prior Services undertaken and money paid in respect of the Prior Services will be deemed to have been performed and paid pursuant to this Agreement.

3.3 WAPHA may by Notice to the Contractor, in its sole and absolute discretion, extend the Term for the additional period(s) specified in Item 6 of the Standard Schedule.

4. Performance of Services

4.1 The Contractor must carry out each Activity in accordance with this Agreement and:

- (1) with due care and skill and to the best of the knowledge and expertise of the Contractor for the benefit of WAPHA;
- (2) in accordance with the Performance Criteria;
- (3) in a professional manner and in accordance with any applicable ethical codes or standards;
- (4) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;
- (5) using the Specified Personnel (if any);

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- (6) in accordance with:
 - (a) all applicable Law; and
 - (b) all applicable governmental policy of which a prudent and experienced Contractor providing the Services should have been aware;
- (7) in accordance with any reasonable directions in relation to the Services given by WAPHA from time to time;
- (8) within its Activity Period and so as to meet the Deliverable Dates and other timeframes specified in the Activity Schedule for that Activity; and
- (9) otherwise in accordance with the provisions of this Agreement.

4.2 The Contractor represents and warrants that:

- (1) it has the right to enter into this Agreement;
- (2) it has all rights, title, licences, interests and property necessary to lawfully perform the Services and grant the rights to WAPHA specified in this Agreement;
- (3) it and its subcontractors and Personnel, including its Specified Personnel, have and will continue to have the necessary experience, skill, knowledge, qualifications and competence to perform the Services efficiently;
- (4) it has the necessary resources, including financial resources, to deliver each Activity and will use those resources to deliver each Activity;
- (5) all information, reports and Activity Material given to WAPHA under this Agreement will be correct, complete and not misleading;
- (6) if the Contractor is a trustee, it enters this Agreement personally and in its capacity as trustee;
- (7) neither it nor any of its Personnel, agents or subcontractors (including Specified Personnel) has any actual or perceived conflict of interest or anticipates such a conflict, relevant to the performance of the Services;
- (8) it will promptly notify and fully disclose to WAPHA any actual or threatened event or occurrence arising during the Term which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Agreement;
- (9) it will promptly notify WAPHA and fully disclose all material information if it becomes subject in any way to the operation of any Law relating to insolvency or bankruptcy;
- (10) no litigation, arbitration, mediation, conciliation or proceedings (including any investigations) are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened, which, if adversely decided, could have an adverse effect on its ability to perform its obligations under this Agreement;
- (11) it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any government agency, including in any tender or application process or in any other agreement;
- (12) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Commonwealth or any government agency which would adversely affect its ability to perform this Agreement; and
- (13) 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 2012 (Cth).

The Contractor acknowledges that WAPHA is entering into this Agreement in reliance on these warranties and representations, which are deemed to be repeated by the Contractor each time a Fee is paid under this Agreement.

4.3 If it becomes evident to the Contractor or WAPHA that anything, including an act or omission of WAPHA or an employee, other contractor, or agent of WAPHA, may delay the carrying out of the Services, that Party must promptly notify the other Party in writing with details of the possible delay and the cause. WAPHA may, at any time, by Notice to the Contractor, extend the time for carrying out the Services or any Deliverable Date for any reason. WAPHA is not required to exercise its discretion under this clause 4.3 for the benefit of the Contractor.

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4.4 Variations to the Services

- (1) WAPHA may:
 - (a) at any time instruct the Contractor to carry out a Variation to the Services in writing; and
 - (b) carry out any Services omitted under clause 4.4(1)(a) either itself or by engaging third parties.
- (2) The Contractor:
 - (a) must not effect a Variation unless that Variation is directed by WAPHA in accordance with clause 4.4(1); and
 - (b) will have no Claim against WAPHA if, contrary to clause 4.4(2)(a), it does effect a purported Variation that is not directed by WAPHA in accordance with clause 4.4(1).
- (3) WAPHA will:
 - (a) consult with the Contractor in good faith on any necessary adjustment to the Fee resulting from any Variation directed under clause 4.4(1); and
 - (b) acting reasonably, adjust the Fee to allow for the relevant Variation.
- (4) Nothing in this clause 4.4 limits WAPHA's rights under clause 27.7(2).

5. Working with Vulnerable Persons

5.1 The Contractor must:

- (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) 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:

- (3) obtain a Police Check for the Relevant Person, except as otherwise agreed by WAPHA;
- (4) confirm that no applicable Commonwealth, State or Territory Law prohibits the Relevant Person from being engaged in a capacity where they may have contact with Vulnerable Persons;
- (5) comply with all other applicable Laws of the place in which that part of the Activity is being conducted in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
- (6) comply with any other conditions reasonably required by WAPHA.

5.2 If a Police Check indicates that a Relevant Person has a Serious Record, the Contractor 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.

5.3 The Contractor agrees:

- (1) if a Police Check indicates that a Relevant Person has a Criminal or Court Record, not to engage, deploy or redeploy that Relevant Person in respect of any part of an Activity that involves working with Vulnerable Persons unless the Contractor has conducted and documented a risk assessment for that Relevant Person in accordance with clauses 5.5 to 5.7;
- (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, to comply with clause 5.3(1) and conduct and document a risk assessment in accordance with clauses 5.5 to 5.7 to determine whether to allow that Relevant Person to continue performing any part of an Activity that involves working with Vulnerable Persons;
- (3) on becoming aware of a Relevant Person being convicted of a Serious Offence, to comply with clause 5.3(1) and immediately cease to deploy the Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person; and
- (4) to document the actions the Contractor will take as a result of conducting a risk assessment.

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- 5.4 The Contractor must promptly notify WAPHA if the Contractor becomes aware of an occurrence specified in clause 5.3 or the Contractor conducts a risk assessment in accordance with clauses 5.5 to 5.7, except to the extent agreed in writing by WAPHA.
- 5.5 The Contractor is wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person who has:
- (1) a Criminal or Court Record;
 - (2) been charged or convicted of any Other Offence;
 - (3) been charged with a Serious Offence,
- to work on any part of an Activity that involves working or contact with Vulnerable Persons.
- 5.6 In undertaking the risk assessment under clause 5.5 in respect of a Relevant Person, the Contractor agrees to take into account the following factors:
- (1) whether the Relevant Person's Criminal or Court Record (or the offence that the Relevant Person has been charged with, or convicted of, as specified in clause 5.3(2)) is directly relevant to the role that he or she will or is likely to perform in relation to an Activity;
 - (2) the length of time that has passed since the Relevant Person's charge or conviction and his or her record since that time;
 - (3) the nature of the offence pertaining to the Relevant Person's charge or conviction and the circumstances in which it occurred;
 - (4) whether the Relevant Person's charge or conviction involved Vulnerable Persons;
 - (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;
 - (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 (or has been charged or convicted as specified in clause 5.3(2)) is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role; and
 - (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.
- 5.7 After taking into account the factors set out in clause 5.6 in respect of a Relevant Person, the Contractor agrees to determine whether it is reasonably necessary to:
- (1) not engage, deploy or redeploy the Relevant Person in relation to an Activity or any part of an Activity;
 - (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;
 - (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
 - (4) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.
- 5.8 As and when required by WAPHA, the Contractor must promptly provide evidence, in a form WAPHA requires, that the Contractor has complied with the requirements of his clause 5.
- 5.9 The Contractor agrees to reflect its obligations under this clause 5 in all subcontracts it enters into in relation to any part of an Activity that involves working with Vulnerable Persons.
- 5.10 Notwithstanding anything else in this Agreement, the Contractor is responsible for all costs associated with compliance with this clause 5.

6. Specified Personnel and Subcontracting

- 6.1 Subcontractors

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- (1) The Contractor must not subcontract any aspect of the provision of the Activity without the prior written approval of:
 - (a) WAPHA, which may be given or withheld in the WAPHA's sole and absolute discretion; and
 - (b) where required, the Commonwealth.
- (2) The subcontractors, if any, specified or referred to in Item G of the Activity Schedule for an Activity are approved by WAPHA to undertake the part of the Activity specified in that Item G of the Activity Schedule.
- (3) If WAPHA requests, the Contractor must provide WAPHA with details of all subcontractors engaged in the performance of each Activity.
- (4) The Contractor must ensure that any subcontractor, Personnel and Specified Personnel approved under this Agreement:
 - (a) has the necessary relevant expertise and appropriate types and amounts of insurance to perform the work it is engaged by the Contractor to perform; and
 - (b) complies with:
 - (i) all applicable Law;
 - (ii) clause 4.2(7) (Conflict of interest);
 - (iii) clause 5 (Working with Vulnerable Persons);
 - (iv) clause 14 (Confidentiality);
 - (v) clause 15 (Protection of Personal Information);
 - (vi) clauses 25.1 to 25.4 (Commonwealth requirements); and
 - (vii) the requirements of this Service Agreement as though the subcontractor were the Contractor in relation to the specific subcontracted services.
- (5) The Contractor is fully responsible for the performance of the Activity even if the Contractor subcontracts any aspect of the provision of the Services.
- (6) Unless WAPHA agrees otherwise in writing, where a subcontractor that is specified or referred to in Item G of the Activity Schedule or is otherwise approved by WAPHA under this clause 6.1 is unable to perform the subcontracted work, the Contractor must notify WAPHA of this inability no later than 5 Days after the Contractor becomes aware of it.
- (7) WAPHA may, at any time:
 - (a) revoke its approval of a subcontractor; and/or
 - (b) require the Contractor to replace a subcontractor,in which case the Contractor must, at no additional cost to WAPHA and at the earliest opportunity, secure a suitable replacement subcontractor, to be approved by WAPHA under this clause 6.1.
- (8) If the Contractor does not comply with its obligations under clause 6.1, WAPHA may terminate the affected Activity or this Agreement in accordance with clause 22.1.

6.2 Specified Personnel

- (1) Except as otherwise specifically agreed in writing by WAPHA, the components of the Activity to be performed by members of the Specified Personnel must be performed exclusively by those members of the Specified Personnel.
- (2) If any of the Specified Personnel become unavailable or refuse to provide those Services, the Contractor must inform WAPHA as soon as possible. Within five (5) Business Days of the Contractor becoming aware that a Specified Personnel is unavailable or refuses to provide the Services, the Contractor must appoint a replacement person of equivalent expertise who must:
 - (a) meet the requirements of this Agreement; and
 - (b) be approved by WAPHA in writing.

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- (3) The Contractor will provide WAPHA, upon request in writing, with full particulars as to the qualifications and relevant experience of any proposed replacement person.
- (4) The Contractor warrants that the persons engaged in the performance of the Services are or will be, while they perform those Services, employed or contracted by it and that such persons shall be suitably qualified and experienced for the performance of the duties allocated to them in connection with this Agreement.
- (5) WAPHA may at any time require the Contractor to remove any of its Personnel, including Specified Personnel, from performing any of the Services.

7. Performance Assessment

- 7.1 Each element of the Activity is subject to assessment by WAPHA against the relevant Performance Criteria.
- 7.2 Without limiting any other rights of WAPHA under this Agreement, if WAPHA considers that all or part of the Services do not meet the Performance Criteria, WAPHA must notify the Contractor within five (5) Business Days (or such other period as specified in Item B of the Activity Schedule) of assessing the Activity against the Performance Criteria.
- 7.3 WAPHA must include reasons as to why it considers the Services do not meet the Performance Criteria in the Notice given under clause 7.2.
- 7.4 If WAPHA notifies the Contractor that all or part of the Activity does not meet the Performance Criteria, the Contractor must:
 - (1) take all necessary steps to ensure that the Services are promptly corrected;
 - (2) give Notice to WAPHA when the Services have been corrected; and
 - (3) allow WAPHA to repeat the assessment of all or part of the Activity against the Performance Criteria, within five (5) Business Days after the date of the Notice or such other time as agreed between the Parties in writing.
- 7.5 If any part of the Activity does not meet the Performance Criteria on two or more occasions, WAPHA may (in addition to its other remedies and without limiting clause 22.1(2)(b)) terminate the Agreement immediately under clause 22.1(2)(c).

8. Audit and Performance Review

- 8.1 WAPHA may conduct, or WAPHA may engage a third party to conduct, a performance review or an audit of the Contractor at any reasonable time, at the expense of WAPHA:
 - (1) for the purpose of monitoring and assessing the Contractor's performance of its obligations under this Agreement or delivery of the Activities;
 - (2) if WAPHA has reasonable concerns that the Contractor may not be delivering, or may be unable to deliver, all or part of the Activities in accordance with this Agreement;
 - (3) if the Contractor's records give WAPHA reasonable concern that the Contractor is not financially stable;
 - (4) if WAPHA has reasonable concerns that the Contractor has misused all or part of the funding;
 - (5) if the Contractor's records give WAPHA reasonable concern about the Contractor's compliance, or ability to comply, with this Agreement; or
 - (6) to investigate whether the Funding has been used for the correct purposes.
- 8.2 The Contractor will:
 - (1) cooperate with and provide assistance to WAPHA or any third party engaged by WAPHA to conduct an audit or performance review;
 - (2) make available to WAPHA or any third party engaged by WAPHA all information and records needed for the audit or performance review in accordance with any written request from WAPHA or third party engaged by WAPHA; and
 - (3) allow WAPHA or any third party engaged by WAPHA access the Contractor's premises or place of business to carry out the audit or performance review.

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9. Intellectual Property Rights to be Owned by WAPHA

9.1 Application of Clause

This clause applies unless Item J of the Activity Schedule provides that the Contractor will own Intellectual Property Rights in Activity Material.

9.2 WAPHA Material and Existing Material

This clause 9 does not affect the ownership of the Intellectual Property Rights in any WAPHA Material or Existing Material.

9.3 WAPHA ownership of Intellectual Property Rights in Activity Material

All Intellectual Property Rights in all Activity Material vest in WAPHA upon creation, and the Contractor automatically assigns the entire future Intellectual Property Rights in all Activity Material to WAPHA.

9.4 To the extent that:

- (1) WAPHA needs to use any of the Existing Material to receive the full benefit of the Services, the Contractor grants to or must obtain for WAPHA a perpetual, irrevocable, non-exclusive, world-wide, licence fee-free and royalty-free licence (including the right to sub-licence) to use, reproduce, adapt, modify, publish, distribute, communicate, exploit and create derivative works from that Material as part of, or in conjunction with, the Activity Material for that Activity; and
- (2) the Contractor needs to use any of the WAPHA Material or Activity Material for the purpose of performing its obligations under this Agreement, WAPHA grants the Contractor, subject to any conditions or restrictions notified to it by WAPHA and any direction by WAPHA, a non-exclusive, non-transferable, royalty-free licence to use, reproduce, modify, adapt and communicate:
 - (a) the Activity Material; and
 - (b) WAPHA Material;

provided for that Activity solely for the purpose of providing the Services and for the Term of this Agreement. The licence granted under this clause 9 does not allow the Contractor to distribute or exploit WAPHA Material or the Activity Material unless WAPHA agrees in writing.

9.5 IPR Warranty

- (1) The Contractor represents and warrants that:
 - (a) WAPHA's use of the Activity Material and the Existing Material (the Warranted Material) will not infringe the Intellectual Property Rights or Moral Rights of any person; and
 - (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 9.
- (2) If a third party claims, or WAPHA believes that a third party is likely to claim, that all or part of the Warranted Material infringes the third party's Intellectual Property Rights, in addition to the indemnity under clause 13 and to any other rights WAPHA may have, the Contractor must promptly and at its own expense:
 - (a) use its best efforts to secure the rights for WAPHA to continue to use the affected Warranted Material; or
 - (b) replace or modify the Warranted Material in a manner acceptable to WAPHA so that it becomes non-infringing.

9.6 Continuing Obligation

The obligations of the Contractor under this clause 9 are continuing obligations and survive expiration or termination of the Agreement.

10. Intellectual Property Rights to be Owned by Contractor

10.1 Application of Clause

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This clause only applies if Item J of the Activity Schedule provides that the Contractor will own Intellectual Property Rights in Activity Material.

10.2 WAPHA Material and Existing Material

This clause 10 does not affect the ownership of the Intellectual Property Rights in any WAPHA Material or Existing Material.

10.3 Contractor ownership of Intellectual Property Rights in Activity Material

All Intellectual Property Rights in all Activity Material vest in the Contractor upon creation.

10.4 To the extent that:

- (1) WAPHA needs to use any of the Existing Material or Activity Material to receive the full benefit of the Services or to meet WAPHA's obligations to the Commonwealth, the Contractor grants to or must obtain for WAPHA a perpetual, irrevocable, non-exclusive, world-wide, licence fee-free and royalty-free licence (including the right to sub-licence) to use, reproduce, adapt, modify, publish, perform, distribute, communicate, exploit and create derivative works from that Material as part of, or in conjunction with, the Activity Material for that Activity; and
- (2) the Contractor needs to use any of the WAPHA Material for the purpose of performing its obligations under this Agreement, WAPHA grants the Contractor, subject to any conditions or restrictions notified to it by WAPHA and any direction by WAPHA, a non-exclusive, non-transferable, royalty-free licence to use, reproduce, modify, adapt and communicate the WAPHA Material provided for that Activity solely for the purpose of providing the Services and for the Term of this Agreement. The licence granted under this clause 10 does not allow the Contractor to distribute or exploit WAPHA Material unless WAPHA agrees in writing.

10.5 Commonwealth Licence

- (1) The Contractor grants to the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit the Activity Material for any purpose.
- (2) The Contractor agrees that the licence granted in clause 10.5(1) includes a right for the Commonwealth to licence the Activity Material in respect of an activity to the public under an open access licence.

10.6 IPR Warranty

- (1) The Contractor represents and warrants that:
 - (a) WAPHA's use of the Activity Material and the Existing Material (the Warranted Material) will not infringe the Intellectual Property Rights or Moral Rights of any person; and
 - (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 10.
- (2) If a third party claims, or WAPHA believes that a third party is likely to claim, that all or part of the Warranted Material infringes the third party's Intellectual Property Rights, in addition to the indemnity under clause 13 and to any other rights WAPHA may have, the Contractor must promptly and at its own expense:
 - (a) use its best efforts to secure the rights for WAPHA to continue to use the affected Warranted Material; or
 - (b) replace or modify the Warranted Material in a manner acceptable to WAPHA so that it becomes non-infringing.

10.7 Continuing Obligation

The obligations of the Contractor under this clause 10 are continuing obligations and survive expiration or termination of the Agreement.

11. Delivery Of Activity Material And Deliverables

11.1 At all times throughout the Term, the Contractor will provide WAPHA with such information, documents, access, contact, assistance (including attendances at and participation of appropriate personnel in meetings convened

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by WAPHA) as WAPHA reasonably requires, to assist WAPHA to assume the conduct and delivery of the Activity upon the termination or expiry of this Agreement.

11.2 On the expiry of this Agreement, termination of this Agreement under clause 22 or 24.3 or upon request of WAPHA, the Contractor must deliver to WAPHA all:

- (1) Activity Material;
- (2) WAPHA Material;
- (3) Deliverables; and
- (4) other material in the possession or custody of the Contractor relating in whole or in part to the Activity, promptly and at the Contractor's expense.

12. Moral Rights

12.1 To the extent permitted by applicable Laws and for the benefit of WAPHA, the Contractor must:

- (1) give, where the Contractor is an individual; and
- (2) use its best endeavours to ensure that each of the Personnel used by the Contractor in the production or creation of the Activity Material gives,

genuine consent in writing, in a form acceptable to WAPHA, to the use of the Activity Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

12.2 In this clause, Specified Acts means:

- (1) falsely attributing the authorship of any Activity Material, or any content in the Activity Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));
- (2) materially altering the style, format, colours, content or layout of the Activity Material and dealing in any way with the altered Activity Material;
- (3) reproducing, communicating, adapting, publishing or exhibiting any Activity Material; and
- (4) adding any additional content or information to the Activity Material.

13. Indemnity

13.1 The Contractor must at all times indemnify and defend WAPHA, its employees, directors, officers and agents from and against all Claims and Losses arising directly or indirectly from:

- (1) an infringement, or an alleged infringement, of the Intellectual Property Rights or Moral Rights of any person, which occurred by reason of an act done by WAPHA, or its sub-licensees within the scope of WAPHA's Intellectual Property Rights and licences under this Agreement, in relation to any part of the Activity;
- (2) any actual, likely or threatened breach of the Contractor's or its subcontractor's obligations relating to Confidential Information by the Contractor, its subcontractors or its Personnel;
- (3) any actual, likely or threatened breach of any of the obligations of the Contractor under clause 15 or a subcontractor under the subcontract provisions referred to in clause 15.2;
- (4) any negligent, reckless, unlawful or wilful act or omission of the Contractor, its Personnel or subcontractors;
- (5) any act or omission of the Contractor, its subcontractors or Personnel which results in any death, personal injury or damage to property; or
- (6) without limiting the preceding paragraphs, any breach of this Agreement by the Contractor, its subcontractors or Personnel.

13.2 The Contractor and WAPHA agree that:

- (1) each indemnity or promise provided by the Contractor under clause 13.1 to a party other than WAPHA (Indemnified Party) is held on trust by WAPHA for the benefit of that Indemnified Party; and

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- (2) the consent of an Indemnified Party is not required for any amendment to, or waiver of rights under, this Agreement.

14. Confidentiality

14.1 The Contractor must not directly or indirectly use any Confidential Information:

- (1) of WAPHA; or
(2) of any Related Body Corporate of WAPHA; or
(3) disclosed to WAPHA or the Contractor by any existing or potential customer, supplier, contractor, agent, licensor or licensee of WAPHA,

for any purpose other than providing the Activity under this Agreement, and must not disclose such Confidential Information to any person without the prior written consent of WAPHA.

14.2 In giving written consent under clause 14.1, WAPHA may impose such terms and conditions as it thinks fit in its sole and absolute discretion. The Contractor must comply with any term and condition imposed by WAPHA under this clause 14.2.

14.3 The Contractor acknowledges that:

- (1) a breach of clause 14.1 of this Agreement would be harmful to the business of WAPHA;
(2) monetary damages alone would not be a sufficient remedy for the breach; and
(3) in addition to any other remedy which may be available at Law, WAPHA is entitled to interim, interlocutory and permanent injunctions or any of them to prevent the breach.

14.4 The Contractor must, at the request of WAPHA, sign a confidentiality agreement containing provisions similar to the provisions in this clause 14 in favour of the Commonwealth or any existing or potential customer, supplier, contractor, agent, licensor or licensee of WAPHA.

14.5 WAPHA may notify the Contractor in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement. Where WAPHA provides Notice to the Contractor under this clause 14.5, the Notice document is incorporated into, and becomes part of this Agreement.

14.6 At WAPHA's request or on the expiry of this Agreement or termination of this Agreement under clauses 22 or 24.3, the Contractor must promptly:

- (1) return all of WAPHA's physical and written records containing Confidential Information, and all documentation relating to that Confidential Information (including copies), to WAPHA in a form reasonably requested by WAPHA;
(2) if requested by WAPHA, destroy such items referred to in clause 14.6(1) in the manner specified by WAPHA and promptly certify to WAPHA in writing that it has done so; and
(3) provide WAPHA with such information and assistance as WAPHA may reasonably require in order to effect a transition of the continuation of the delivery of the Services without break in continuity or diminution of delivery standard, to WAPHA or any other person(s) nominated by WAPHA.

The obligations of the Contractor under this clause 14.6 survive the expiry or termination of this Agreement for so long as is necessary to give them full force and effect.

14.7 For the avoidance of doubt, nothing in this Agreement derogates from any obligation the Contractor may have under the Privacy Act 1988 (Cth) as amended from time to time, in relation to the protection of Personal Information or information that is protected by the Census and Statistics Act 1905 (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

15. Protection of Personal Information

15.1 If the Contractor obtains any Personal Information in connection with this Agreement, the Contractor must:

- (1) comply with the Privacy Act 1988 (Cth), the Australian Privacy Principles established under that Act, the My Health Records Act 2012 (Cth) and any other applicable Law relating to privacy;

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- (2) not do any act or engage in any practice which, if done or engaged in by WAPHA, would be a breach of an Australian Privacy Principle; and
- (3) comply with WAPHA's reasonable directions in relation to the protection of Personal Information, including as to how the Contractor must collect, hold, use or disclose that Personal Information.

15.2 The Contractor must notify WAPHA immediately if the Contractor becomes aware of a breach or possible breach of any of the Contractor's obligations under this clause 15.

15.3 If the Contractor provides a 'health service' (as defined in the Privacy Act 1988 (Cth) to an individual, the Contractor must:

- (1) comply with the requirements in that Act regarding the use and disclosure of 'health information' or other 'sensitive information' (as those terms are defined in that Act) about the individual to the extent those requirements apply to the Contractor;
- (2) disclose 'health information' and other 'sensitive information' to another Australian health service provider when the Commonwealth or WAPHA directs the Contractor to do so; and
- (3) inform the individual:
 - (a) as required by the Privacy Act 1988 (Cth); and
 - (b) at the time the information is collected,

that the information may be disclosed to another health service provider if required by the Commonwealth.

15.4 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 15, including the requirement in relation to subcontracts.

16. Contractor's Insurance

16.1 The Contractor must, from the Commencement Date:

- (1) have in place or effect and maintain the following insurance:
 - (a) workers' compensation insurance (in the amount required by Item 4 of the Standard Schedule);
 - (b) professional indemnity insurance (in the amount required by Item 4 of the Standard Schedule), which policy or policies must be maintained for seven years after the End Date;
 - (c) public liability insurance (in the amount required by Item 4 of the Standard Schedule), which policy must be maintained until the End Date; and
 - (d) any other insurance (on terms and conditions including the term and period of cover) that a prudent and experienced contractor in the position of the Contractor would take out; and
- (2) ensure that:
 - (a) any Clinician has in place professional indemnity insurance which includes indemnity insurance (in the amount required by Item 4 of the Standard Schedule) which policy must be maintained until seven years after the last provision of the relevant Clinical Services; and
 - (b) without limiting clause 16.1(2)(a), its subcontractors hold insurance policies (on terms and conditions, including the term and period of cover) as required by Law or which a prudent and experienced subcontractor in the position of the subcontractor would otherwise hold.

16.2 Any insurance policy contemplated by clause 16.1 must be:

- (1) with reputable insurers; and
- (2) subject to terms which are satisfactory to WAPHA (acting reasonably).

16.3 The Contractor must provide WAPHA with evidence satisfactory to WAPHA that any insurance policy contemplated by clause 16.1 is current as required by WAPHA from time to time.

17. Invoicing

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The Contractor must invoice WAPHA for the Activity in accordance with the requirements set out in Item 3 of the Standard Schedule.

18. Use of Fees

18.1 The Contractor must use the Fees for an Activity solely to conduct that Activity and in accordance with this Agreement.

18.2 If at any time WAPHA determines that:

- (1) the Contractor has received Fees for an Activity that have not been spent or Committed for the Activity in accordance with this Agreement including as a result of the Contractor having a surplus and/or underspend for the Activity;
- (2) WAPHA has made an overpayment of Fees to the Contractor; or
- (3) the Contractor has spent or Committed an amount of the Fees for an Activity other than for the Activity for which it was provided,

then at WAPHA's discretion:

- (4) the Contractor must repay those Fees to WAPHA within 30 Days after receiving a Notice from WAPHA requiring the Contractor to do so;
- (5) the Contractor must deal with those Fees as directed by WAPHA; or
- (6) WAPHA may reduce one or more further Fee payments for an Activity by up to the amount of those Fees.

19. Payment

19.1 In this clause 19 and Item C and Item F of the Activity Schedule, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**) and not otherwise defined in this Agreement has the same meaning given to it in that Act.

19.2 The Fees are, with the exception of any out-of-pocket expenses incurred in accordance with clause 19.8 that are reimbursable by WAPHA and (unless expressly stated otherwise) GST, inclusive of all costs and expenses incurred by the Contractor.

19.3 Subject to:

- (1) this clause 19; and
- (2) the Contractor complying with its obligations under this Agreement (including that the Services have been delivered in accordance with this Agreement and meet the Performance Criteria),

WAPHA must pay to the Contractor the Fees in accordance with the requirements set out in Item F of the Activity Schedule.

19.4 WAPHA must make payment of a correctly rendered invoice within the period specified in Item 3 of the Standard Schedule of receiving:

- (1) the invoice;
- (2) any supporting documentation that WAPHA reasonably requests; and
- (3) the funding payment from the Commonwealth corresponding to the delivery of the relevant Services to which the invoice relates.

19.5 Any payment of moneys under clause 19.4 is not:

- (1) evidence of the value of the Services or that the Services been satisfactorily carried out in accordance with this Agreement;
 - (2) an admission of liability; or
 - (3) approval by WAPHA of the Contractor's performance or compliance with this Agreement,
- but is only to be taken as payment on account.

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- 19.6 The Contractor acknowledges that, as a result of funding arrangements under the WAPHA Funding Agreement or otherwise, it may be paid part (or all) of the Fees in advance of performing the Services to which that part of the Fees relates.
- 19.7 Any interest earned on Fees received as part (or all) payment of Fees in advance as outlined in 19.6 is deemed to be Fees to be used in accordance with Clause 19.
- 19.8 Any out-of-pocket expenses incurred by the Contractor in providing the Services must be pre-approved in writing by WAPHA. WAPHA must reimburse the Contractor for all pre-approved out-of-pocket expenses within seven (7) Days after receipt of a correctly rendered Tax Invoice accompanied by such supporting documentation as WAPHA reasonably requests.
- 19.9 Without limiting its rights under clause 19 or otherwise under this Agreement or at Law, WAPHA may deduct from moneys otherwise due to the Contractor any debt or other moneys due from or any other amount claimed by WAPHA to be payable by the Contractor to WAPHA.

20. Records

- 20.1 The Contractor must keep separate, accurate records and accounts regarding each Activity including receipts, proof of purchase and invoices and other documents to identify all receipts and payments for that Activity and must retain those records for at least 7 years after the Activity End Date for that Activity (or any such longer period required by legislation).

21. Goods and Services Tax

- 21.1 In this clause:
- (1) a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**) and not otherwise defined in this Agreement has the same meaning given to it in that Act;
 - (2) any reference to GST payable by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member, and any reference to a Party's entitlement to an input tax credit includes any entitlement to an input tax credit of the representative member of any GST group of which that Party is a member; and
 - (3) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 21.2 When any consideration (whether expressed in money or otherwise) becomes due in respect of a Taxable Supply by the Contractor, the Contractor will provide WAPHA with a Tax Invoice for the Supply to which the payment relates and any other documentation required under the GST Law.
- 21.3 If GST is applicable to a Supply made under this Agreement, then, to the extent that the consideration for that Supply is not already stated to include an amount in respect of GST, the Contractor may increase the consideration by the applicable amount of GST and WAPHA must pay that increased amount.
- 21.4 Where any out-of-pocket expenses incurred by the Contractor are to be reimbursed by WAPHA under this Agreement, the reimbursable amount will be determined as follows:
- (1) first, any amount that the Contractor is entitled to claim as an Input Tax Credit shall be deducted from the cost to the Contractor of the expense item to arrive at an "Actual Cost"; and
 - (2) second, the Actual Cost shall be increased by the amount of GST applicable to the Supply of the expense item to WAPHA.
- 21.5 Each Party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any Input Tax Credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any Supply made under or in connection with this Agreement but the supplier need not provide a Tax Invoice for a Supply until the supplier has received payment for the Supply.
- 21.6 If the GST on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this Agreement must be increased or decreased to reflect that variation of the GST.

22. Termination

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22.1 Termination for default

- (1) WAPHA may:
- (a) terminate this Agreement immediately by Notice to the Contractor if any of the termination events specified in clause 22.1(2) occur; or
 - (b) at its sole discretion, choose to immediately terminate one or more of the Activities affected by a termination event specified in clause 22.1(2) instead of terminating the entire Agreement.
- (2) For the purposes of clause 22.1(1), the termination events are:
- (a) the Contractor breaches any provision of this Agreement and WAPHA considers that the breach cannot be rectified;
 - (b) the Contractor breaches any provision of this Agreement and does not rectify the breach within 14 Days after receipt of WAPHA's Notice to do so;
 - (c) the circumstances contemplated by clause 7.5;
 - (d) WAPHA considers that its decision to approve funding to the Contractor for an Activity was affected by a statement in the Contractor's funding application that was incorrect, incomplete, false or misleading;
 - (e) WAPHA is satisfied on reasonable grounds that the Contractor is unable or unwilling to satisfy the terms of this Agreement;
 - (f) the Contractor:
 - (i) fails to submit a report in the form, and containing the information, required by this Agreement; or
 - (ii) submits a report that is incomplete or that WAPHA, acting reasonably, considers is inadequate;
and the Contractor fails to rectify this within 14 Days of being notified to do so by WAPHA;
 - (g) the Contractor comes under a form of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or equivalent provisions in legislation of the States and Territories pertaining to local governments or to incorporated associations or Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) or has an order made against the Contractor for the purpose of placing the Contractor under external administration;
 - (h) the Contractor is unable to pay all its debts as and when they become payable or the Contractor fails to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);
 - (i) proceedings are initiated with a view to obtaining an order for winding the Contractor up, or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for winding the Contractor up;
 - (j) if the Contractor is a local government organisation, the relevant State Government takes action to cease the Contractor's operations and/or to amalgamate them with the operations of another local government organisation;
 - (k) the Contractor becomes bankrupt or enters into a scheme of arrangement with creditors;
 - (l) anything analogous to, or of a similar effect to, anything described in clauses 22.1(2)(g) to 22.1(2)(k) occurs in respect of the Contractor;
 - (m) another provision of this Agreement allows for termination under this clause 22.1;
 - (n) the Contractor has breached a provision of another arrangement or agreement with WAPHA and that breach allows WAPHA to terminate that other arrangement or agreement;
 - (o) WAPHA considers that an Activity poses a threat to the health, safety or well-being of any person; or

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- (p) in respect of an Activity, WAPHA considers that the Contractor's purposes and activities are no longer compatible with the aim or objectives of the Activity as described in Item B of the Activity Schedule for the Activity.
- (3) If WAPHA terminates an Activity, but not the entire Agreement under this clause 22.1, WAPHA:
 - (a) will not be liable to make any further payments to the Contractor in respect of that Activity; and
 - (b) will be entitled to recover from the Contractor any part of the Fees provided to the Contractor for that Activity which:
 - (i) is not spent or due and payable by the Contractor as at the date that the Notice of termination is received; or
 - (ii) has, in WAPHA's opinion, been spent or is due and payable by the Contractor other than for that Activity and in accordance with this Agreement.
- (4) If WAPHA terminates this Agreement under this clause 22.1, WAPHA:
 - (a) will not be liable to make any further payments to the Contractor in respect of this Agreement; and
 - (b) will be entitled to recover from the Contractor any part of the Fees provided to the Contractor for that Activity which:
 - (i) is not spent or due and payable by the Contractor as at the date that the Notice of termination is received; or
 - (ii) has, in WAPHA's opinion, been spent or is due and payable by the Contractor other than for that Activity and in accordance with this Agreement.
- (5) On termination of an Activity or this Agreement under this clause 22, the Contractor must hold the Fees provided for that Activity or under this Agreement (whichever applies) in utmost good faith for use only in accordance with the directions of WAPHA and the Contractor must cease all other dealings with those Fees.
- (6) If a purported termination by WAPHA under this clause 22.1 is determined by a competent authority not to be a proper termination under this clause 22.1, then that termination by WAPHA will be deemed to be a termination for convenience under clause 22.2 with effect from the date of the Notice of termination referred to in this clause 22.1.
- (7) This clause 22.1 does not affect WAPHA's other rights under this Agreement or otherwise at Law.

22.2 Termination or reduction in scope for convenience

- (1) WAPHA may, at any time, by Notice, terminate this Agreement or reduce the scope of the Agreement (including by reducing or terminating one or more Activities) immediately.
- (2) On receipt of a Notice of termination or reduction issued under clause 22.2(1), the Contractor must:
 - (a) stop or reduce the performance of work as specified in the Notice;
 - (b) take all available steps to minimise the Losses, costs and expenses resulting from that termination or reduction, and to protect PHN Material and Activity Material;
 - (c) continue to perform any Activity, or any Services, not affected by the Notice, except to the extent WAPHA notifies the Contractor otherwise;
 - (d) immediately return to WAPHA, or comply with WAPHA's directions regarding, the part of the Fees specified in clause 22.2(5); and
 - (e) use best endeavours to support WAPHA to ensure seamless transition and service continuity.
- (3) If this Agreement is terminated under clause 22.2(1), subject to clause 22.2(4), WAPHA is liable only:
 - (a) to make payments that were due and payable to the Contractor under clause 19 for Services rendered before the date of Notice of termination; and

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- (b) to reimburse reasonable costs unavoidably incurred by the Contractor that relate directly and entirely to the termination of the Agreement and are not covered by clause 22.2(3)(a).
- (4) WAPHA will not be liable to pay, in respect of an Activity, any amount under clause 22.2(3) which would, in addition to any Fee amounts already paid, to the Contractor under this Agreement for the Activity, together exceed the total Fees set out in Item C of the Activity Schedule for that Activity.
- (5) In the event of termination under clause 22.2(1), WAPHA is entitled to recover from the Contractor (or direct the use of) any part of the Fees provided for an Activity which:
 - (a) has not been spent or Committed by the Contractor as at the date that the Notice of termination is received; or
 - (b) has, in WAPHA's opinion, been spent or Committed by the Contractor other than for that Activity and in accordance with this Agreement.
- (6) In the event of a reduction in the scope of the Agreement under clause 22.2(1):
 - (a) WAPHA is entitled to recover any Fees that:
 - (i) have been provided to the Contractor for an Activity (or part thereof) that has been removed by the reduction in scope; and
 - (ii) have not been spent or Committed for that Activity in accordance with the Agreement as at the date that Notice of reduction is received; and
 - (b) WAPHA's liability to pay any part of the Fees for an Activity will, except to the extent that the Parties agree in writing otherwise, reduce in accordance with the reduction in, or termination of, the Activity resulting from that reduction in scope.
- (7) WAPHA's liability to pay any compensation under clause 22.2(3)(b) is subject to:
 - (a) the Contractor's strict compliance with this clause 22.2; and
 - (b) the Contractor's substantiation of any amount claimed under clause 22.2(3)(b).
- (8) The Contractor will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Contractor if the termination or reduction had not occurred.
- (9) This clause 22.2 does not affect WAPHA's other rights under this Agreement or otherwise at Law.

23. Dispute Resolution

- 23.1 A Party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement or the Services (Dispute) unless it has complied with this clause 23. If a Party does not comply with this clause 23 in relation to a Dispute, the other Party does not have to comply with this clause in relation to the Dispute.
- 23.2 A Party claiming that a Dispute has arisen must notify the other Party or Parties to the Dispute giving details of the Dispute (Notification).
- 23.3 On receipt of a Notification each Party must negotiate in good faith to resolve the Dispute and, if necessary to resolve the Dispute, involve the Chief Executive Officers or other senior officers of any of the Parties directly in those negotiations.
- 23.4 If the Dispute is not resolved under clause 23.3 within 14 Days of the date of the Notification (or a longer period agreed between the Parties), the Parties must refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (**ACDC**) for resolution in accordance with the Mediation Rules of the ACDC. Mediation must take place within the Jurisdiction.
- 23.5 If the Dispute is not resolved under clause 23.4 within 60 Days after referral to mediation (or a longer period agreed between the Parties) any Party may initiate proceedings in a court.
- 23.6 This clause ~~23.23~~ does not:
 - (1) prevent a Party from applying to a court for urgent injunctive relief; or
 - (2) apply to any Dispute in relation to a termination or reduction by WAPHA under clause 22.

24. Unavoidable Delay

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- 24.1 A Party (**Affected Party**) is not liable for any delay or failure to perform its obligations under this Agreement if:
- (1) the delay or failure is caused by an event beyond the non-performing Party's reasonable control (including war, terrorism, natural disaster or labour disputes not solely involving its Personnel);
 - (2) the delay could not have been reasonably foreseen before entering into this Agreement; and
 - (3) it notifies the other Party of the unavoidable delay as soon as it becomes aware of it.
- 24.2 The Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.
- 24.3 If non-performance or diminished performance by the Affected Party due to the circumstances under clause 24.1 continues for a period of more than 30 consecutive Days, the other Party may terminate or reduce the scope of an Activity or terminate the Agreement immediately by giving the Affected Party Notice in accordance with clause 22.

25. Commonwealth Requirements

- 25.1 Notwithstanding anything else in this Agreement, the Contractor:
- (1) acknowledges that WAPHA is bound by obligations to the Commonwealth under the WAPHA Funding Agreement and that the Contractor's acts or omissions (except where it is acting in accordance with the terms of this Agreement) may cause WAPHA to breach or otherwise incur liabilities under the WAPHA Funding Agreement;
 - (2) expressly consents to the disclosure of its identity (and in the case of an individual, the disclosure of their Personal Information) and to the provision of a copy of this Agreement to the Commonwealth by WAPHA. This consent extends to allowing the Commonwealth to publish information including the Contractor's identity and the existence and nature of this Agreement;
 - (3) must comply with all reasonable directions of WAPHA, and otherwise provide all assistance and do all things necessary for WAPHA to comply with the WAPHA Funding Agreement; and
 - (4) must ensure that any subcontractor approved under this Agreement is engaged under a subcontract that contains all the relevant terms of this Agreement including:
 - (a) those relating to working with Vulnerable Persons, subcontracting, conflict of interest, confidentiality, protection of Personal Information and Intellectual Property;
 - (b) obligations equivalent to those under this clause 25 and clause 27.1(4)(a); and
 - (c) in particular that the Contractor has a right to terminate or reduce the scope of an Activity or the subcontract on terms no less favourable than those accorded to WAPHA by clause 22. The Contractor must, where WAPHA considers it appropriate, make use of that right in the event of a termination or reduction in scope of an Activity or this Agreement.
- 25.2 The Contractor must allow the Auditor-General, the Privacy Commissioner, the Commonwealth Ombudsman and persons authorised in writing by the Commonwealth to:
- (1) access premises at which any Activity Material is stored or at which the Services are undertaken;
 - (2) interview its Personnel; and
 - (3) inspect and copy any Activity Material,
- for purposes associated with this Agreement or any review of the Contractor's performance of this Agreement.
- 25.3 The Contractor:
- (1) must provide any plan, report, or assistance in preparing any report, as specified in Item E of the Activity Schedule for that Activity or as otherwise directed by WAPHA in order for WAPHA to comply with WAPHA Funding Agreement or for any other reasonable purpose of WAPHA. Each report must contain the information and be given in the manner as required by WAPHA;
 - (2) must, where requested by the Commonwealth, promptly and at no cost to the Commonwealth or WAPHA, provide access to a document created by or in the possession of the Contractor or a subcontractor that relates to the performance of this Agreement;

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- (3) must not publish any publication or otherwise make any public communication in relation to the Activity without the prior written approval of WAPHA; and
- (4) must comply with any directions of WAPHA in respect of publications.

25.4 The Contractor must:

- (1) comply with any reasonable directions of WAPHA in relation to confidentiality or conflict of interest; and
- (2) provide any information or enter into any undertakings required by the Commonwealth in respect of confidentiality or conflict of interest.

25.5 The Contractor must allow WAPHA to use or disclose any Confidential Information:

- (1) of the Contractor; or
- (2) of any Related Body Corporate of the Contractor; or
- (3) disclosed to WAPHA or the Contractor by any existing or potential customer, supplier, contractor, agent, licensor or licensee of the Contractor,

to the extent necessary to allow WAPHA to comply with its obligations under WAPHA Funding Agreement.

25.6 The Contractor must at all times indemnify and release WAPHA, its employees, directors, officers and agents from and against all Claims and Losses arising under the WAPHA Funding Agreement directly or indirectly as a result of the Contractor's breach of this clause 25.

26. Clinical Services

26.1 The Contractor acknowledges that the acts or omissions of it or its Personnel in connection with Clinical Services may cause WAPHA to suffer significant loss, including as a result of:

- (1) claims by third parties;
- (2) loss of its status as a "Primary Health Network"; and
- (3) loss of existing or future funding.

26.2 In recognition of the acknowledgments under clause 26.1, and without limiting any other obligation of the Contractor under this Agreement, the Contractor agrees to be bound by the obligations in respect of Clinical Services set out in Item 7 of the Standard Schedule.

27. General

27.1 No partnership or employment

- (1) Nothing in this Agreement is intended to create a partnership as between the Contractor and WAPHA.
- (2) The Contractor acknowledges that:
 - (a) the Contractor has no authority to bind WAPHA without WAPHA's specific consent; and
 - (b) the Contractor enters into this Agreement as an independent contractor and retains the ultimate responsibility for the management and direction in relation to the provision and performance of the Services to WAPHA.
- (3) The Contractor must not represent itself as being an officer, employee, partner or agent of the Commonwealth or WAPHA, or as otherwise able to bind or represent the Commonwealth or WAPHA.
- (4) Notwithstanding clause 27.1(3), the Contractor acknowledges that:
 - (a) it may be considered a "Commonwealth Service Provider" for the purposes of the Ombudsman Act 1976 (Cth) and subject to investigation by the Commonwealth Ombudsman under that Act and that neither the Commonwealth nor WAPHA will be liable for the costs of any such investigation in connection with this Agreement or the Activity; and
 - (b) it must comply with the Code of Conduct in section 13 of the Public Service Act 1999 (Cth).
- (5) The Contractor acknowledges that:
 - (a) its role under this Agreement is as a non-exclusive provider of services; and

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- (b) WAPHA is in no way restricted from performing or engaging third parties to perform services similar to the Services.

27.2 No assignment

Neither Party to this Agreement may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other Party.

27.3 Further assurance

Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

27.4 Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

27.5 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

27.6 Entire understanding

(1) This Agreement:

- (a) is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

(2) The Contractor acknowledges and agrees that:

- (a) it has not placed any reliance on the completeness, accuracy or adequacy of any of WAPHA Material or WAPHA Representations;
- (b) it has entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (c) WAPHA Material and PHN Representations do not form part of this Agreement; and
- (d) to the extent permitted by Law, WAPHA is not liable to the Contractor upon any Claim with respect to WAPHA Material or WAPHA Representations.

27.7 Amendment

- (1) Subject to clause 27.7(2), an amendment to this Agreement is not effective unless it is in writing and signed by the Parties.

(2) Where WAPHA determines that an amendment to this Agreement is necessary:

- (a) to ensure that the Contractor complies with the requirements of the WAPHA Funding Agreement; or
- (b) as a result of any variation to the WAPHA Funding Agreement or change in related funding or administrative policies or practices, where that change or variation is initiated by the Commonwealth,

WAPHA will:

- (a) notify the Contractor in writing of the amendment;
- (b) consult with the Contractor in good faith on any necessary adjustment to the Fee resulting from the amendment; and
- (c) adjust the Fee as necessary and acting reasonably.

- (3) The Contractor will be deemed to have agreed to any amendment to this Agreement in accordance with clause 27.7(2).

27.8 Waiver

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A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is only effective in respect of the specific instance to which it relates and for the specific purpose for which it is given.

27.9 Costs and outlays

Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

27.10 Notices

(1) A notice or other communication connected with this Agreement (Notice) shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of a Party and addressed to the contact person set out in Item 2 of the Standard Schedule, and is either delivered by hand, posted, by email or facsimile to the contact details set out in Item 2 of the Standard Schedule or such other address as may be notified in writing from time to time.

(2) A Notice given in accordance with 27.10(1) is taken to be received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by post, on the second Business Day after the date of posting (or if outside Australia, on the seventh Business Day after the date of posting);
- (c) if sent by facsimile, when the sender's facsimile machine generates a message confirming successful transmission; or
- (d) if sent by email, the date Notice was sent, unless the sender receives an email message stating that the Notice could not be delivered,

but if the Notice is given after 5.00pm on a Business Day or not on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

27.11 Governing law and jurisdiction

The law of the Jurisdiction governs this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction and any courts of appeal from those courts.

27.12 Survival

The obligations of the Contractor under clauses 4.2, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 25 and this clause 27.12 will survive the expiry or termination of the Agreement.