

# Commissioned Services Agreement

Between

**South Western Sydney Primary Health Network Limited**

And

**Service Provider**

**Commissioned Services Agreement Number: XXXYYYYMM**

**Terms and Conditions**

Version	Date Commenced	Document Owner	Change Description	Authorised By
v.1.0	March 2017	Commissioning Manager	New Contract Template	Audit & Risk Committee
v.2.0	April 2021	Commissioning Manager	New Contract Template	Audit & Risk Committee
v.3.0	June 2022	Commissioning Manager	New Contract Template	Audit & Risk Committee

# COMMISSIONED SERVICES AGREEMENT

Details	
<b>PHN</b>	South Western Sydney Primary Health Network Limited ABN 74 605 441 067 Level 2, 1 Bolger Street, CAMPBELLTOWN, NSW 2560
<b>PHN Representative</b>	<b>Amy Prince - Director of Planning and Performance</b> Phone: 02 4632 3080 Email: <a href="mailto:amy.prince@swsphn.com.au">amy.prince@swsphn.com.au</a>
<b>Service Provider</b>	
<b>ABN</b>	
<b>Business Address</b>	
<b>Phone</b>	
<b>Fax</b>	
<b>E-mail</b>	
<b>Service Provider Representative</b>	
<b>Commencement Date</b>	
<b>End Date</b>	
<b>Extension Options</b>	

The terms and conditions of this commissioned services agreement (including any schedules or annexures) (**CSA**) apply as between the PHN and the Service Provider for provision of Services by the Service Provider.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this CSA:

- (1) **Acceptance Notice** has the meaning given in clause 7.2.
- (2) **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.
- (3) **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.
- (4) **Commencement Date** means the date specified in the Details.
- (5) **Confidential Information:**

- (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) is designated by the PHN as confidential; or
  - (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 CSA or any other confidentiality obligation); or
  - (iii) required to be disclosed by Law.
- (6) **Commonwealth** means the Commonwealth of Australia as represented by and acting through The Department of Health ABN 83 605 426 759, or any other department or agency of the Commonwealth of Australia which is from time to time responsible for administering the PHN Deed.
- (7) **Conflict of Interest** means any matter, circumstance, interest or activity involving or affecting the Service Provider or the Service Provider's Personnel, which may or may appear to impair the Service provider's ability to perform the Services diligently, fairly and independently.
- (8) **Contract** has the meaning given in clause 3.4.
- (9) **Contract IP** has the meaning given in clause 13.4.
- (10) **Contract Start Date** in respect of each Contract means the date so specified in the Contract.
- (11) **day** means a calendar day.
- (12) **Defaulting Party** has the meaning given in clause 28.1(1).
- (13) **Data** means all data, information, text and other materials whether in hard or soft copy, which is accessed, created or generated, whether by the Service Provider or the PHN, in the course of the performance of the Services under the CSA. For the avoidance of doubt, Data can include PHN Material and Personal Information.
- (14) **Deliverable** means any:
  - (a) Material created by the Service Provider for the purpose of or as a result of performing its obligations under a Contract; or
  - (b) other item or element of the Services to be supplied by the Service Provider to the PHN under a Contract.
- (15) **Details** mean the information set out in the table on page 1 of this CSA.
- (16) **Disengagement Services** means the services and assistance specified in a Disengagement Plan.

- (17) **Disengagement Plan** means the plan for the provision of the Disengagement Services as agreed between the parties in accordance with clause 29.1.
- (18) **End Date** means the date specified in the Details.
- (19) **Excess Fees** has the meaning given in clause 28.3(3).
- (20) **Fees** means fees payable in accordance with a Contract.
- (21) **Force Majeure Event** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared), civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment, and including an epidemic or pandemic, public health or safety emergency, quarantines, radiation and radioactive contamination (including any government action in respect of these).
- (22) **Intellectual Property** means all intellectual property rights conferred under statute, common law or equity in any jurisdiction, 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 (a); and
  - (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether existing now or in the future,
- whether or not such rights are registered or capable of being registered, and **Intellectual Property Right** has a corresponding meaning.
- (23) **Indirect Loss** has the meaning given in clause 17.1(3).
- (24) **Jurisdiction** means New South Wales, Australia.
- (25) **Law** means:
- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, 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.
- (26) **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).
- (27) **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.
- (28) **Material Default** has the meaning given in clause 28.1(1)(d).

- (29) **Milestone Date** means any fixed date to be met by the Service Provider in performing any of its obligations under a Contract as specified in the Contract and/or as extended in accordance with this CSA.
- (30) **Moral Rights** has the meaning given by the *Copyright Act 1968* (Cth).
- (31) **Notice** has the meaning given in clause 36.11.
- (32) **Notification** has the meaning given in clause 31.1.
- (33) **Performance Criteria** means the requirements set out in each Contract.
- (34) **Personal Information** has the same meaning given by the *Privacy Act 1988* (Cth).
- (35) **Personnel** of a party means the officers, employees, and contactors of that party (and, in the case of the Service Provider, includes its Specified Persons).
- (36) **PHN Intellectual Property** means any Intellectual Property created, developed, owned or acquired by the PHN (including by way of licence or assignment) prior to the date of this CSA, or any Intellectual Property which is created or acquired by the PHN independently of the arrangements under this CSA or a Contract.
- (37) **PHN Material** means any Material provided to the Service Provider by the PHN, including the Material (if any) specified in a Contract.
- (38) **PHN Representations** means any representations (including by silence) made by the PHN to the Service Provider in respect of the scope or nature of the Services or any matters the subject of this CSA and/or any Contract.
- (39) **Police Check** means a formal inquiry made to the relevant police authority in each State or Territory designed to obtain details of an individual's criminal convictions or findings of guilt in each State or Territory and in all non-Australian jurisdictions in which the relevant person is known to have resided.
- (40) **Privacy Laws** has the meaning given to that term in clause 20.2.
- (41) **Rate** means 10% per annum.
- (42) **Records** has the meaning given in clause 34(1).
- (43) **Regular Default** has the meaning given in clause 28.1(1)(a).
- (44) **Regular Default Notice** means a Notice delivered to the Defaulting Party identifying a Regular Default.
- (45) **Related Body Corporate** has the meaning given by the *Corporations Act 2001* (Cth).
- (46) **Remediation Plan** has the meaning given to that term in clause 28.1(3).
- (47) **Required Outcomes** are all commercial and/or clinical outcomes described in a Contract.
- (48) **Resources** has the meaning given in clause 4.7.
- (49) **Retention Period** has the meaning given in clause 34(2).
- (50) **Security Incident** means the actual, likely or suspected occurrence of any event

involving:

- (a) any unauthorised (whether under this CSA or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Data or Personal Information within the Service Provider's or its Personnel's possession or control;
  - (b) any notifiable data breach under the Privacy Laws; or
  - (c) any denial of service attack.
- (51) **Security Policy** has the meaning given in 19.2(2).
- (52) **Service Schedule** means schedule(s), in a form approved and signed by the PHN and the Service Provider, recording the particular Services to be performed or provided by the Service Provider and including any additional terms and conditions relating to those particular Services.
- (53) **Services** means the services supplied by the Service Provider under a Contract, including:
- (a) the services to be performed or provided by the Service Provider specified in a Service Schedule or in a Statement of Work;
  - (b) any services, tasks, functions, activities and responsibilities not specifically identified in a Contract but which are inherent in or necessary for the proper performance of the services of the Service Provider that are specifically identified in that Contract.
- (54) **Specified Person** means an employee of or contractor to the Service Provider specified in a Contract.
- (55) **Service Provider Intellectual Property** means any Intellectual Property which the Service Provider developed or acquired prior to the date of this CSA or any Intellectual Property which is developed or acquired by the Service Provider independently of the arrangements under this CSA or a Contract.
- (56) **Statement of Work** means an agreement between the PHN and the Service Provider that is subsidiary to this CSA, under which the Service Provider undertakes to provide a specific service to the PHN that is not otherwise part of the Service Provider's services, tasks, functions, activities or responsibilities under this CSA or any other agreement.
- (57) **Term:**
- (a) for this CSA as a whole has the meaning given in clause 2.1; and
  - (b) for a Contract means the period of performance for that Contract.
- (58) **Variation** means any change to the Services, including any addition, increase, decrease, omission or deletion in, to or from the Services.
- (59) **Virus** means a computer program, code, device, product or component that is designed to threaten or which otherwise poses a threat to the security, availability or integrity of the Data or any system which manages, controls or has access to Data.
- (60) **Vulnerable Person** means:
- (a) an individual aged under 18 years; 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 by any reason, including age, illness, trauma or disability, pregnancy, the influence, or part or existing use, of alcohol, drugs or substance use or any other reason.
- (61) **WHS Authority** means any government, statutory body or authority authorised to enforce, make orders in relation to or otherwise investigate under an applicable WHS Law, including but not limited to investigations by SafeWork NSW, investigations by Comcare, parliamentary inquiries, boards of inquiry and coroner's investigations.
- (62) **WHS Law** means the *Work Health and Safety Act 2011* (Cth) (**WHS Act**) and any corresponding work health and safety law (as defined in s4 of the WHS Act), including but not limited to the *Work Health and Safety Act 2011* (NSW).

## 1.2 Interpretation

In the interpretation of this CSA and each Contract, the following provisions apply unless the context otherwise requires:

- (1) A provision of this CSA or any Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the CSA or any Contract or the inclusion of the provision in the CSA or any Contract.
- (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 CSA.
- (7) A reference to:
  - (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) the word "includes", and any variants of that word, will be read as though followed by the words "without limitation";
  - (e) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and
  - (f) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions.

### 1.3 **Inconsistency**

- (1) If there is any inconsistency between any part of the CSA and any Contract, that inconsistency will be resolved using the following order of precedence:
  - (a) clauses 1 to 37 of the CSA;
  - (b) the Service Schedule or the Statement of Work; and
  - (c) any other documents incorporated by reference into the Contract.
- (2) If there is any inconsistency between two Contracts, the Contract with the later Contract Start Date will take precedence and the earlier Contract will be construed accordingly to the extent of the inconsistency.

## 2. **Term of CSA**

- 2.1 This CSA begins on the Commencement Date and ends on the End Date unless terminated earlier in accordance with clauses 28 (the **Term**).
- 2.2 Each Contract will be deemed to have commenced on the Contract Start Date. Subject to earlier termination in accordance with the terms of this CSA, each Contract will operate for the term set out in that Contract.

## 3. **Formation of a Contract**

- 3.1 This CSA applies to all Services provided by the Service Provider and must be signed by the PHN for the first Service Schedule or the first Statement of Work to become active.
- 3.2 On each occasion that Services are required by the PHN, the PHN and the Service Provider must agree and sign a separate Service Schedule or a separate Statement of Work relating to such engagement.
- 3.3 A contract will be formed between the PHN and the Service Provider when each of the Service Provider and the PHN has signed a Service Schedule or a Statement of Work.
- 3.4 Each contract will comprise the signed Service Schedule or the signed Statement of Work and all attachments or annexures to that Service Schedule or to that Statement of Work and will incorporate the terms and conditions of this CSA (together, **Contract**).
- 3.5 Any purchase order, confirmation, terms and conditions or other document issued or provided by the Service Provider which is not an attachment or annexure to a Contract will not form part of the Contract.

## 4. **Performance of Services**

- 4.1 The Service Provider will provide the Services in accordance with this CSA and the terms of each Contract.
- 4.2 If one or more Specified Persons are named in a Contract, the Services will be provided by those Specified Persons.
- 4.3 The Service Provider must, and must procure that those Specified Persons and its Personnel, comply with all of the PHN's reasonable directions about the performance of the Services.
- 4.4 The Service Provider must, and must procure that its Personnel, carry out the Services:
  - (1) with due care and skill and to the best of the knowledge and expertise of the

Service Provider;

- (2) in accordance with the Performance Criteria;
  - (3) to achieve the Required Outcomes;
  - (4) in a professional, timely and competent manner and in accordance with any applicable ethical codes or standards;
  - (5) in accordance with relevant Australian standards, best practice and other applicable guidelines;
  - (6) using the Specified Persons (if any);
  - (7) in accordance with:
    - (a) all applicable Law; and
    - (b) all applicable governmental policy;
  - (8) in accordance with any reasonable written directions in relation to the Services given by the PHN from time to time;
  - (9) in accordance with any timetable specified in the relevant Contract; and
  - (10) otherwise in accordance with the provisions of this CSA.
- 4.5 The Service Provider must provide all reports about the Services it provides pursuant to a Contract (including the achievement of Required Outcomes) that is required by the PHN in the form, at the times and containing the information as is specified in the Contract relating to those Services.
- 4.6 The Service Provider must, and must procure that its Personnel do not do any act, matter or thing that would have the effect of:
- (1) bringing the reputation of the PHN into disrepute; or
  - (2) causing any nuisance or disruption to the PHN.
- 4.7 Unless otherwise specified in a Contract the PHN has no obligation to provide and the Service Provider must provide all equipment and other resources (including telecommunications and computer equipment, diagnostic and treatment equipment, software, hardware, data and consumables) (**Resources**) that may be required by the Service Provider to enable to deliver the Services in accordance with this CSA and the applicable Contract.
- 4.8 If given access to the PHN or its customer's facilities to provide the Services, the Service Provider will, and will procure that its Personnel:
- (1) take all reasonable care in accessing those facilities and systems and observe all reasonable security procedures and work practices;
  - (2) comply with all reasonable instructions given by the PHN or its customer.
- 4.9 The Service Provider will maintain the Resources and facilities it requires to deliver the Services in good, working order at its own cost.

## 5. Service Provider Warranties

5.1 The Service Provider represents and warrants that:

- (1) it has the right to enter into this CSA and each Contract;
- (2) it has all rights, title, licences, interests and property necessary to lawfully perform the Services and grant the rights to the PHN specified in this CSA and each Contract;
- (3) it is solvent and is able to meet all of its financial obligations under this CSA and each Contract;
- (4) the Service Provider and its Personnel have the necessary experience, skill, knowledge and competence to perform the Services;
- (5) all information, reports and Deliverables given to the PHN by the Service Provider under this CSA and each Contract will be correct, complete and not misleading;
- (6) if the Service Provider is a trustee, it enters this CSA and each Contract personally and in its capacity as trustee;
- (7) it will promptly notify and fully disclose to the PHN any actual or threatened event or occurrence arising during the Term which could have an adverse effect on the Service Provider's ability to perform any of its obligations under this CSA or each Contract;
- (8) it will promptly notify the PHN and fully disclose all material information if it becomes subject in any way to the operation of the Law relating to insolvency or bankruptcy;
- (9) 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 CSA or each Contract;
- (10) 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;
- (11) 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 CSA or each Contract;
- (12) it holds the necessary licences, permits, consents and authorisations required under any law in relation to the provision of the Services and will continue to do so at all times during the term of this CSA;
- (13) it has the power and authority to enter into and perform its obligations under this CSA and each Contract;
- (14) it has taken all necessary steps, including any corporate action necessary, to authorise its entry into and performance of all of its obligations under this CSA and each Contract and to carry out the transactions contemplated by them;
- (15) it has sufficient numbers of sufficiently qualified and experienced Personnel and will maintain those Personnel to enable it to fulfil its obligations under the CSA and each Contract; and

(16) it has sufficient Resources and will maintain those Resources to enable it to fulfil its obligations under the CSA and each Contract.

5.2 The Service Provider acknowledges that the PHN, in entering into this CSA and any Contract, is relying on the warranties and representation contained in this clause 5, and that the warranties and representations contained in this clause 5 are deemed to be repeated by the Service Provider each time a Fee is paid under this CSA or an applicable Contract.

## **6. Delay and Loss of Resources**

6.1 The Service Provider must provide the Services in accordance with any timeframes and Milestone Dates set out in this CSA or an applicable Contract.

6.2 If the Service Provider or the PHN become aware of any thing, including:

- (1) an act or omission of the PHN or an employee, other contractor, or agent of the PHN;
- (2) an act or omission of the Service Provider or any of its Personnel;
- (3) any reduction in the Resources available to the Service Provider;
- (4) any reduction in the number of Personnel available to the Service Provider,

that may delay or interrupt the performance of the Services and/or the achievement of the Required Outcomes, that party must promptly notify the other parties in writing with details of the possible delay, interruption or non-achievement and the cause.

6.3 If notice is given under clause 6.2, the Service Provider will promptly develop (and provide to the PHN) a plan to manage and overcome the delay, interruption or non-achievement.

6.4 The parties will promptly meet to discuss and agree this plan and the Service Provider will amend it or do all other things as may be reasonably necessary or desirable to manage and overcome the delay, interruption or non-achievement as is reasonably requested by the PHN.

## **7. Acceptance of Deliverables**

7.1 The Deliverables (if any) specified in a Contract will be reviewed by the PHN and the PHN will, acting reasonably, determine whether or not each of those Deliverables meet the requirements of that Contract.

7.2 The PHN will notify the Service Provider in writing of the PHN's acceptance of each Deliverable under a Contract (**Acceptance Notice**).

7.3 No Deliverable will be deemed to have been accepted by the PHN until the PHN has issued an Acceptance Notice in relation to that Deliverable.

7.4 The Service Provider acknowledges that the issuing of an Acceptance Notice does not amount to an agreement that there are no defects in a Deliverable or that the Service Provider has complied with its obligations under this CSA or a Contract in relation to that Deliverable.

7.5 If a Deliverable is not acceptable to the PHN, the PHN may:

- (1) require the Service Provider to rectify or replace the Deliverable or Service (at its own cost) within five Business Days (or such other period as may be agreed between the parties);

- (2) provide an Acceptance Notice in relation to the Deliverable or Service subject to the Service Provider rectifying any defects identified by the PHN within the period specified by the PHN;
- (3) provide an Acceptance Notice in relation to the Deliverable or Service on an "as is" basis subject to the Parties agreeing an appropriate reduction to the Fees in relation to the Deliverable or Service; or
- (4) exercise any other right or remedy available to it in respect of that failure under this CSA or at Law.

## **8. Variations to the Services**

- 8.1 The PHN may request a variation of the Services at any time by notifying the Service Provider of the variation in writing.
- 8.2 If the PHN requests the Service Provider to vary the Services in accordance with clause 8.1, the variation will only take effect once the Service Provider and the PHN record in writing their agreement to the variation of the Services to be provided and any increase or decrease in the fees payable for the Services.

## **9. Service Provider Personnel Checks**

- 9.1 If required by the PHN, the Service Provider must obtain from each of its Personnel proposed to perform any aspect of the Services, consents to undertake, and to provide all information and assistance required for:
  - (1) a Police Check;
  - (2) any other check or investigation required by Law or government policy in respect of Vulnerable Persons; and
  - (3) validating the credentials of and (if applicable) the insurances held by the Service Provider's Personnel.
- 9.2 The Service Provider's Personnel must not perform any aspect of the Services until the PHN has conducted such checks, investigations and validations as required by the PHN of a type referred to in clause 9.1 and determined in writing, acting reasonably, that each of the Service Provider's Personnel is of suitable character to perform the Services.
- 9.3 In addition to the other requirements under clause 9.2, the Personnel of the Service Provider involved in the Service Provider's performance of the Services must also have the checks, investigations and validations referred to in clause 9.1 performed every three years they are involved in the Service Provider's performance of the Services.
- 9.4 If the Service Provider becomes aware or reasonably suspects that a member of its Personnel has recently been convicted of an offence, or otherwise had a change of circumstances which means they would no longer be considered of suitable character to perform the Services, the Service Provider must immediately notify the PHN, and comply with any reasonable direction given by the PHN including but not limited to removing that Personnel from any involvement in the Service Provider's performance of the Services.
- 9.5 Notwithstanding anything else in this CSA, the Service Provider is responsible for all costs associated with compliance with this clause 9.

## **10. Specified Persons and Subcontracting**

### **10.1 Subcontractors**

- (1) The Service Provider must not subcontract any aspect of the provision of the Services without the prior written approval of:
  - (a) the PHN, which may be given or withheld in the PHN's sole and absolute discretion; and
  - (b) where required, the Commonwealth.
- (2) Notwithstanding clause 10.1(1), the Service Provider may engage one or more persons to work for it in respect of Services to be provided by it as a contractor on a short or continuing basis.
- (3) The Service Provider must ensure that any of its Personnel responsible for delivery of the Services comply with:
  - (a) all applicable Law;
  - (b) clause 13 (Intellectual Property Rights);
  - (c) clause 18 (Confidentiality);
  - (d) clause 20 (Privacy);
  - (e) clause 22 (Conflict of interest);
  - (f) clause 32 (Commonwealth Requirements); and
  - (g) clause 34 (Record Keeping).
- (4) The Service Provider must ensure that any subcontractor approved under this CSA is engaged under a subcontract that contains all the relevant terms of this CSA including those relating to subcontracting, Intellectual Property, obligations equivalent to those under clause 32, and in particular that the Service Provider has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded to the PHN by clause 28.2 in the event of this CSA being terminated.

10.2 Despite any consent given by the PHN, the Service Provider is not relieved of its liabilities and obligations under this CSA and remains liable to the PHN for the acts, defaults and omissions of its subcontractors and the servants, agents and employees of its subcontractors as if they were the acts, defaults or omissions of the Service Provider.

### 10.3 **Specified Persons**

- (1) If Specified Persons are specified in a Contract, the Service Provider must provide the relevant Services using those Specified Persons and must ensure that those Specified Persons undertake any roles ascribed to the Specified Persons in a Contract.
- (2) If any of the Specified Persons become unavailable or refuses to provide the Services, the Service Provider must notify the PHN immediately. Within five Business Days of the Service Provider becoming aware that the particular Specified Person is unavailable or refuses to provide the Services, the Service Provider must appoint a replacement person of equivalent expertise and experience who must:
  - (a) meet the requirements of this CSA; and
  - (b) be approved by the PHN in writing.
- (3) The Service Provider will provide the PHN, upon request in writing, with full

particulars as to the qualifications and relevant experience of any proposed replacement person.

- (4) The Service Provider 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 for the performance of the duties allocated to them in connection with this CSA or a particular Contract.
- (5) The Service Provider must not remove the Specified Persons from the provision of the Services other than where:
  - (a) the removal is required by the PHN in accordance with clause 10.3(6); or
  - (b) such removal is beyond the control of the Service Provider due to the relevant Specified Persons ceasing to be employed by the Service Provider or otherwise being unavailable for reasons beyond the control of the Service Provider (such as death, extended sick leave, maternity or paternity leave).
- (6) If the PHN reasonably considers that any of the Specified Persons are not performing the Services to the standards required under this CSA, the PHN may, by providing 14 days' notice in writing, require the Service Provider to substitute the Specified Persons with personnel acceptable to the PHN.

## 11. Work Health and Safety

11.1 The Service Provider acknowledges and agrees that:

- (1) in supplying the Services, the Service Provider is conducting its own business or undertaking, separate to the business or undertaking of the PHN;
- (2) it has an obligation to, and it will ensure, so far as is reasonably practicable:
  - (a) the health and safety of any Personnel caused to be engaged by the Service Provider and any workers whose activities in performing the Services are influenced or directed by the Service Provider in accordance with the WHS Laws and any other applicable legislation; and
  - (b) other persons (including PHN Personnel) are not put at risk as a result of work carried out in relation to provision of the Services; and
- (3) it will consult, cooperate and coordinate with the PHN in relation to its work health and safety duties.

11.2 If an event occurs in relation to the Service Provider's provision of the Services which leads, or could lead, to the death, injury or harm to, or illness of, any person or a dangerous incident as defined in the applicable WHS Law (**Notifiable Incident**), the Service Provider must:

- (a) immediately report the matter to the PHN, including all relevant details known to it;
- (b) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it reasonably can:
  - (i) its cause; and
  - (ii) what adverse effects (if any) it will have on the Service Provider's conduct and provision of the Services, including adverse effects on health and safety;

- (c) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy the effects of the Notifiable Incident on health and safety;
- (d) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that the kinds of events or circumstances which led to the Notifiable Incident do not reoccur;
- (e) within 3 Business Days after the Notifiable Incident, give the PHN a written report detailing the Notifiable Incident, including the results of the investigations required by clause 11.2(b), and a statement of the steps the Service Provider has taken or that the Service Provider proposes to take, as required by this 11.2;
- (f) within 60 Business Days after the Notifiable Incident, give the PHN a written report giving full details of the Service Provider's actions in relation to the Notifiable Incident;
- (g) if the Notifiable Incident is being investigated by a WHS Authority, provide the PHN with a copy of any report from the WHS Authority investigating the Notifiable Incident within 5 business days after the Service Provider receives a copy of that report; and
- (h) fully co-operate with any investigation by any WHS Authority with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.

## **12. Performance Assessment**

- 12.1 Each element of the Services is subject to assessment by the PHN against the relevant Performance Criteria.
- 12.2 Without limiting any other rights of the PHN under this CSA and/or any Contract, if the PHN considers that all or part of the Services do not meet the Performance Criteria, the PHN must notify the Service Provider within five Business Days (or such other period as specified in the Details, Schedule(s) or Contract) of assessing the Services against the Performance Criteria.
- 12.3 The PHN must include reasons as to why it considers the Services do not meet the Performance Criteria in the notice given under clause 12.2.
- 12.4 If the PHN notifies the Service Provider that all or part of the Services do not meet the Performance Criteria, the Service Provider must:
  - (1) take all necessary steps to ensure that the Services are promptly corrected;
  - (2) give Notice to the PHN when the Services have been corrected; and
  - (3) allow the PHN to repeat the assessment of all or part of the Services against the Performance Criteria,within five Business Days after the date of the Notice or such other time as agreed between the parties in writing.
- 12.5 If any part of the Services does not meet the Performance Criteria on two or more occasions, PHN may (in addition to its other remedies and without limiting clause 28.1(1)(a)) terminate the agreement immediately under clause 28.1(1)(b) or exercise its step in rights under clause 30.

## **13. Intellectual Property Rights**

- 13.1 The parties acknowledge and agree that:
- (1) the PHN retains all rights and interests in relation to the PHN Intellectual Property and the PHN Materials; and
  - (2) the Service Provider retains all rights and interests in relation to the Service Provider Intellectual Property.
- 13.2 To the extent that the Service Provider needs to use any of the PHN Intellectual Property for the purpose of providing the Services, the PHN grants to the Service Provider a revocable, non-exclusive, non-transferable, limited licence to use, reproduce and modify the PHN Intellectual Property solely for that purpose.
- 13.3 To the extent that the PHN needs to use any of the Service Provider Intellectual Property for the purpose of making use of the Services and any Deliverables, the Service Provider grants to the PHN a worldwide, perpetual, non-exclusive, transferable, royalty and licence fee free licence capable of sub-licence to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit the Service Provider Intellectual Property.
- 13.4 The Intellectual Property in any Deliverable created by or on behalf of the Service Provider, in the course of providing the Services to the PHN under a Contract (**Contract IP**), automatically vests, on creation, in the PHN.
- 13.5 The Service Provider must immediately and confidentially disclose any Contract IP referred to in clause 13.4 to the PHN within a reasonable time of it becoming aware of such Contract IP.
- 13.6 The Service Provider warrants to the best of its knowledge and belief that all Contract IP will be original works and not open to any claims of infringement by third parties, and that any use of the Contract IP by the PHN or by the Commonwealth will not infringe the Intellectual Property Rights of another person.
- 13.7 The Service Provider undertakes that it holds or will obtain, from each of its Personnel who are responsible for creating Contract IP unconditional consents to any act or omission which, but for that consent, would constitute an infringement of their Moral Rights.

## **14. Delivery of Deliverables**

On the expiry of this CSA and/or each Contract, termination of the CSA and/or each Contract under clause 28 or any other provision of the CSA, or upon request of the PHN, the Service Provider must deliver to the PHN all:

- (1) PHN Material;
- (2) Deliverables; and
- (3) other material in the possession or custody of the Service Provider relating in whole or in part to the Services,

promptly and in the form reasonably required by the PHN, and at the Service Provider's expense.

## **15. Indemnity**

- 15.1 The Service Provider must at all times indemnify, hold harmless and defend the PHN, 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 the PHN, or

its sub-licensees within the scope of the PHN's Intellectual Property Rights and licences under CSA, in relation to any part of the Services;

- (2) any actual, likely or threatened breach of the Service Provider's or its subcontractor's obligations relating to Confidential Information by the Service Provider, its subcontractors or its Personnel;
- (3) any actual, likely or threatened breach of any of the obligations of the Service Provider under clause 20 or a subcontractor under the subcontract provisions referred to in clause 20.2;
- (4) negligent, reckless, unlawful or wilful acts or omissions of the Service Provider, its Personnel or subcontractors; or
- (5) performance of the Services or any breach or non observance of any term of this CSA or a Contract on the part of the Service Provider, its subcontractors or Personnel.

## 16. Liability

Each party's liability under CSA is reduced to the extent that any damages, liability, loss or costs arise from, or are attributable to, any negligent act or omission of the other party or its officers, employees, agents or Service Providers.

## 17. Limitations of Liability

### 17.1 Limitation of liability

- (1) A party's liability for damages to the other party in connection with a Contract will not exceed in aggregate the greater of:
  - (a) the liability cap amount stated in that Contract; or
  - (b) any liability cap amount stated in a Schedule.
- (2) Neither party will be liable to the other for damages in respect of any Indirect Loss.
- (3) For the purposes of this clause 17, **Indirect Loss** means an indirect loss (not being a loss which arises naturally as a result of a breach of this CSA or other event giving rise to the relevant Claim), and the Parties acknowledge and agree that the following will be considered Indirect Losses for the purposes of this clause 17.1:
  - (a) a loss of revenue;
  - (b) a loss of profits;
  - (c) a loss of opportunity or business; and
  - (d) a loss of reputation.
- (4) The parties also acknowledge and agree that the following will not be considered Indirect Losses for the purposes of this clause 17.1 and will be recoverable by the PHN as direct losses:
  - (a) payments made to the Service Provider for Services or Deliverables that are not provided as required by this CSA or a Contract;
  - (b) costs for procuring replacement or alternative goods or services in respect of Services or Deliverables that the Service Provider fails to provide as required under this CSA or a Contract (including Services or Deliverables

- that fail to comply with the Acceptance Criteria or Performance Criteria);
- (c) costs of implementing any reasonably necessary workaround in relation to defective Services or Deliverables; or
  - (d) costs of remedial measures such as engaging extra staff or purchasing additional equipment to address issues caused by Services or Deliverables that the Service Provider fails to provide as required under this CSA or a Contract (including Services or Deliverables that fail to comply with the Acceptance Criteria or Performance Criteria).

## 17.2 Exceptions to limitation of liability

The limits on and exclusions of liability in clause 17.1 will not apply in relation to:

- (1) personal injury (which includes illness) or death of any person;
- (2) loss of, or damage to, any real or personal property owned, leased, licensed or controlled by the PHN, or any real or personal property of any third party;
- (3) liability of the Service Provider in connection with:
  - (a) unlawful, negligent or fraudulent acts or omissions;
  - (b) wilful misconduct;
  - (c) repudiation of this CSA or a Contract;
  - (d) the indemnities provided by the Service Provider under this CSA;
- (4) a breach of clauses 5 (Warranties), 13 (Intellectual Property), 18 (Confidentiality), 19 (Data and Security), 20 (Privacy), or any other obligation of confidence owed to the PHN under this CSA or an applicable Contract.

## 17.3 Proportionate liability

To the extent permitted by applicable Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this CSA or a Contract.

## 18. Confidentiality

18.1 The Service Provider must not directly or indirectly use any Confidential Information:

- (1) of the PHN;
- (2) of any Related Body Corporate of the PHN;
- (3) disclosed to the PHN or the Service Provider by any existing or potential customer, supplier, contractor, agent, licensor or licensee of the PHN; or
- (4) of the Commonwealth,

for any purpose other than providing the Services under this CSA and/or any applicable Contract, and must not disclose such Confidential Information to any person without the prior written consent of the PHN.

18.2 If the Service Provider discloses any Confidential Information in accordance with clause 18.1 to another party (the **Recipient**), the Service Provider must:

- (1) notify the Recipient that the information is confidential;
- (2) take all reasonable proper and effective precautions to ensure that the Recipient maintains the confidential nature of the Confidential Information; and
- (3) procure from the Recipient a written and signed agreement to keep to the disclosed information confidential, to be provided to the PHN.

18.3 The Service Provider must:

- (1) take all reasonable, proper and effective precautions to maintain the confidential nature of the Confidential Information, including the Commonwealth's Confidential Information;
- (2) not copy or duplicate or allow the copying or duplication of any Confidential Information without the prior consent of the PHN;
- (3) immediately notify the PHN of any potential, suspected or actual unauthorised access, disclosure, copying or use or breach of this clause 18; and
- (4) at the request of the PHN, sign a confidentiality agreement containing provisions similar to the provisions in this clause 18 in favour of the Commonwealth or any existing or potential customer, supplier, contractor, agent, licensor or licensee of the PHN.

18.4 At the PHN's request or on the expiry or termination of this CSA and/or any Contract under clauses 28 or 30.3, the Service Provider must promptly return all of the PHN's physical and written records containing Confidential Information, including any Confidential Information of the Commonwealth, and all documentation relating to that Confidential Information (including copies), to the PHN in a form reasonably requested by the PHN. Alternatively, if requested by the PHN, the Service Provider must destroy such items in the manner specified by the PHN and promptly certify to the PHN in writing that it has done so.

18.5 For the avoidance of doubt, nothing in this CSA derogates from any obligation the Service Provider 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.

18.6 Each party agrees to notify the other party immediately if it learns or has reason to believe that any person who has had access to the other party's Confidential Information has violated or intends to violate the terms of this CSA or any Contract, and must reasonably cooperate with the other party in seeking injunctive relief and/or other available remedies against any such person.

## **19. Data and security**

### **19.1 Data**

- (1) The Service Provider acknowledges and agrees that:
  - (a) it obtains no right, title or interest with respect to any Data, other than a right to use Data for the sole purpose of, and only to the extent required for, the performance of the Services in accordance with this CSA; and
  - (b) subject to the confidentiality and privacy requirements under clauses 18 and 20, the PHN may use the Data for any purpose, including without limitation:
    - (i) performing its obligations and exercising its rights under this CSA;

- (ii) for its ordinary business purposes; and
  - (iii) in relation to any procurement or tendering purposes.
- (2) As between the Service Provider and the PHN, all rights in, and in relation to, Data remain with the PHN at all times and the Service Provider assigns all rights, title and interest in the Data to the PHN on creation.
- (3) The Service Provider must ensure that its Personnel:
  - (a) who access, or have the ability to access, Data are appropriate to do so, including passing any background or security checks as required by this CSA; and
  - (b) (including subcontractors) comply with this clause 19 and manage and safeguard Data in accordance with all other requirements of this CSA.
- (4) Where Data is in the Service Provider's possession or control, the Service Provider must assist the PHN to access, use, interact with, extract and retrieve the Data, immediately on receipt of a request from the PHN.
- (5) The Service Provider must not:
  - (a) transfer, store, process, access, disclose or view Data; or
  - (b) perform any of its obligations under this CSA which could involve Data being stored, processed, accessed, disclosed or viewed,outside of Australia, except with the prior written consent of the PHN (such consent may be conditional).
- (6) In addition to its obligations under this clause 19, the Service Provider must comply with any written directions, instructions or policies of the PHN in relation to the Data, including access, storage, security, integrity, confidentiality and availability of Data.

## 19.2 Security of Data

- (1) This clause 19.2 applies to the extent that the Service Provider manages, controls or has access to Data in the performance of the Services or otherwise under this CSA.
- (2) The Service Provider must implement, maintain and enforce a formal program of organisational security measures (comprising, at a minimum, policies and procedures relating to audits and security practices) relating to technology and cyber security that reflects the:
  - (a) vulnerabilities and threats to the Data; and
  - (b) potential impact of a loss of availability, confidentiality or integrity of the Data,

**(Security Policy);**
- (3) The Security Policy must be designed to:
  - (a) comply with best industry practice;
  - (b) monitor, audit, detect, identify, report and protect against Security Incidents, Viruses, and any other threats or hazards to the security, integrity or availability of the Data;

- (c) ensure the security (including the confidentiality, availability and integrity) of the Services and Data in accordance with the requirements of this CSA; and
  - (d) monitor, detect, identify and protect against fraud and corruption by the Service Provider's organisation and the Service Provider's Personnel.
- (4) The Service Provider must regularly review and continuously improve the Security Policy to ensure it remains current and up-to-date and continues to satisfy the requirements of this clause 19.2 and is in accordance with best industry practice.

### 19.3 Security Incidents

- (1) If the Service Provider becomes aware that there has been a Security Incident, the Service Provider must within one Business Day:
- (a) notify the PHN and, for Security Incidents that are classified by the PHN as having a major or potentially major impact or where otherwise directed by the PHN, also notify the Commonwealth (such notification will be, for the avoidance of doubt, in addition to any notification the Service Provider is required to make to a government body or regulatory authority); and
  - (b) provide to the PHN, to the extent known at the time, the date of the Security Incident and a description of the Security Incident.
- (2) Where the Service Provider becomes aware of any Security Incident or is notified by the PHN of any actual, likely or suspected Security Incident, the Service Provider must promptly (but in any case, within 72 hours):
- (a) investigate and diagnose the Security Incident;
  - (b) manage and contain the Security Incident and mitigate the impact of the Security Incident;
  - (c) investigate and take steps to identify the root cause of the Security Incident and seek to understand the risks posed by the Security Incident and identify how these risks can be addressed;
  - (d) work with the PHN to remediate and rectify the facts and circumstances giving rise to the Security Incident, in order to prevent the occurrence of a similar Security Incident in the future; and
  - (e) comply with any reasonable direction (including as to timeframes) of the PHN with respect to the Security Incident.
- (3) The Service Provider must, promptly on receiving a request from the PHN, provide the PHN with:
- (a) information and details of any actions it has taken in response to an actual, suspected or likely Security Incident;
  - (b) where a Security Incident has impacted a customer of the PHN, a summary of the records impacted, or which may be impacted, and any Data and other information that has been or may have been lost, accessed or disclosed as a result of a Security Incident; and
  - (c) any assistance reasonably required by the PHN in relation to any criminal, regulatory or other investigation relating to the Security Incident, including any obligation of the PHN to the Commonwealth.
- (4) For clarity, nothing in this clause 19.3:

- (a) requires the Service Provider to provide the PHN with specific details that relate to the Service Provider's other customers or would breach any applicable Laws; and
- (b) limits the Service Provider's obligations at Law with respect to the notification and resolution of Security Incidents.

#### 19.4 Audits and compliance

- (1) The Service Provider must, at its own cost, audit its compliance with its Security Policy and security obligations under this CSA on at least an annual basis.
- (2) On request by the PHN, the Service Provider must provide to the PHN with copies of all reports relating to any external or internal audits of the Service Provider's security systems (to be provided for the most recent period available), including follow-up reports on audit action items.
- (3) At the PHN's request, the Service Provider must implement any audit findings or recommendations arising from an audit conducted under clause 19.4(1) and reasonably demonstrate to the PHN the implementation of such findings and recommendations.

#### 19.5 General

- (1) Subject to clause 34(2), on termination of this CSA, the Service Provider must:
  - (a) at the option of the PHN, either return to the PHN or destroy all Data in the Service Provider's possession or control; and
  - (b) immediately cease access to, and ensure that each of its Personnel cease access to, any Data under this CSA.
- (2) For clarity, nothing in this clause 19 relieves the Service Provider of its obligations under clauses 18 or 20.

### 20. Privacy

#### 20.1 Use and disclosure of Personal Information

- (1) The Service Provider must not use or (unless required by Law) disclose any Personal Information other than for the sole purpose of the Service Provider performing its obligations under this CSA without the prior written approval of the PHN, and must:
  - (a) take all reasonable steps to protect all Personal Information in its possession or control against misuse and loss and from unauthorised access, modification or disclosure;
  - (b) comply with any written directions, instructions or policies of the PHN in relation to the collection, storage, use, disclosure or management of Personal Information;
  - (c) only allow the Service Provider's Personnel to access any Personal Information where necessary for the purpose of the Service Provider performing its obligations under this CSA and otherwise ensure that the Service Provider's Personnel treat Personal Information in accordance with the Service Provider's obligations in this clause 20;
  - (d) not do or omit to do anything with respect to Personal Information that causes or is likely to cause the PHN to be in breach of its obligations under any Privacy Laws;

- (e) if it becomes aware that there has been an actual, alleged or suspected Security Incident involving Personal Information:
  - (i) comply with clause 19.3;
  - (ii) comply with any reasonable directions (including as to timeframes) from the PHN with respect to that breach (which may include, for example, notifying any affected individuals of the breach of privacy); and
  - (iii) take all necessary action to prevent any recurrence of such breach or potential breach;
- (f) keep logs and records of all access to Personal Information by the Service Provider's Personnel and provide copies of those logs and records to the PHN promptly on request; and
- (g) subject to clause 34(2), on termination of this CSA or if requested by the PHN, at the option of the PHN, either:
  - (i) return all Personal Information in the Service Provider's possession or control to the PHN;
  - (ii) destroy all Personal Information in the Service Provider's possession or control; or
  - (iii) de-identify all Personal Information in the Service Provider's possession or control, including in all backup and disaster recovery sites of the Service Provider.

## 20.2 Compliance with Privacy Laws

The Service Provider must comply (and ensure that the Service Provider Personnel are aware of and comply) with:

- (a) the PHN's publicly available privacy policy as updated from time to time by the PHN;
- (b) the Australian Privacy Principles in the *Privacy Act 1988* (Cth), as amended or replaced from time to time;
- (c) any applicable privacy code approved under the *Privacy Act 1988* (Cth); and
- (d) any other applicable Laws or codes governing Personal Information,

(together, **Privacy Laws**) in doing any act or engaging in any practice pursuant to this CSA, to the extent that the Service Provider is bound to do so under the Privacy Laws and also (whether or not it is bound to do so under the Privacy Laws) in the same way and to the same extent as the PHN would have been bound by the Privacy Laws if the PHN had done the act or engaged in the practice.

## 20.3 Service Provider to implement directives

In handling Personal Information, the Service Provider must comply with any reasonable request by the PHN for the purpose of the PHN implementing:

- (a) the PHN's privacy obligations under the Privacy Laws or any privacy policy the PHN adopts;
- (b) any guideline, direction or determination of the Office of the Australian Information Commissioner; and

- (c) industry best practice regarding the collection, storage, handling and disposal of information.

#### 20.4 **Service Provider to provide access**

- (1) In relation to any Personal Information that the Service Provider holds or stores in connection with this CSA, the Service Provider must:
  - (a) promptly comply with any request by the PHN for access to that information; and
  - (b) comply with any reasonable and lawful direction issued by the PHN in respect of that information.
- (2) If the Service Provider receives a request from an individual for access to, alteration, correction or deletion of Personal Information about the individual held or stored by the Service Provider in connection with this CSA, the Service Provider must promptly notify the PHN in writing of the request and comply with any reasonable and lawful direction issued by the PHN in respect of any such request.

#### 20.5 **No off-shoring of Personal Information**

- (1) The Service Provider must not transfer any Personal Information to a person outside of Australia, or allow any person who is located outside of Australia to access Personal Information, without the prior written consent of the PHN.
- (2) If the Service Provider does transfer Personal Information to a person outside of Australia, or allow any person who is located outside of Australia to access Personal Information (including with the consent of the PHN), the Service Provider must indemnify the PHN and its Related Bodies Corporate and hold them harmless against all Claims suffered or incurred by them in connection with any act or practice involving that Personal Information engaged in by persons located outside of Australia where that act or practice would constitute a breach of Privacy Laws if engaged in by the PHN.

#### 20.6 **Co-operation with investigations**

Without limiting the other obligations of the Service Provider under this CSA, the Service Provider must reasonably co-operate with the PHN and the Office of the Australian Information Commissioner in relation to the investigation of any incident where the PHN believes there may have been any breach of this clause 20.

### **21. Service Provider's Personnel**

21.1 At all times throughout the Term, the Service Provider warrants that:

- (1) it has paid, on or before the due date for payment, all:
  - (a) remuneration and other benefits payable or to be provided to;
  - (b) payroll tax payable by the Service Provider in respect of wages paid or payable in respect of;
  - (c) workers compensation insurance premiums payable by the Service Provider in respect of,

employees (or deemed employees) of the Service Provider in respect of work done in connection with this CSA or any Contract including Services for which PHN has not yet paid the Service Provider; and

- (2) each subcontractor (if any) engaged by the Service Provider has provided to the Service Provider statements to the effect that the payments referred to in clause 21.1(1) have been paid, in such form as prescribed under legislation with respect to workers compensation insurance, industrial relations (payment of subcontractor's wages) and payroll tax may prescribe.
- 21.2 The Service Provider must, on receipt of a written request from the PHN, provide the PHN with a written statement confirming that it has complied with its obligations under clause 21.1.
- 21.3 The Service Provider indemnifies the PHN against any loss or liability (including statutory liability for unpaid wages, workers' compensation insurance premiums, workers compensation liability and unpaid payroll tax) directly or indirectly arising from breach of this clause 21 or failure to pay the foregoing when due.
- 21.4 The PHN may withhold or suspend any payment or compliance by it with any other obligation under this CSA or a Contract pending receipt of a statement and certificate referred to in clause 21.2. Exercise of this right does not entitle the Service Provider to cease work, terminate this CSA or the relevant Contract or to any other remedy and is without prejudice to the exercise of any other right or remedy (including termination) by the PHN.

## **22. Conflict of Interest**

- 22.1 The Service Provider represents and warrants that at the time of the Commencement Date, neither the Service Provider nor any of its Personnel, agents or subcontractors has any actual or perceived Conflict of Interest or anticipates such a conflict, relevant to the performance of the Services.
- 22.2 If, during the Term of this CSA or an applicable Contract, a Conflict of Interest arises or appears likely to arise in respect of the Service Provider or any of its Personnel, the Service Provider must:
  - (1) immediately notify the PHN if it becomes aware of any Conflict of Interest or potential Conflict of Interest, and provide the PHN with a full disclosure of all relevant information relating to the actual or potential Conflict of Interest and the steps it proposes to take to resolve or otherwise deal with that Conflict of Interest; and
  - (2) implement those steps proposed by the Service Provider to resolve or otherwise deal with the Conflict of Interest, subject to any reasonable directions of the PHN.
- 22.3 The Service Provider acknowledges and agrees that if it fails to notify the PHN as required under this clause 22 of a Conflict of Interest, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, the PHN may terminate this agreement or any part of it in accordance with clause 28.1.

## **23. Insurance**

- 23.1 The Service Provider must ensure that, throughout the Term, the Service Provider is insured or is the beneficiary of an insurance policy with a reputable insurance company, and on terms which are satisfactory to the PHN (acting reasonably) for:
  - (1) broad form public liability insurance to the value of \$20 million per occurrence;
  - (2) professional indemnity insurance to the value of \$10 million in respect of each claim arising from or in relation to the Services provided by the Service Provider or its Personnel under each Contract and the professional indemnity insurance policy

must be maintained for seven years after the End Date;

- (3) workers' compensation insurance and any other insurance as required by law; and
- (4) any other insurance that a prudent and experienced Service Provider in the position of the Service Provider would take out.

23.2 The Service Provider must, on PHN's written request, provide evidence to the PHN's satisfaction that the Service Provider has complied with its obligations under this clause 23.1.

## **24. Fees, Expenses and Invoicing**

24.1 The PHN must pay the Fees for the Services to the Service Provider.

24.2 The Service Provider must invoice the PHN for the Services in accordance with the timetable set out in a Contract. If the Service Provider fails to issue an invoice within six months of the date specified in the timetable, it will not be permitted to invoice for the relevant Services.

24.3 Tax invoices for Services duly performed and delivered are payable by the PHN within 30 days of the date on which it receives the tax invoice from the Service Provider, unless otherwise agreed.

24.4 Any payment of moneys under this clause 24 is not:

- (1) evidence of the value of the Services or that the Services have been satisfactorily carried out in accordance with the CSA;
- (2) an admission of liability; or
- (3) approval by the PHN of the Service Provider's performance or compliance with CSA,

but is only to be taken as payment on account.

24.5 The Service Provider acknowledges that, as a result of funding arrangements under the PHN Deed 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.

24.6 Without limiting its rights under this clause 24 or otherwise under the CSA or at Law, the PHN may deduct from moneys otherwise due to the Service Provider any debt or other moneys due from or any other amount claimed by the PHN to be payable by the Service Provider to the PHN.

## **25. Underspend and overpayment**

### **25.1 Notification**

If, at any stage, the Service Provider becomes aware of, or reasonably suspects that:

- (1) an amount paid to the Service Provider by the PHN in Fees which is allocated for the provision of specified Services has not been fully allocated or spent in the provision of those specified Services as a result of a surplus of Fees or an underspend of Fees (**Underspend**); or
- (2) an amount has been paid to the Service Provider by the PHN in Fees or otherwise under this CSA or an applicable Contract to which the Service Provider is not entitled (**Overpayment**),

then the Service Provider must immediately notify the PHN in writing with details of the actual or suspected Underspend or Overpayment.

## 25.2 Underspend & Overpayment

- (1) If the Service Provider provides a notice to the PHN in accordance with clause 25.1, or if the PHN otherwise becomes aware that there has been an Underspend and/or Overpayment, then the PHN may, at its sole discretion, notify the Service Provider in writing:
  - (a) requiring the Service Provider to repay the amount of the Underspend and/or Overpayment within five Business Days of the date of the notice; or
  - (b) that the Underspend and/or Overpayment amount will be offset against any amount subsequently due to the Service Provider under this CSA or any Contract (in which case the amount of offset Underspend and/or Overpayment will be considered part of the Fees payable in the subsequent period, and must be allocated to Services appropriately).
- (2) If there is an Underspend, the Service Provider may make a written request to the PHN requesting that the Underspend be allocated to other Services or otherwise requesting to spend or allocate the Underspend (**Underspend Request**). Within 60 days of receipt of the Underspend Request, the PHN may, in its sole discretion:
  - (a) provide notice approving the Underspend Request and detailing any conditions or additional terms which the Service Provider must comply with in allocating the funds in accordance with the Underspend Request; or
  - (b) provide notice denying the Underspend Request, and requiring that the Service Provider repay the amount of the Underspend to the PHN within five Business Days of the date of the notice.
- (3) For the avoidance of doubt, the Service Provider must not spend, allocate or make use of any Underspend under this CSA or an applicable Contract without the express, prior written permission of the PHN in accordance with clause 25.2(2)(a), and the Service Provider must only spend, allocate or make use of the Underspend in the manner expressly specified by the PHN in accordance with any notice issued under clause 25.2(2)(a).
- (4) The PHN will only consider Underspend Requests which are consistent with the scope of the Services already agreed to be provided by the Service Provider under this agreement.

## 25.3 Failure to make payment

If the Service Provider fails to repay the full amount of any Underspend or Overpayment as required in accordance with this clause 25, the PHN may (at its sole discretion) require that the Service Provider pay interest on the amount of the Underspend or Overpayment outstanding in accordance with the Rate from the due date for payment up to and including the date on which payment of the Underspend or Overpayment is made by the Service Provider to the PHN in full.

## 26. Withholding payment and Fee disputes

### 26.1 Withholding payment

- (1) The PHN may withhold payment of all or part of a tax invoice for a particular timetable period under an applicable Contract if:
  - (a) the Service Provider in providing the Services under a particular Contract fails to meet any key performance indicators or specifications detailed under

the applicable Contract; or

- (b) the Service Provider otherwise does not complete the Services relating to a particular Contract to the satisfaction of either the PHN or its customers,

(together, **Service Default**).

- (2) If payment of a tax invoice occurs in advance and a Service Default occurs for that portion of Services attributable to the Fees paid in advance, the PHN may withhold all or part of a tax invoice for the next applicable timetable period under an applicable Contract.
- (3) Where the PHN has withheld all or part of payment of the Fees under clauses 26.1(1) or 26.1(2) and the Service Provider has rectified the Service Default to the satisfaction of the PHN, the Service Provider must (at the sole discretion of the PHN):
  - (a) promptly issue an additional tax invoice for payment of the withheld amount, which the PHN must pay within 30 days of the date on which it receives the tax invoice from the Service Provider, unless otherwise agreed; or
  - (b) include the amount which was previously withheld but is now to be paid, as a separate line in the next tax invoice to be issued by the Service Provider,
- (4) Where the Service Provider has rectified the Service Default only in part, the PHN may comply with clause 26.1(3) by making partial payment reflecting, in the reasonable opinion of the PHN, that portion of the Service Default which has been rectified by the Service Provider.
- (5) Without limitation, the Service Provider may rectify a Service Default by (as applicable):
  - (a) rectifying any issues with a particular Service which fails to meet any specifications detailed in an applicable Contract; or
  - (b) if the Service Default involves the failure to meet any key performance indicators detailed in an applicable Contract for a particular timetable period, achieving the key performance indicators in a subsequent timetable period such that when the two timetable periods are taken together, it is as if the Service Default is reduced or eliminated.
- (6) Notwithstanding clause 26.1, the PHN may withhold payment of all or part of the Fees for a particular timetable period under an applicable Contract if there has been an offset of an Underspend and/or Overpayment amount in accordance with clause 25.2(1)(b).

## 26.2 Fee dispute

- (1) If any tax invoice is disputed in good faith by the PHN, the PHN must give written notice to the Service Provider of the dispute, which must include the reasons for the dispute (**Dispute Notice**), no less than 30 days after receipt of the tax invoice by the PHN. After this date, all tax invoices will be final.
- (2) If the PHN issues a Dispute Notice, the PHN may withhold only those amounts that are directly related to disputed elements of the tax invoice.
- (3) The parties will use reasonable endeavours to resolve any invoice dispute within 30 days after a Dispute Notice is issued. Any payment to be made following resolution is to be paid within seven days after such resolution.

- (4) If the parties are unable to resolve the dispute under clause 26.2(3) within thirty days, the dispute is to be resolved in accordance with the procedure set out in clause 31.

## 27. Taxes

- 27.1 The Service Provider is liable for all taxes payable in respect of this CSA and any Contract.
- 27.2 Unless the contrary is clear all amounts shown in this CSA or any Contract are exclusive of GST.
- 27.3 If a party makes a taxable supply under, or in connection with, this CSA or any Contract then, the party liable to pay for the taxable supply must also pay to the party making the taxable supply at the same time any GST payable in respect of the taxable supply.
- 27.4 A party is not obliged to make a payment of GST unless it is provided with a valid tax invoice which complies with the GST law.

## 28. Termination

### 28.1 Termination for default

- (1) A party may terminate this CSA and/or a Contract at any time by Notice to the other party (Defaulting Party) if any of the following apply:
- (a) the Defaulting Party breaches any provision of this CSA or any Contract, the breach is capable of remedy (**Regular Default**) and the Defaulting Party does not remedy that breach according to the Remediation Plan within the given period for remediation;
  - (b) the circumstances contemplated by clause 12.5;
  - (c) the PHN is exercising its right to terminate under clause 36.3 (Force Majeure);
  - (d) the Defaulting Party breaches a material provision or breaches a warranty provided under this CSA and/or a Contract and the breach is not capable of remedy (**Material Default**);
  - (e) where the Defaulting Party:
    - (i) subject to applicable laws, becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth) or commits an act of bankruptcy; or
    - (ii) is subject to any event or circumstance which, in the reasonable opinion of a party to this CSA, is likely materially and adversely to affect the ability of the Defaulting Party to perform all or any of its obligations under or otherwise to comply with the terms of this CSA or a Contract.
- (2) If this CSA and/or a Contract is terminated under clause 28.1(1), subject to clause 28.3, the PHN is liable only for payments under clause 24.2 for Services rendered before the effective date of termination.
- (3) Within seven Days of a Regular Default Notice being given, the parties must meet to discuss and in good faith agree a remediation plan in relation to the Regular Default, which will also specify a period for rectification of the Regular Default (**Remediation Plan**). If the parties do not to agree a Remediation Plan, the party who is not in default may then terminate the CSA and/or the relevant Contract by Notice.

## 28.2 Termination or reduction for convenience

- (1) The PHN may, at any time and without cause, by Notice, terminate or reduce the scope of this CSA and/or a Contract. On receipt of a Notice of termination or reduction, the Service Provider must:
  - (a) stop or reduce work (as applicable) as specified in the Notice; and
  - (b) take all available steps to minimise loss resulting from that termination or reduction and to protect PHN Material and Deliverables.
- (2) If this CSA and/or Contract is terminated or reduced under clause 28.2, subject to clause 28.3, the PHN is liable only for:
  - (a) payments under clause 24.2 for Services rendered before the effective date of termination or reduction; and
  - (b) reasonable costs incurred by the Service Provider and directly attributable to the termination or reduction.
- (3) The PHN is not liable to pay compensation under clause 28.2(2)(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this CSA and/or a Contract, exceed the total Fees which would otherwise have been payable under this CSA and/or a Contract.
- (4) Termination or reduction of this CSA and/or a Contract does not affect any accrued rights or liabilities of either party under the CSA and/or a Contract, nor does it affect any provision of the CSA and/or a Contract which is expressly or by implication intended to operate after termination.

## 28.3 Refunding of Fees paid in advance

- (1) The PHN:
  - (a) if the CSA and/or a Contract is terminated under clauses 28.1(1) or is otherwise terminated or expires, must determine; and
  - (b) may otherwise in its discretion choose to determine at any point, in accordance with clause 28.3(2) the extent to which any part of the Fees paid to the Service Provider corresponds to Services not yet rendered.
- (2) In making its determination under clause 28.3(1), the PHN must:
  - (a) where applicable, take into account the Deliverables, the Deliverable Milestone Dates and any other relevant details in the CSA and/or a Contract; and
  - (b) act reasonably.
- (3) To the extent that any part of the Fees paid to the Service Provider corresponds to Services not yet rendered (as determined by the PHN under clause 28.3(1)) **(Excess Fees)**:
  - (a) the PHN may set off the Excess Fees against any amounts payable to the Service Provider; and
  - (b) the Service Provider must reimburse the PHN for the Excess Fees (after taking into account any set off under clause 28.3(3)(a)) within 30 days of a written request from the PHN.

- (4) If the Service Provider does not reimburse the PHN for the Excess Fees in accordance with clause 28.3(3)(b), the Service Provider must pay interest on the amount of the Excess Fees in accordance with the Rate from the due date for payment up to and including the date on which payment of the Excess Fees is made by the Service Provider to the PHN in full.

## 29. Disengagement

### 29.1 Disengagement Services

Following termination or no less than three months prior to the expiry of this CSA or a Contract, the Service Provider must (without limiting its other obligations under this CSA), on request by the PHN:

- (1) provide the Disengagement Services to the PHN in accordance with a Disengagement Plan, which is to be agreed between both parties within 90 days of the date of this CSA;
- (2) provide all Service Provider Personnel and Resources required to implement the Disengagement Plan; and
- (3) continue to provide the Services to the PHN on the terms of this CSA for the duration of the transition period specified in the Disengagement Plan or if no period is specified in the Disengagement Plan, a transition period nominated by the PHN.

### 29.2 Partial termination

If the Services are terminated in part, the obligations of the Service Provider under this clause 29 and the agreed Disengagement Plan will apply to the extent necessary or desirable to ensure the orderly transition to the PHN (or to a replacement provider nominated by the PHN) of those Services which are the subject of the termination.

## 30. Step-In Rights

- 30.1 The purpose of this clause is to set out the circumstances in which the PHN is entitled to step in and perform the Services in place of the Service Provider (**Step-in Rights**). The Step-in Right described in this clause does not limit any other rights the PHN has under this CSA and/or any Contract.
- 30.2 The purpose of the PHN exercising the Step-In Rights is to enable the delivery of the Services to achieve the Required Outcome.
- 30.3 The PHN is entitled, by Notice to the Service Provider, to step in and either itself perform, or procure that a third party perform, the Services being provided by the Service provider under a Contract where:
  - (1) the PHN is of the reasonable belief that the Service Provider is in Material Default under the Contract;
  - (2) a Security Incident has occurred and the Service Provider has failed to take, or delayed in taking, the actions required in relation to the Security Incident under clause 19.3; or
  - (3) the PHN has given notice to the Service Provider that it is in default of its obligation under the Contract and that the PHN is entitled to exercise its Step-in Rights and proposes to do so (**Step-in Notice**), and the Service Provider has failed within five days to rectify the default, specified in the Step-in Notice, to the reasonable satisfaction of the PHN.

30.4 As soon as reasonably practical after the circumstances giving rise to the PHN's exercise of the Step-in Right have abated or been remediated to its satisfaction:

- (1) the PHN will cease or procure the third party to cease to perform any of the Services for which it assumed responsibility under this clause; and
- (2) the Service Provider must resume provision of those Services.

## **31. Dispute Resolution**

- 31.1 A party claiming that a Dispute has arisen may notify the other party or parties to the Dispute giving details of the Dispute in writing (**Notification**).
- 31.2 On receipt of a Notification the representative of each party must first 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.
- 31.3 If the Dispute is not resolved under clause 31.2 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 Dispute Centre Limited (ADC) for resolution in accordance with the Guidelines for Commercial Mediation which are deemed incorporated into this CSA. Mediation must take place within South West Sydney.
- 31.4 This clause 31 does not prevent a party from initiating proceedings in a court.
- 31.5 For the avoidance of doubt, the Service Provider must continue to provide the Services under each Contract notwithstanding the existence of a Dispute, unless otherwise directed in writing by the PHN.
- 31.6 The cost of any mediator will be shared equally between each of the disputing parties participating in the Dispute resolution process under this clause 31.
- 31.7 Subject to clause 31.6, the disputing parties will each bear their own costs of any mediation.
- 31.8 This clause 31 shall survive termination of this agreement.

## **32. Commonwealth Requirements**

- 32.1 Notwithstanding anything else in this CSA, the Service Provider:
- (1) acknowledges that the PHN is bound by obligations to the Commonwealth which has provided funding to enable the PHN to enter this CSA and each Contract;
  - (2) must comply with all reasonable directions of the PHN, and otherwise provide all assistance and do all things necessary as requested by the PHN to enable the PHN to comply with its obligations to the Commonwealth; and
  - (3) expressly consents to the PHN disclosing the Service Provider's identity to the Commonwealth, including allowing the Commonwealth to publish information about the Service Provider (including its identity and the nature and existence of this agreement).
- 32.2 The Service Provider must allow the Auditor-General, the Privacy Commissioner, the Commonwealth Ombudsman and persons authorised in writing by the Commonwealth:
- (1) to access:

- (a) any sites or premises at which any Deliverable is stored or at which the Services are undertaken; and
  - (b) its Personnel; and
- (2) to inspect and copy any Deliverable.

32.3 The Service Provider must:

- (1) provide any report, or assistance in preparing any report, as directed by the PHN in order for the PHN to comply with its obligations to the Commonwealth under the PHN Deed;
- (2) not publish any publication or otherwise make any public communication in relation to the Services without the prior written approval of the PHN;
- (3) comply with any reasonable directions of the PHN in relation to confidentiality or conflict of interest; and
- (4) provide any information or enter into any undertakings required by the Commonwealth in respect of confidentiality or conflict of interest.

32.4 Where the Services include producing a publication, the Service Provider must:

- (1) recognise the PHN as a co-author in any resulting and approved publications. The order of authors will reflect their contributions to the development of the publication;
- (2) comply with any directions of the PHN in respect of publications; and
- (3) except to the extent the PHN notifies otherwise, ensure the final version of any publication complies with:
  - (a) the Level AA accessibility requirements in the *Web Content Accessibility Guidelines 2.0*; and
  - (b) the *World Wide Web Access: Disability Discrimination Act Advisory Notes 4.0* (2010) issued by the Australian Human Rights Commission,both of which the PHN will either provide to the Service Provider in a digital or physical copy, or by sending Service Provider a link where they can be accessed.

### 33. **Publicity**

The Service Provider must not make or authorise the making of any press release or other public announcement relating to the subject matter of this CSA or any Contract or any of the transactions contemplated by this CSA or any Contract unless:

- (1) it has the prior written approval of the PHN; or
- (2) the release or announcement is required to be made by law or the rules of a securities exchange, in which case, the Service Provider must give the PHN a reasonable opportunity to comment on the contents of the release or announcement before its release.

### 34. **Record Keeping**

- (1) The Service Provider must keep and maintain up to date records of the Services it provides (**Records**) accurately and consistently to reflect the performance of its obligations under this CSA and any Contract.

- (2) The Service Provider must retain all Records from the date on which the Record was first created until the expiry of the period which it is legally required to retain that Record (but not less than a period of seven years) (**Retention Period**) unless otherwise agreed and make them available for inspection by the PHN (in a form reasonably requested by the PHN) within 21 days of receipt of written notice from PHN.
- (3) The Service Provider may destroy hard copies of Records held by it before the end of the Retention Period if it has produced legible electronic records of those Records in such form as may be agreed by the parties.
- (4) The Service Provider must provide to the PHN written reports on the Services it provides to the PHN in accordance with the reporting obligations set out in each Contract.
- (5) The Service Provider must also provide any information reasonably requested by the PHN from time to time in relation to the Services it provides under a Contract.

### 35. Access and Audit Rights

- (1) The Service Provider agrees that the PHN or persons nominated by the PHN may, after giving the Service Provider reasonable notice, have access to the Service Provider's premises, books, records, documents, equipment and other property relevant to providing the Services for the purpose of ensuring compliance with the terms of this CSA.
- (2) The Service Provider must:
  - (a) on the written request of the PHN, subject to providing the Service Provider with reasonable notice, allow or provide the PHN or any of its professional advisors or an auditor appointed by the PHN with:
    - (i) such Records relating to the Services;
    - (ii) such access to the Service Provider's data, Records or personnel as is reasonably required to examine the Service Provider's performance of the Services;
    - (iii) reasonable access to the Service Provider's premises to conduct an onsite visit so as to examine any documents or information relating to the provision of the Services; and
    - (iv) reasonable access to documents or information in the possession of the Service Provider relating to the Services (to be known as an '**Audit**'); and
  - (b) cooperate with the PHN, its professional advisors or an auditor appointed by the PHN (subject to the professional advisors or auditor complying with any reasonable security procedures and confidentiality requirements established by the Service Provider) on the basis that:
    - (i) an Audit does not unreasonably interfere with the Service Provider's provision of services to other customers of the Service Provider; and
    - (ii) the PHN, its professional advisors or an auditor appointed by the PHN will not be entitled to examine any matter which does not impact on the Services.

## 36. General

### 36.1 No partnership or employment

- (1) Nothing in this CSA is intended to create a partnership as between the Service Provider and the PHN. The Service Provider acknowledges that:
  - (a) the Service Provider has no authority to bind the PHN without the PHN's specific written consent; and
  - (b) the Service Provider enters into this CSA as an independent service provider and retains the ultimate responsibility for the management and direction in relation to the provision and performance of the Services to the PHN.
- (2) The Service Provider must not represent itself as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- (3) Notwithstanding clause 36.1(2), the Service Provider 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 the PHN will be liable for the costs of any such investigation in connection with this CSA or the Services; and
  - (b) it must comply with the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth).
- (4) The Service Provider acknowledges that:
  - (a) its role under this CSA is as a non-exclusive provider of services; and
  - (b) the PHN is in no way restricted from performing or engaging third parties to perform services similar to the Services.

### 36.2 No assignment

No party to this CSA may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other party.

### 36.3 Force Majeure

- (1) If a party is prevented, hindered or delayed from performing its obligations under this CSA or an applicable Contract by the occurrence of a Force Majeure Event (**Affected Party**), then:
  - (a) as long as that situation continues, and provided that the Affected Party complies with all of the provisions in this clause 36.3, the Affected Party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly; and
  - (b) the Affected Party must immediately give the other party a notice of its occurrence and its effect or likely effect.
- (2) If the Service Provider is the Affected Party, then on giving the notice in accordance with clause 36.3(1):

- (a) the Service Provider must promptly develop (and provide to the PHN) a plan to manage and overcome the delay, interruption or non-achievement caused by the Force Majeure Event; and
  - (b) the parties will promptly meet to discuss and agree this plan and the Service Provider will amend it or do all other things as may be reasonably necessary or desirable to manage, mitigate and overcome the delay, interruption or non-achievement as is reasonably requested by the PHN.
- (3) If:
- (a) in the process of developing the plan contemplated under clause 36.3(2) the PHN, in its sole discretion, determines that as a result of the Force Majeure Event the Service Provider is unlikely to be able to provide the Services in accordance with this CSA or the terms of each Contract including the Performance Criteria; or
  - (b) a Force Majeure Event affecting the Service Provider's ability to provide the Services continues for more than 90 days,

then the PHN may, at its sole discretion, terminate this CSA or any applicable Contract in accordance with clause 28.1(1)(c).

#### 36.4 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 CSA.

#### 36.5 Severability

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

#### 36.6 Counterparts

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

#### 36.7 Entire understanding

- (1) This CSA is the entire agreement and understanding between the parties on everything connected with the subject matter of this CSA, and supersedes any prior agreement or understanding on anything connected with that subject matter.
- (2) The Service Provider acknowledges and agrees that:
  - (a) it has not placed any reliance on the completeness, accuracy or adequacy of any of the PHN Material or PHN Representations;
  - (b) it has entered into this CSA based on its own investigations, interpretations, deductions, information and determinations;
  - (c) the PHN Material and PHN Representations do not form part of this CSA; and
  - (d) to the extent permitted by law, the PHN is not liable to the Service Provider upon any Claim with respect to the PHN Material or the PHN Representations.

### 36.8 Amendment

- (1) Subject to clause 36.8(2), an amendment to this CSA or a Contract is not effective unless it is in writing and signed by the parties.
- (2) Where the PHN determines that an amendment to this CSA or Contract is necessary:
  - (a) to ensure that the Service Provider complies with the requirements of the PHN Deed; or
  - (b) as a result of any variation to the PHN Deed, or change in related funding or administrative policies or practices, where that change or variation is initiated by the Commonwealth,the PHN will:
  - (c) notify the Service Provider in writing of the amendment;
  - (d) consult with the Service Provider in good faith on any necessary adjustment to the Fee resulting from the amendment; and
  - (e) adjust the Fee as necessary and acting reasonably.
- (3) The Service Provider will be deemed to have agreed to any amendment to this CSA or Contract in accordance with clause 36.8(2).

### 36.9 Waiver

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.

### 36.10 Costs and outlays

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

### 36.11 Notices

- (1) A notice or other communication connected with this CSA (**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 the Details, and is either delivered by hand, posted, by email or facsimile to the contact details set out in the Details or such other address as may be notified in writing from time to time.
- (2) A Notice given in accordance with 36.11(1) is taken to be received:
  - (a) 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)
  - (b) if sent by facsimile, when the sender's facsimile machine generates a message confirming successful transmission; or
  - (c) if sent by email, the date the 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.

#### **36.12 Survival**

The obligations of the Service Provider under clauses 4.5 (reporting), 5 (Service Provider Warranties), 13 (Intellectual Property Rights), 14 (Delivery of Deliverables), 15 (Indemnity), 16 (Liability), 17 (Limitations of Liability), 18 (Confidentiality), 19 (Data and security), 20 (Privacy), 22 (Conflict of Interest), 23 (Insurance), 25 (Underspend and Overpayment), 26 (Withholding payment and Fee disputes), 28.3 (Refunding of Fees paid in advance) 29 (Disengagement), 31 (Dispute Resolution), 32 (Commonwealth Requirements), 33 (Publicity), and 34 (Record Keeping) will survive the expiry or termination of this CSA or any Contract.

#### **37. Governing law and jurisdiction**

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

Example

**Executed as an agreement**

Signed for and on behalf of <insert supplier name> in the presence of:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Full name of authorised signatory

\_\_\_\_\_  
Full name of authorised signatory

\_\_\_\_\_  
Position of authorised signatory

\_\_\_\_\_  
Position of authorised signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Signed for and on behalf of **South Western Sydney Primary Health Network Limited** by its authorised signatories in the presence of:

\_\_\_\_\_  
Signature of authorised signatory 1

\_\_\_\_\_  
Signature of authorised signatory 2

\_\_\_\_\_  
Full name of authorised signatory 1

\_\_\_\_\_  
Full name of authorised signatory 2

\_\_\_\_\_  
Position of authorised signatory 1

\_\_\_\_\_  
Position of authorised signatory 2

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date