

STANDARD TERMS AND CONDITIONS (NON-PHN)

CAPITAL HEALTH NETWORK LTD ABN 82 098 499 471

STRICTLY CONFIDENTIAL

Currency: Current on and from 1 JULY 2018

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In the Agreement the following definitions apply:

"**Activity**" means the activity described in Schedule 2, including:

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

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

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

- (a) has been Acquired wholly or in part with the Funding provided for the Activity; and
- (b) at the time of its Acquisition, the value of the item is greater than \$10,000 (GST-inclusive);

but excludes Intellectual Property and land, buildings or other real property.

"**Agreement**" means the agreement between CHN and Supplier regarding the performance of the Activity (including, as applicable, the provision of Client Services) by Supplier, comprising these standard terms and conditions and the relevant Services Order (and any agreed variation in accordance with clause 27.16).

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

"Budget" means, in respect of the Activity, the budget (if any) for expenditure of the Funding and Other Contributions for the Activity (if any) specified in Schedule 2 or as otherwise specified in writing by CHN from time to time.

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

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

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

"Client Services" means health and health-related services provided to a client under or as a consequence of the Agreement, being the services (if any) described as "Client Services" in Item 1 of Schedule 2.

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

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

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

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

It does not include information which:

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

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

"Contract Manager" means, in respect of each party, the person whose details are set out in Item 4 of Schedule 1.

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

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

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

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

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

"End Date" means the date set out in Item 2 of Schedule 1, being the date by which the Activity is to be completed (other than the provision of any Reports due after that date).

"Funder" means the legal entity or entities that provides Funding for the Activity.

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

- (a) the maximum amount of money payable by CHN to Supplier under the Agreement for the Activity as specified in Schedule 3; and
- (b) any amount calculated in accordance with clause 12.23 in respect of the Activity,

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

"Guidelines" means:

- (a) any guidelines issued by the Funder or by a State or Territory or any statutory body which set minimum standards for the performance of the Activity or the provision of Client Services;
- (b) any guidelines listed in Schedule 2; and
- (c) any guidelines relating in any way to the performance of the Activity or the provision Client Services that may be issued by CHN from time to time.

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

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

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

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

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

"Insolvency Event" in relation to a party means anything that indicates that there is a significant risk that that party is or will become unable to pay its debts as and when they become due and payable. This includes the party is insolvent as that term is defined in section 95A of the Corporations Act, the appointment of a liquidator to that party, the appointment of an administrator to that party, a step being taken to make the person bankrupt, an application being presented or an order being made for the sequestration of the party's estate, a meeting of the party's creditors being called or held, any application being made to wind up that party in insolvency in circumstances where that application is not stayed or dismissed within 10 business days of filing the application, the appointment of a controller as defined in section 9 of the Corporations Act to any asset or assets of that party, or that party ceasing or threatening to cease to carry on its business.

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

"Key People" means the individuals listed in Item 3 of Schedule 1.

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

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

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

"Milestone" means a milestone for the Activity as set out in Schedule 2.

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

"Other Contributions" means, in respect of the Activity, the financial or in-kind resources (with in-kind resources valued at market rates) other than the Funding, which are specified in Schedule 3 and are contributed by Supplier or another person for the Activity.

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

- (a) an apprehended violence or protection order made against the Relevant Person;
- (b) the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or any other prohibited substance;
- (c) violence against a person or the injury, but excluding the death, of a person; or
- (d) an attempt to commit a crime or offence, or to engage in any conduct or activity, described on paragraphs (a) to (c) of this defined term.

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

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

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

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

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

"Professional" means a Health Professional or other professional engaged or nominated by Supplier to provide Client Services under the Agreement, and for the avoidance of doubt may include Supplier where Supplier is an individual.

"Related Party" means:

- (a) an entity that controls or has significant influence over CHN at any time;
- (b) an entity that CHN controls or has significant influence over at any time, including any subsidiary of CHN;
- (c) a person who is a member of CHN's board;

- (d) a member of the board of an entity referred to in paragraph (a) or (b) above;
- (e) any Representative of CHN other than in their capacity as an employee of CHN; or
- (f) a spouse or immediate family member of:
 - (i) any of CHN's Representatives; or
 - (ii) a person referred to in paragraph (c) or (d) above,
 who is not themselves an employee of CHN.

"Relevant Person" means a natural person who is an actual or potential officer, employee, volunteer, agent, contractor or subcontractor of Supplier, and for the avoidance of doubt includes Supplier where Supplier is an individual.

"Reports" means the reports Supplier is required to provide under Item 4 of Schedule 2 or as otherwise directed by CHN from time to time.

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

- (a) neither Supplier nor any of its contractors, subcontractors or sub-subcontractors (including any Professional) is a "Representative" of CHN; and
- (b) any Subcontractor or Sub-subcontractor (including a Professional) retained by Supplier to perform any work directly or indirectly relating to the Activity (including any Client Services) is a "Representative" of Supplier.

"Serious Offence" means:

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

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

"Services Order" means a services order executed by CHN and Supplier for the performance of the relevant Activity by Supplier in such form approved by CHN from time to time and, to avoid doubt, includes each of the following schedules to that services order unless CHN specifies otherwise in writing:

- (a) "Schedule 1: General Information";

(b) “Schedule 2: Activity details”; and

(c) “Schedule 3: Funding and payments”.

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

"Subcontractor" means, in respect of the performance of any work directly or indirectly relating to the Activity (including any Client Services), any person who is engaged by Supplier to deliver all or any part of such work unless CHN agrees in writing with Supplier that the person is not a "Subcontractor" for the purposes of the Agreement, and

"Subcontract" means the written agreement between Supplier and the relevant Subcontractor.

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

"Supplier" means the person identified as “Supplier” in the relevant Services Order.

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

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

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

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

"Vulnerable Person" means a Child or an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age, illness, trauma or disability, pregnancy, the influence, or use, of alcohol, drugs or substance use or any other reason.

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

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

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

Interpretation

- 1.2 In the interpretation of the Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of the Agreement.
 - 1.2.2 A reference in the Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Canberra, Australian Capital Territory.
 - 1.2.3 If the day on which any act, matter or thing is to be done under the Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference to 'dollars' or '\$' means Australian dollars and all amounts payable under the Agreement are payable in Australian dollars.
 - 1.2.5 A reference to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.6 A reference in the Agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
 - 1.2.7 A reference to a clause, part or attachment is a reference to a clause, part or attachment of or to the Agreement.
 - 1.2.8 A reference to “Schedule 1”, “Schedule 2” or “Schedule 3” is a reference to the applicable schedule to the relevant Services Order, and a reference to a schedule generally is a reference to a schedule to the relevant Services Order.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender.
 - 1.2.12 A reference to the word 'include' or 'including' is to be interpreted without limitation.
 - 1.2.13 Any schedules, attachments or annexures to the Services Order form part of the Agreement (without limiting clause 23).
 - 1.2.14 A word or expression that is used or defined in the applicable WHS Law and is not otherwise defined in the Agreement has the meaning given to it under the applicable WHS Law.

1.2.15 A word or expression defined in the GST Act and not otherwise defined in the Agreement has the same meaning given to it in the GST Act.

1.2.16 Where Schedule 2 specifies that the Activity includes the provision of Client Services, a reference in the Agreement to the “Activity” is also a reference to the relevant Client Services.

2 ABOUT THE AGREEMENT

The Activity

2.1 The Agreement sets out the terms and conditions on which CHN will provide Supplier with Funding in consideration of Supplier’s performance of the Activity.

2.2 Supplier agrees to perform, or (where authorised by CHN), procure the performance of, the Activity, subject to the terms and conditions of the Agreement.

Supplier’s acknowledgements

2.3 Supplier acknowledges that CHN’s provision of Funding to Supplier under the Agreement is non-exclusive and does not restrict CHN's right to:

2.3.1 engage other persons to perform, or (where authorised by CHN), procure the performance of, the Activity or activities similar to the Activity;

2.3.2 conduct a competitive tender process or other procurement process among person (including Supplier) that CHN has entered into a contract with; or

2.3.3 perform any activity (including activities similar to the Activity) or any services, including to avoid doubt Client Services or other services similar to Client Services, itself.

2.4 Where no Grant Funding is payable under the Agreement, Supplier acknowledges and agrees that CHN is under no obligation to acquire services (including, if applicable, Client Services) from Supplier that attract a minimum level of charges, or to pay any minimum fee to Supplier under the Agreement.

Supplier is independent contractor

2.5 The relationship between the parties is that of principal and independent contractor. No party is an agent, representative or partner of any other party by virtue of the Agreement. Supplier must not represent itself as an agent, representative or partner of CHN in any circumstances, except to the extent expressly set out in the Agreement. Payments made by CHN to Supplier in respect of Supplier's performance of the Activity, or (where authorised by CHN) Supplier's procuring the performance of the Activity, are not wages or salary. Supplier acknowledges and agrees that:

2.5.1 Supplier must not represent itself or hold itself out as being an employee, representative, partner or agent of CHN or the Funder or as providing services to third parties for and on behalf of CHN or the Funder, and must ensure that none of its Representatives does any of those things;

- 2.5.2 neither CHN nor any of its Representatives is responsible for the payment of any income, profit and salary tax payable in respect of the payments received by Supplier or the payments made by Supplier to any of its Representatives;
- 2.5.3 neither Supplier nor any of its Representatives is entitled to payment from CHN in respect of any annual leave, sick leave, severance pay, long service leave or any other entitlement which an employee may have in respect of his or her employment;
- 2.5.4 Supplier and (as applicable) its Representatives are responsible for and must pay all fees, charges and costs incurred in or incidental to the performance of the Activity (including, as applicable, performance of Client Services and including, unless CHN agrees otherwise in writing, any costs related to clinical supervision); and
- 2.5.5 each Client who receives Client Services under or as a consequence of the Agreement is in a direct contractual relationship with Supplier or (as applicable) a Representative of Supplier, and is not in a direct contractual relationship with CHN.

3 TERM

- 3.1 The Agreement starts on the commencement date set out in Item 2 of Schedule 1 and will remain in force until the end date set out in Item 2 of Schedule 1, unless terminated earlier or extended in accordance with the Agreement.
- 3.2 If any option period is set out in Item 2 of Schedule 1, CHN may extend the term of the Agreement for that option period on the same terms and conditions set out in the Agreement (save for this clause 3.2) by written notice to Supplier. Such notice must be given not less than 20 business days before the expiry of the then current term.
- 3.3 If the term of the Agreement (including any extension) ends, any dealings between the parties after the end of the term of the Agreement are on a day to day basis and continue to be governed by the Agreement. Either party may terminate the holding over period at any time in accordance with clause 21.1.

4 CONDUCT OF THE ACTIVITY

Supplier's conduct of the Activity

- 4.1 Supplier must conduct the Activity in accordance with the terms of the Agreement and, if relevant, any other requirements set out in any Guidelines or any policies issued by CHN from time to time.
- 4.2 Without limiting clause 4.1, at all times during the term of the Agreement, Supplier must perform (or, where authorised by CHN, procure the performance of) the Activity:
 - 4.2.1 within the term of the Agreement and so as to meet the Milestones and other timeframes (if any) specified in Schedule 2;
 - 4.2.2 promptly, carefully, efficiently, ethically, to the highest possible standard and so as to provide value for money; and

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

Conflicts

- 4.3 Supplier warrants that, to the best of Supplier's knowledge after making diligent inquiry, at the commencement date of the Agreement no Conflict exists or is likely to arise in Supplier's, or any of Supplier's Representatives, performance of the Agreement or in respect of the performance of the Activity (or, where authorised by CHN, procuring the performance of the Activity).
- 4.4 If, during the term of the Agreement, a Conflict arises, or appears likely to arise, in respect of Supplier or any of Supplier's Representatives, Supplier must:
 - 4.4.1 immediately notify CHN of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps Supplier proposes that Supplier or Supplier's relevant Representatives will take to resolve or otherwise deal with the Conflict; and
 - 4.4.2 take such steps as have been proposed by Supplier or (at CHN's discretion) as CHN may reasonably require, to resolve or otherwise deal with the Conflict.
- 4.5 Supplier must not, and will use Supplier's best endeavours to ensure that any of Supplier's Representatives do not, engage in any activity or obtain any interest during the course of the Agreement that is likely to conflict with or restrict Supplier or any of Supplier's Representatives in performing the Activity fairly and independently.

Key People

- 4.6 Supplier must ensure that the Key People (if any) named in Item 3 of Schedule 1 are directly involved in the performance of the Activity at all times in the manner (if any) specified in Item 3 of Schedule 1. If Supplier engages any people other than the Key People to assist with the performance of the Activity, they must be supervised by and report directly to the Key People. Supplier must notify CHN in writing immediately if any Key People are unable to, or do not directly assist with the performance of the Activity in the manner (if any) specified in Item 3 of Schedule 1.
- 4.7 If it is necessary to replace any of the Key People, Supplier must immediately notify CHN in writing and arrange for replacement by a person of comparable experience and competence. to be approved by CHN, which approval must not be unreasonably withheld.

Contract Managers

- 4.8 Each party must appoint the Contract Manager named in Item 4 of Schedule 1 as its authorised representative under the Agreement. The Contract Managers will be responsible for the day to day administration of the Agreement on behalf of the party appointing them. For the avoidance of doubt, where Supplier is an individual, he or she will be Supplier's Contract Manager for the purposes of the Agreement.
- 4.9 The Contract Managers must be available and able to be contacted during normal business hours. A party must notify the other party immediately if its Contract Manager is removed or replaced, together with the contact details of its new Contract Manager, or of any change to its Contract Manager's contact details.

- 4.10 Each party will be responsible for the acts, omissions and defaults of its Contract Manager. Any direction, instruction, notice, approval or other communication made or given to a Contract Manager will be deemed to have been made or given to the party appointing that person.

Key performance indicators

- 4.11 Supplier must meet the performance requirements and key performance indicators (if any) set out in Items 2 and 3 of Schedule 2 at all times during the term of the Agreement. CHN will have regard to the performance requirements and key performance indicators in any review it conducts of Supplier's performance under clause 4.12 and Supplier must comply with any revised or additional performance requirements and key performance indicators required by CHN as a result of any review.

Reviews

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

Compliance

- 4.14 At all times during the term of the Agreement, Supplier must, and must ensure that its Representatives:
- 4.14.1 hold all authorisations, qualifications, permits, registrations and licences required under any Law to perform the Activity;
 - 4.14.2 continually comply with the requirements of all Laws of any kind applying to the performance of the Activity;
 - 4.14.3 continually comply with any code of ethics, regulations or industry standards relevant to the performance of the Activity;
 - 4.14.4 continually comply with any Guidelines; and

- 4.14.5 promptly comply with all lawful and reasonable directions from CHN regarding the performance of the Activity.

Capacity to perform Activity

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

5 REPORTS, INFORMATION AND RECORDS

Reports

- 5.1 Supplier must deliver Reports to CHN in relation to the Activity. Reports must be provided regularly in a timely fashion and in accordance with any requirements as CHN may specify in writing from time to time. The Reports must include all information referred to in Item 4 of Schedule 2 and any other information CHN may reasonably require to be included from time to time (including after any change in Law or any Guidelines).
- 5.2 If CHN terminates the Agreement, Supplier must provide an audited financial report for the Activity which contains all information specified by CHN, within 20 business days of written notice by CHN.
- 5.3 All Reports generated by Supplier will be the property of CHN. Supplier may retain a copy of the Reports for internal record keeping purposes only.

Information

- 5.4 In addition to the Reports to be delivered under clause 5.1, CHN may require Supplier to provide it with information concerning any aspect of the Activity which CHN may reasonably require, subject always to the Law. Supplier must provide the information within 2 business days of receiving a request to do so (or such longer period as CHN may permit in writing).

Records

- 5.5 Supplier must keep full and accurate records, accounts and documentation in relation to the Activity (including receipts, proof of purchase and invoices) in accordance with good business practice, in hard copy or accessible and readable electronic form. Supplier must do so during the term of the Agreement and for 7 years after the Agreement ends, or such longer period as may be required by Law.
- 5.6 Subject to the Law, on request by CHN, Supplier must promptly make all documents and records relating to the Activity available to CHN or its nominees for inspection and copying at no charge, and must ensure that each of its Representatives does the same to the extent that the Representative has created or is in the possession or control of any such document.

6 CLIENT SERVICES

Application

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

Supplier's conduct of the Activity

- 6.2 Supplier must ensure that all Client Services are provided in accordance with the terms of the Agreement and any other requirements set out in any Guidelines or any policies issued by CHN from time to time.
- 6.3 Without limiting clause 6.2, at all times during the term of the Agreement, Supplier must provide, or (where authorised by CHN) procure the provision of, Client Services to Clients:
 - 6.3.1 within the term of the Agreement and so as to meet the Milestones, any timeframes specified in the Guidelines and any other timeframes (if any) specified in Schedule 2;
 - 6.3.2 promptly, carefully, efficiently, ethically and to the highest possible standard (and, at a minimum, to any applicable Standards) and so as to provide value for money;
 - 6.3.3 exercising all due care, skill and judgement, in an efficient, professional and cost-effective manner and in accordance with accepted professional and business practices; and
 - 6.3.4 subject to the other provisions of the Agreement, in accordance with any reasonable and lawful direction of a person having day-to-day control of any premises at which Client Services are provided.

Supplier's notification obligations

- 6.4 Supplier must immediately notify CHN in writing of any matter which does, or which has the potential at any time to, have an adverse effect on:
 - 6.4.1 the credentials of any Participating Professional who is a Health Professional (including, where applicable, Supplier);
 - 6.4.2 the ability of Supplier to deliver, or (where authorised by CHN) procure the delivery of, Client Services safely, effectively and in accordance with the Agreement; or
 - 6.4.3 the professional indemnity or public liability insurance status of any Participating Professional who is a Health Professional (including, where applicable, Supplier).
- 6.5 Without limiting clause 6.4, Supplier must advise CHN in writing as soon as possible but no later than 5 business days of any of the following occurring with respect to Supplier or a Participating Professional who is a Health Professional (including, where applicable, Supplier):
 - 6.5.1 if applicable:
 - 6.5.1.1 that Professional receives notification that the relevant National Board or other accrediting body has decided to investigate him or her;
 - 6.5.1.2 the relevant National Board or other accrediting body requires that Professional to undergo a health assessment or performance assessment;

- 6.5.1.3 that Professional is cautioned, reprimanded, required to give an undertaking, has his or her registration suspended or cancelled, surrenders his or her registration or otherwise ceases to be registered or is suspended from registration by the relevant National Board; or
- 6.5.1.4 any conditions, limitations or restrictions are imposed by the relevant National Board in relation to that Professional's practice;
- 6.5.2 an adverse finding is made against Supplier or that Professional by any registration, disciplinary, investigative or professional body;
- 6.5.3 Supplier's or that Professional's appointment to, accreditation at or scope of clinical practice at any health service, hospital or day procedure centre is altered in any way, whether at the request of Supplier or a Professional or otherwise;
- 6.5.4 that Professional suffers or incurs an illness or disability which will or may adversely affect the Professional's ability to provide Client Services;
- 6.5.5 Supplier or that Professional is charged with or convicted of a breach of any Law that regulates the provision of health care or health insurance; or
- 6.5.6 Supplier or that Professional ceases to hold professional indemnity insurance sufficient to meet (as applicable) the requirements of the relevant National Board or as required under clause 18 of the Agreement.

Complaints

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

Records of Client Services

- 6.8 Supplier must keep (and, to the extent necessary, ensure that Participating Professionals keep) full and detailed records in relation to all Client Services in accordance with good clinical and business practice), in hard copy or accessible and readable electronic form. Supplier must do so during the term of the Agreement and for 7 years after the Agreement ends (or such longer period as may be required by Law).
- 6.9 Subject to the Law, on request by CHN, Supplier must promptly make all documents and records relating to Client Services available to CHN or its nominees for inspection and copying at no charge, and must ensure that each of its Representatives does the same to the extent that the Representative has created or is in the possession or control of any such document.

7 SUBCONTRACTING

- 7.1 Supplier must not subcontract any of Supplier's obligations under the Agreement without CHN's prior written approval. Supplier must comply with any conditions imposed by CHN in relation to Subcontracting.
- 7.2 CHN approves the Subcontractors (if any) specified in Item 5 of Schedule 1 to perform the part of the Activity specified in that Item 5.
- 7.3 If CHN requests, Supplier must provide CHN with details of all Subcontractors, and any Sub-subcontractors, engaged in any way in the performance of the Activity.
- 7.4 CHN may, at any time under direction from, or request by, the Funder or where CHN (acting reasonably) otherwise considers it necessary:
- 7.4.1 revoke its approval of a Subcontractor or Sub-subcontractor; and/or
 - 7.4.2 require Supplier to:
 - 7.4.2.1 replace a Subcontractor (whether or not the Subcontractor was originally approved by CHN); or
 - 7.4.2.2 require the relevant Subcontractor to arrange for the replacement of a Sub-subcontractor,

in which case Supplier must, at no additional cost to CHN and at the earliest opportunity, secure a suitable replacement Subcontractor or require the Subcontractor to arrange for a suitable replacement Sub-subcontractor. The replacement Subcontractor or Sub-subcontractor must be a person acceptable to CHN in its absolute discretion, except to the extent CHN agrees otherwise in writing.
- 7.5 Unless CHN agrees otherwise in writing, where a Subcontractor that is specified in Item 5 of Schedule 1 or is otherwise approved by CHN under clause 7.1 is unable to perform the Subcontracted work, Supplier must notify CHN of this inability no later than five business days after Supplier becomes aware of it. Supplier must also notify CHN of any inability of a Sub-subcontractor to perform the part of the Activity that has been Sub-subcontracted to it within five business days after Supplier becomes aware of that inability.
- 7.6 Supplier must:
- 7.6.1 have a Subcontract with each Subcontractor; and
 - 7.6.2 unless CHN agrees otherwise in writing, ensure in respect of all of Supplier's Subcontracts (including any that CHN was not required to approve under clause 7.1) that:
 - 7.6.2.1 each Subcontract gives effect to, and is not inconsistent with, Supplier's obligations and CHN's rights under the Agreement;
 - 7.6.2.2 without limiting the operation of clause 7.6.2.1, each Subcontract contains a right of termination to take account of CHN's rights of termination and reduction under the Agreement and Supplier must, where CHN considers appropriate, make use of that right;

- 7.6.2.3 each Subcontractor has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work it is engaged by Supplier to perform;
 - 7.6.2.4 each Subcontractor is prohibited under its Subcontract with Supplier from any further subcontracting in respect of the performance of the Activity or the relevant part of the Activity, whether by it or a Sub-subcontractor, without CHN's prior written consent; and
- 7.7 If CHN requests a copy of a Subcontract or a Sub-subcontract, Supplier must provide a copy of the Subcontract or Sub-subcontract to CHN within five business days after CHN's request and at no additional expense to CHN.

8 WORKPLACE HEALTH AND SAFETY

8.1 Supplier must:

- 8.1.1 ensure that the work conducted by Supplier and any of Supplier's Representatives in respect of the Agreement complies with all applicable legislative requirements, standards and policies and requirements of the Agreement that relate to the health and safety of any person; and
 - 8.1.2 comply with obligations under applicable WHS Law and must ensure, so far as is reasonably practicable, that officers (as defined under applicable WHS Law) and workers also comply with their obligations under WHS Law. This clause 8.1.2 is not limited by clause 8.1.1.
- 8.2 Supplier must ensure, so far as is reasonably practicable, the health and safety of the following workers while they are engaged in performing work in any way relating to the Activity:
- 8.2.1 workers engaged or caused to be engaged by Supplier; and
 - 8.2.2 workers whose activities in carrying out work are influenced or directed by Supplier.
- 8.3 Supplier must also ensure, so far as is reasonably practicable, that the health and safety of other persons (including CHN's Representatives and, as applicable, the Funder's Representatives) is not put at risk as a result of work performed in relation to the Activity.

9 VULNERABLE PERSONS

- 9.1 For the avoidance of doubt, where Supplier is an individual and is, or will be, a Participating Professional, Supplier is a "Relevant Person" for the purposes of the Agreement.
- 9.2 Supplier must comply, and must ensure that each of Supplier's Representatives comply, with:
- 9.2.1 any obligations under any Laws relating to working or contact with Vulnerable Persons or Police Checks; and
 - 9.2.2 all other obligations that may be specified by CHN from time to time regarding the performing work in any way relating to the Activity that involves working, or contact, with Vulnerable Persons.

- 9.3 As and when required by CHN, Supplier must promptly provide evidence, in a form CHN requires, that Supplier has complied with the requirements of this clause 9.

10 PERSONNEL

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

11 FUNDING, INVOICES AND PAYMENT

Payment of Funding

- 11.1 Subject to CHN receiving and retaining sufficient funding from the Funder and Supplier's continual compliance with the Agreement, CHN will pay the Funding to Supplier for the Activity at the times and in the manner specified in Schedule 3.
- 11.2 Subject to the other terms of the Agreement, CHN will make a payment of Funding for the Activity within 20 business days after the later of the following to occur:
- 11.2.1 CHN receives the necessary funds from the Funder; and
 - 11.2.2 Supplier satisfies the preconditions (if any) specified in Schedule 3 for that payment.
- 11.3 Supplier acknowledges and agrees that CHN is not responsible for providing, and will not provide, any money for the Activity in excess of the Funding specified for the Activity in Schedule 3.

Invoices and payment

- 11.4 When any consideration becomes due to Supplier in respect of a Taxable Supply, subject to clause 11.5 CHN will issue a Recipient Created Tax Invoice (**RCTI**) to Supplier in a form required by Law for the Supply to which the payment relates, in accordance with this clause 11 and the requirements set out in Item 2 of Schedule 3 detailing the payments to be made by CHN in relation to each Client Service Supplier has delivered, or (where authorised

by CHN) procured the delivery of, to a Client (for example, each treatment session). CHN may withhold payment of any amount that it disputes, acting honestly and reasonably, until the dispute has been resolved to CHN's satisfaction.

- 11.5 CHN will not issue a RCTI if either party has failed to comply with any of the requirements of "GSTR 2000/10 Goods and services tax: recipient created tax invoices" (**GSTR 2000/10**).
- 11.6 Subject to clause 11.5, Supplier must not issue a Tax Invoice in respect of payments made by CHN in accordance with the Agreement.
- 11.7 Supplier must provide its Australian Business Number to CHN and this must be disclosed on the RCTI.
- 11.8 CHN will issue the original or a copy of a recipient created adjustment note to Supplier within 28 days of the adjustment that occurs in respect of supplies for which a RCTI was issued and will retain the original or a copy.
- 11.9 For the purpose of the Agreement, CHN and Supplier agree that they are parties to a RCTI agreement as set out in clause 13(e) of GSTR 2000/10. Each party warrants that it is registered for GST and that it will notify the other party if it ceases to be registered.
- 11.10 Unless otherwise stated in Item 2 of Schedule 3, the amount payable is exclusive of GST but inclusive of all costs and expenses incurred by Supplier. The performance of the Activity constitutes a Taxable Supply and attracts GST.

12 GRANT FUNDING AND ASSETS

Application

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

CHN's rights to withhold or reduce the Funding

- 12.2 Where Supplier has not met a Milestone for the Activity by the date specified for that Milestone in Schedule 3, CHN may withhold, in whole or part, the Funds remaining payable under the Agreement for the Activity until such time (if any) that the Milestone is completed to the CHN's satisfaction.
- 12.3 CHN may, in its absolute discretion and in addition to any other rights it has under the Agreement or at Law:
 - 12.3.1 withhold (either permanently or temporarily) or reduce one or more Funding payments under the Agreement where Supplier has breached a provision of the Agreement; or
 - 12.3.2 reduce the amount of the Funding payable for the Activity under the Agreement:
 - 12.3.2.1 by the amount of any monetary or in-kind contributions other than the Funding and the Other Contributions (if any) identified in Schedule 3 that Supplier receives, or is entitled to receive, for the Activity, including any contributions to which clause 12.21 applies; and/or

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

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

Supplier's use of the Grant Funding

12.5 Supplier must use the Grant Funding provided for the Activity:

12.5.1 subject to clause 12.13.5, solely for the Activity; and

12.5.2 in accordance with the Agreement.

12.6 Supplier must not Commit or spend any part of the Grant Funding for the Activity beyond the End Date, except as otherwise agreed in writing by CHN and subject to the following:

12.6.1 Supplier may pay an amount of Grant Funding to a third party after the End Date for the Activity provided that the amount was Committed for the Activity before the End Date in accordance with the Budget (if any) and the Agreement;

12.6.2 if there is a Budget, Supplier may only spend the Grant Funding for the Activity on the preparation of the Reports to the extent that the Budget for that Activity provides for the Grant Funding to be used for that purpose; and

12.6.3 if there is no Budget, Supplier may use a reasonable amount of the Grant Funding for the preparation of the Reports that are due after the End Date.

12.7 Supplier must immediately deposit and hold the Grant Funding in an Australian bank account that is controlled solely by Supplier and enables the tracking of Grant Funds to demonstrate how Supplier spent the Grant Funds in undertaking the Activity. Supplier must notify CHN as soon as practicable if the details of this bank account change.

12.8 Supplier must keep separate financial accounts and records for the Activity that:

12.8.1 identify all receipts and payments for the Activity; and

12.8.2 enable the preparation of any declaration required under clause 5.1 and any other financial Report required for the Activity under clause 5.1 and Schedule 2 except to the extent otherwise notified by CHN in writing.

12.9 If CHN considers that Supplier is in breach of the Agreement, or CHN is considering reducing the scope of the Agreement or terminating the Agreement under clause 21, CHN may direct Supplier by written notice to suspend Supplier's Commitment and expenditure of some or all of the Grant Funding as specified in the notice, and Supplier must fully comply with that notice immediately.

Prohibited use of the Grant Funding

12.10 Except to the extent that CHN has otherwise agreed in writing, Supplier must not use any of the Grant Funding provided for the Activity:

- 12.10.1 for any travel or expenses related to travel other than as permitted under the Budget (if any) or Guidelines;
 - 12.10.2 to pay fines or penalties;
 - 12.10.3 to cover the costs of any legal action or proceedings or to settle or agree to consent orders in relation to, or otherwise resolve, any proceeding or application for reinstatement and/or wrongful dismissal by a current or former employee;
 - 12.10.4 to lend or gift money or Assets to any person;
 - 12.10.5 to provide redundancy payments, advances, commissions, bonuses, performance based benefits or similar benefits to any person;
 - 12.10.6 for a sale and lease back arrangement;
 - 12.10.7 to lease an item of property that Supplier owns;
 - 12.10.8 for the purpose of establishing a subsidiary or other commercial entity or activity;
 - 12.10.9 to pay Supplier any fee or charge that is calculated on a basis other than the costs Supplier actually incurs in the performance of the Activity (including the proportion of any general operational overhead or expense of Supplier that is reasonably required for Supplier's performance of the Activity);
 - 12.10.10 to purchase a car or other vehicle; or
 - 12.10.11 to provide for the future replacement of any asset or to Dispose of, acquire or provide for the future replacement of any land, building or other real property.
- 12.11 Except to the extent that CHN has otherwise agreed in writing, Supplier must not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:
- 12.11.1 the Grant Funding for the Activity;
 - 12.11.2 the Agreement or any of CHN's obligations under the Agreement; or
 - 12.11.3 any Assets, land, building or other real property or rights in Developed Intellectual Property.

Budget

- 12.12 Where there is a Budget for the Activity:
- 12.12.1 Supplier must only spend the Grant Funding specified in that Budget on the Activity and in accordance with that Budget; and
 - 12.12.2 Supplier must seek CHN's prior written approval for any Grant Funding reallocation within, or outside of, that Budget.

Unspent or misspent Grant Funding

- 12.13 If at any time CHN determines or reasonably suspects that:

- 12.13.1 Supplier has received Grant Funding for the Activity that has not been spent or Committed for the Activity in accordance with the Agreement, including as a result of Supplier having a surplus and/or underspend for the Activity;
- 12.13.2 CHN has made an overpayment of Grant Funds to Supplier; or
- 12.13.3 Supplier has spent or Committed an amount of Grant Funding other than for the Activity and in accordance with the Agreement,

then at CHN's discretion:

- 12.13.4 Supplier must repay those Grant Funds to CHN within 20 business days of receiving written notice from CHN requiring Supplier to do so;
 - 12.13.5 Supplier must deal with those Grant Funds as directed by CHN in writing; or
 - 12.13.6 CHN may reduce one or more further Grant Funding payments for the Activity by up to the amount of those Grant Funds.
- 12.14 If, after CHN applies clause 12.13.1 to an amount of Grant Funding that was provided to Supplier for the Activity and, subject to the other provisions of the Agreement, Supplier demonstrates to CHN's satisfaction that Supplier requires some or all of that amount (in addition to the part of the Grant Funding that remains payable for the Activity) to complete the Activity, CHN will repay the required amount to Supplier within 10 business days after CHN is satisfied that the amount is required.

Interest and debt

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

Other Contributions

- 12.17 Supplier must ensure that any Other Contributions specified in Schedule 3 are obtained or provided for the Activity at the times and in the amounts specified. If no times are specified in Schedule 3 for the provision of an Activity's Other Contributions, Supplier must ensure that those Other Contributions are obtained or provided in sufficient time to enable the Activity to be completed in accordance with the Agreement.
- 12.18 Supplier must use the Other Contributions specified in Schedule 3 for an Activity for that Activity and in accordance with any Budget set out in Schedule 2.

- 12.19 If Supplier does not obtain or provide an amount of Other Contributions for an Activity by the date (if any) specified in Schedule 3 for that amount, or Supplier is otherwise unable to obtain or provide that amount of Other Contributions in time to enable completion of the Activity, then CHN may:
- 12.19.1 withhold payment of some or all of the Grant Funding for that Activity until Supplier has obtained or provided that amount of Other Contributions;
 - 12.19.2 reduce the amount of the Grant Funding payable under the Agreement; or
 - 12.19.3 terminate the Agreement in accordance with clause 21.2.
- 12.20 Subject to CHN notifying Supplier otherwise in writing, Supplier must notify CHN within 10 business days after entering into any arrangement or agreement under which Supplier receives, or is entitled to receive, any additional monetary or in-kind contributions for the Activity that are not specified as Other Contributions for the Activity in Schedule 3. The notice must include the amount of any such additional contributions and the purpose for which they will be used.
- 12.21 Any additional contributions referred to in clause 12.20 that Supplier becomes entitled to receive for the Activity constitute Other Contributions for the Activity for the purposes of the Agreement, and the Schedules will be deemed to be varied accordingly on the earlier of the date that Supplier receives the additional contributions or the date that Supplier notifies CHN of those contributions under clause 12.20.

Assets

- 12.22 Supplier may only use an amount of the Grant Funding provided for the Activity to Acquire an Asset for that Activity if CHN has given its prior written consent to Supplier using that amount of the Grant Funding for the Acquisition of that specific Asset.
- 12.23 If clause 12.22 applies, Supplier must comply with all other terms and conditions relating to the Acquisition, use and Disposal of Assets that CHN may specify in writing from time to time. To avoid doubt, this may include terms and conditions relating to:
- 12.23.1 how Supplier must deal with Assets; and
 - 12.23.2 payments that Supplier must make to CHN with respect to Assets, and all such amounts payable to CHN will be deemed to be money that forms part of the Funding (and all of CHN's rights under the Agreement and at Law regarding the Funding will apply to those amounts).

13. INTELLECTUAL PROPERTY

Existing Intellectual Property

- 13.1 Supplier acknowledges and agrees that all Intellectual Property and other information that CHN provides or makes available to Supplier remains the property of CHN or the Funder (as the case may be).
- 13.1.1 Supplier must not use or disclose such Intellectual Property or information for any purpose other than for the purpose of performing its obligations under the Agreement.

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

Developed Intellectual Property

- 13.2 Supplier acknowledges and agrees that all Developed Intellectual Property will vest in, and is assigned to, CHN on creation. Supplier must, at its own expense, execute all documents and do all things required to give effect to this clause 13.2, including obtaining as soon as possible and providing to CHN legally effective releases or assignments to CHN from any of Supplier's Representatives in respect of any Developed Intellectual Property. If CHN is prohibited from using anything that Supplier provides under the Agreement because of a third party's Intellectual Property rights, Supplier must promptly and at its own expense:
- 13.2.1 obtain for CHN the right to continue using such material;
- 13.2.2 replace it with a non-infringing substitute that functions the same in CHN's reasonable opinion; or
- 13.2.3 modify it to make it non-infringing without loss of functionality.

Licence to use Developed Intellectual Property

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

Supplier's existing Intellectual Property

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

Licence to use Supplier's existing Intellectual Property

- 13.5 If any material, matter or thing forming part of Supplier's Intellectual Property is incorporated in or attached to any Developed Intellectual Property, Supplier grants CHN a perpetual, irrevocable, transferable, royalty free and licence fee free, worldwide licence (including the right to sub-license to the Funder or any other person) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Developed Intellectual Property (including using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising and exploiting such intellectual property rights).

Moral rights

- 13.6 Supplier agrees to procure the irrevocable consent of its Representatives who are individuals not to enforce any and all moral rights that those individuals may have, presently or in the

future, arising from the performance of work directly or indirectly relating to the Activity and/or the Developed Intellectual Property including by executing any moral rights consent required by CHN (in which case Supplier must provide CHN with an executed copy of each such consent within 5 business days of CHN's request).

13.7 Without limitation, Supplier warrants that CHN may:

13.7.1 exercise any and all rights without identifying any person as the individual responsible for creating any particular material; and

13.7.2 modify, alter, adapt, distort or otherwise change any Developed Intellectual Property or material as permitted under the Agreement.

No infringement

13.8 Supplier represents and warrants to CHN on a continuing basis that CHN will not infringe any Intellectual Property rights of a third party by performing its obligations or exercising its rights under the Agreement on the basis of or using any material or thing provided by or on behalf of, Supplier including:

13.8.1 any existing Intellectual Property of Supplier;

13.8.2 any Developed Intellectual Property; and

13.8.3 any report, document or information.

13.9 Supplier must not infringe the intellectual property rights of CHN or a third party in connection with performing the Activity. Supplier continually indemnifies CHN against any Loss that CHN incurs or suffers, as a direct or indirect result of a breach of the intellectual property rights of CHN or a third party in connection with the performance of the Activity.

14. CONFIDENTIALITY

Obligations of confidence

14.1 Where Supplier receives Confidential Information under the Agreement, in addition to its obligations at Law, Supplier must, and must ensure that its Representatives:

14.1.1 keep the Confidential Information confidential;

14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of the Agreement (including, as applicable, for the benefit and care of Clients);

14.1.3 not, without CHN's written consent, disclose Confidential Information to any person other than its Representatives who need the information for the purposes of the Agreement; and

14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure, including but not limited to any security measures specified by CHN from time to time.

Further permitted use and disclosure

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

Return of Confidential Information

- 14.3 Supplier must immediately on demand, or on completion or termination of the Agreement, return to CHN, or destroy if requested by CHN, any documents in its possession, power or control containing Confidential Information. Supplier must not retain copies of any Confidential Information in any form, except to the extent required by Law or to comply with clause 5.5 (including any requirement to retain Client records). If requested by CHN, Supplier must give evidence to CHN of the destruction of such documents.

Equitable remedies

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

No undertakings by CHN

- 14.5 Supplier acknowledges and agrees that, unless CHN agrees otherwise in writing:
- 14.5.1 CHN gives no undertakings to treat the Agreement, or any information provided by or relating to Supplier, as confidential (other than as required by Law); and
 - 14.5.2 CHN may disclose any such information to any person, to the extent CHN considers reasonably necessary to comply with any Law or binding directive of a regulator or a court order; if required in connection with legal proceedings; or to comply with the Agreement, including for public accountability reasons.

15. PRIVACY

- 15.1 Supplier must:
- 15.1.1 comply with Privacy Law in respect of any Personal Information it collects in connection with the Agreement or the performance of the Activity;
 - 15.1.2 in performing, or (where authorised by CHN) procuring the performance of, the Activity (including, as applicable, Client Services):
 - 15.1.2.1 not do any act or engage in any practice which, if done or engaged in by an agency (including the Funder), would be a breach of an Australian Privacy Principle; and

- 15.1.2.2 comply with the obligations contained in the Australian Privacy Principles that apply to Supplier; and
 - 15.1.3 use or disclose Personal Information obtained during the course of performing the Activity under the Agreement only for the purposes of the Agreement;
 - 15.1.4 facilitate, where reasonable, compliance with Privacy Law by CHN in respect of all Personal Information Supplier discloses to CHN under the Agreement;
 - 15.1.5 immediately notify CHN and (if required by CHN in its absolute discretion) the Funder in writing if Supplier becomes aware of a breach or possible breach of any of Supplier's obligations under this clause 15;
 - 15.1.6 immediately inform CHN in writing of any complaint that Supplier receives concerning the use, disclosure, storage, transfer or handling of Personal Information and comply with any reasonable direction of CHN in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Personal Information; and
 - 15.1.7 ensure that each Subcontract and Sub-subcontract contains equivalent provisions to this clause 15.
- 15.2 Supplier warrants to CHN on a continual basis that:
- 15.2.1 any Personal Information that Supplier discloses to CHN under the Agreement has been collected and disclosed in accordance with Privacy Law; and
 - 15.2.2 CHN is authorised to use any such Personal Information for the purposes of the Agreement, including that Supplier has duly notified and obtained any necessary consents from the individuals whose personal information is being disclosed to provide that Personal Information to CHN and for CHN to use that Personal Information for the purposes of the Agreement.
- 15.3 Supplier expressly consents to CHN publishing (including in media releases, annual reports and on CHN's website), information about Supplier, including its identity and the existence and nature of the Agreement. Supplier must provide CHN with a high quality digital version of Supplier's logo for the purposes of CHN publishing information about Supplier as outlined in this clause 15.3 and grants CHN a perpetual, irrevocable, transferable, royalty free and licence fee free, worldwide licence (including the right to sub-licence to any other person) to exercise all intellectual property rights in such logo for such purposes and all other purposes reasonably related to that purpose.
- 15.4 Supplier's obligations under this clause 15 are in addition to, and do not restrict, any obligations Supplier may have under Privacy Law and that would apply to Supplier but for the application of this clause 15.

16. WARRANTY AND ACKNOWLEDGEMENTS

- 16.1 Supplier represents and warrants to CHN continually throughout the term of the Agreement that:
- 16.1.1 the Activity will be provided with due care and skill and in accordance with the requirements of the Agreement;

- 16.1.2 Supplier, and (if applicable) each of its Representatives, holds all licences, permits, consents and authorisations required under any Law in relation to the performance of the Activity and will continue to do so at all times during the term of the Agreement; and
- 16.1.3 Supplier and each of its Representatives (as applicable) have the experience, expertise, skill and competence required, and will have at all times the capacity and other resources necessary, to perform the Activity and properly discharge Supplier's obligations under the Agreement.
- 16.2 If a Supplier enters into the Agreement in its capacity as Trustee, the Supplier also represents and warrants to CHN continually throughout the term of the Agreement that:
- 16.2.1 it is a validly appointed trustee of the Trust;
- 16.2.2 it has the right to be indemnified out of, and a lien over, the assets of the Trust except where the Trustee is fraudulent, negligent or in breach of trust;
- 16.2.3 the Agreement does not conflict with the operation or terms of the Trust or the Trust Deed;
- 16.2.4 the Agreement constitutes valid and enforceable obligations of the Trust;
- 16.2.5 it has full and valid power and authority under the Trust to enter into the Agreement and to carry out the transactions contemplated by the Agreement (including all proper authorisations and consents);
- 16.2.6 it enters into the Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and
- 16.2.7 unless it has advised CHN otherwise in writing, it is the sole trustee of the Trust.
- 16.3 Supplier represents and warrants to CHN on a continuing basis that all information, representations, warranties and undertakings made or given by it to CHN before or after the date of the Agreement, whether in any quotation, tender, correspondence, negotiations, report or otherwise, are true, complete and accurate in all respects. Supplier must promptly notify CHN in writing if Supplier learns of any errors in the information provided to CHN.
- 16.4 Supplier acknowledges and agrees on a continuing basis that CHN in entering into the Agreement is relying on the warranties, representations, undertakings and acknowledgements contained in the Agreement.

17. LIABILITY AND INDEMNITY

- 17.1 Supplier will be liable for, and must continually indemnify CHN and each of CHN's Representatives ("**those indemnified**") against, all Loss suffered or incurred by CHN (including, to avoid doubt, Loss suffered or incurred by CHN in respect of any claim made or action taken by the Funder under or in relation to the Agreement) as a result of a breach or threatened breach of the Agreement by Supplier, or anything that Supplier or Supplier's Representatives do or fail to do under or in connection with the Agreement where there was fault (including any negligent or other tortious or unlawful act or omission) on the part of the person whose conduct gave rise to that Loss, except to the extent that the Loss was caused by or contributed to by the conduct of CHN. To the maximum extent permitted by Law, the

operation of any legislative proportionate liability regime is excluded in relation to any claim against Supplier under or in connection with the Agreement. CHN holds the benefit of this clause 17.1 on trust for all those indemnified and Supplier acknowledges and agrees that CHN may enforce that clause on all or any of their behalf. It is not necessary for CHN (or any of those indemnified) to incur expense or make payment before CHN enforces a right of indemnity conferred by the Agreement.

- 17.2 Except as required by Law, CHN's liability shall be limited to the amounts paid to Supplier under the Agreement. This clause 17.2 applies regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract, statute, tort (including negligence) or otherwise.

18. INSURANCE

- 18.1 Supplier must maintain the insurances specified in Item 6 of Schedule 1 during the term of the Agreement. The insurances must be with a reputable and solvent authorised Australian insurer, be on terms reasonably acceptable to CHN and cover Supplier and CHN against any liability arising out of or in connection with the performance of Supplier's obligations under the Agreement. Supplier must comply with and observe the terms of all insurance policies and must not do anything which could result in any policy being rendered void or voidable.

- 18.2 Supplier must deliver to CHN evidence satisfactory to CHN that Supplier has a particular insurance policy and that the policy is current within 24 hours of a written request by CHN to do so.

19. SUSPENSION OF PAYMENTS AND REDUCTION IN SCOPE

Default by Supplier

- 19.1 If Supplier defaults in the performance of its obligations under the Agreement, CHN may give notice to it to remedy the default specifying details of the default.

Failure to remedy default

- 19.2 If Supplier fails to remedy the default specified in a notice under clause 19.1 within 2 business days after receipt of the notice, CHN may suspend payment under the Agreement until the default has been remedied.

Suspension by Funder

- 19.3 CHN may immediately suspend all payments under the Agreement by written notice to Supplier if the Funder requires CHN to suspend dealings with Funding under the Agreement or if the Funder fails to provide CHN with the necessary Funding to allow CHN to provide one or more Funding payments to Supplier at the time or times contemplated under the Agreement.

Reduction in scope

- 19.4 CHN may immediately reduce the scope of the Agreement by written notice to Supplier.

Obligations of Supplier

- 19.5 Suspension of payment or reduction in scope under this clause 19 will not in any way affect the continuing obligations of Supplier under the Agreement and will be without prejudice to

any other rights that CHN may have against Supplier as a result of any default of Supplier's part.

20. DISPUTE RESOLUTION

- 20.1 If a Dispute arises, either party may at any time give written notice to the other party requesting that a meeting take place to seek to resolve the Dispute.
- 20.2 Where Supplier is a legal person other than an individual, if notice is given under clause 20.1:
- 20.2.1 nominated senior representatives of both parties must meet within two business days of the notice and endeavour to resolve the Dispute;
 - 20.2.2 if such meeting does not take place or if after two business days of the meeting the Dispute remains unresolved, either party may refer the Dispute to the CEO of CHN and CEO of Supplier;
 - 20.2.3 if a Dispute is referred to the CEO of CHN and CEO of Supplier, such persons must meet within three business days of the Dispute being referred to them and endeavour to resolve the Dispute; and
 - 20.2.4 if such meeting does not take place or if after five business days of the meeting the Dispute remains unresolved, either party may pursue its rights at law.
- 20.3 Where Supplier is an individual, if notice is given under clause 20.1:
- 20.3.1 the CEO of CHN (or his or her nominee, being a senior representative of CHN) and Supplier must meet within three business days of the notice and endeavour to resolve the dispute; and
 - 20.3.2 if such meeting does not take place within three business days of the notice, or if after five business days of the meeting the dispute remains unresolved, either party may pursue its rights at law.
- 20.4 Each party must continue to perform its obligations under the Agreement during a Dispute.
- 20.5 Nothing in this clause 20 restricts or limits the right of either party to obtain interlocutory relief, or to immediately terminate the Agreement where the Agreement provides such a right.

21. TERMINATION

Termination during holding over period

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

Termination by CHN

- 21.2 CHN may, in its absolute discretion and at any time, terminate the Agreement at any time by 20 business days' written notice to Supplier. If CHN exercises its right of termination under this clause 21.2 it does not have to provide Supplier with reasons for doing so.

- 21.3 CHN may immediately terminate the Agreement by written notice if any of the following occurs:
- 21.3.1 the Agreement is terminated.
 - 21.3.2 The Funder varies the amount of Funding provided to CHN, or the timetable for payment under the Agreement, and such variation means that, in CHN's opinion, it is not reasonably practicable for CHN to continue to engage Supplier to perform the Activity.
 - 21.3.3 Supplier is in breach of its obligations under the Agreement (including any warranty in clause 13.8 or clause 16) and does not remedy the breach (to the extent that it can be remedied) for 5 business days after receiving a written notice from CHN specifying the breach and requiring it to be remedied.
 - 21.3.4 Supplier is in breach of an essential term of the Agreement or Supplier commits a breach of the Agreement which cannot be remedied. The essential terms of the Agreement include clauses 4.1, 4.2, 4.4, 4.5, 4.11, 4.13, 4.14, 4.15, 5.1, 5.4, 5.5, 5.6, 6, 7, 8, 9, 10, 12.5 to 12.12, 12.15, 12.16.2, 12.17, 12.18, 12.20, 12.22, 12.23, 13, 14, 15, 18, 22.1, 26 and 27.15.
 - 21.3.5 Supplier commits multiple or recurring breaches of the Agreement, whether or not remedied.
 - 21.3.6 Supplier fails to maintain any insurance policy that Supplier is required to maintain under clause 18.1 on the terms specified in clause 18.
 - 21.3.7 Supplier is the subject of an Insolvency Event, unless such termination would be contrary to Law.
 - 21.3.8 There is a change in the person or persons in effective control of Supplier, including any change in the underlying beneficial ownership of Supplier.

Termination by Supplier

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

22. OBLIGATIONS ON REDUCTION IN SCOPE OR TERMINATION

Obligations of Supplier

- 22.1 Supplier must, promptly upon receipt of a notice of reduction in scope issued under clause 19.4 or notice of termination issued under clause 21:

- 22.1.1 stop or reduce the performance of Supplier's obligations, as specified in the notice;
- 22.1.2 take all available steps to minimise the losses, costs and expenses resulting from the reduction or termination;
- 22.1.3 continue performing the Activity (or the relevant part of the Activity) not affected by the notice, except to the extent that CHN notifies Supplier otherwise; and
- 22.1.4 immediately return to CHN, or comply with CHN's directions regarding, the part of the Funding specified in clause 22.4.

Consequences of reduction in scope

- 22.2 If the scope of the Agreement is reduced under clause 19.4:
 - 22.2.1 CHN is entitled to recover from Supplier any Funds that:
 - 22.2.1.1 have been provided to Supplier for part of the Activity that has been removed by the reduction in scope; and
 - 22.2.1.2 have not been spent or Committed for the Activity in accordance with the Agreement as at the date that notice of reduction in scope is received; and
 - 22.2.2 CHN's liability to pay any part of the Funding for the Activity will, except to the extent CHN agrees otherwise in writing at the time, reduce in accordance with the reduction in scope of the Activity. Supplier will not be entitled to any compensation in respect of the reduction in scope, including compensation for Supplier's loss of prospective profits, loss of opportunity or loss of any benefits that would have been conferred on Supplier if the reduction in scope had not occurred.

Consequences of termination or expiration

- 22.3 When the Agreement ends, whether by expiration of the term of the Agreement or on earlier termination, and without limiting clause 22.1, Supplier must (as directed by CHN from time to time), return all of CHN's equipment, information, documents, records and other property used by it to perform its obligations under the Agreement or otherwise in the possession, custody or control of Supplier or any of its Representatives, except to the extent required by Law and to the extent required to comply with clause 5.5. Supplier must do so immediately following the provision of all services and Reports that Supplier is required to provide under the Agreement, and at Supplier's sole cost.
- 22.4 If the Agreement is terminated under clause 20, CHN is entitled to recover from Supplier (or direct the use of) any part of the Funding provided for the Activity that:
 - 22.4.1 has not been spent or Committed by Supplier as at the date that the notice of termination is received; or
 - 22.4.2 has, in CHN's opinion, been spent or Committed by Supplier other than for the Activity and in accordance with the Agreement.

- 22.5 If the Agreement expires or is terminated under clause 21 for any reason:
- 22.5.1 each party retains its rights under the Agreement and at Law in respect of any breach of the Agreement by the other party;
 - 22.5.2 without limiting clauses 22.5.3 or 27.12, CHN is only liable to:
 - 22.5.2.1 make a payment of Funds that was due and payable to Supplier under the Agreement prior to the date of the notice of termination; and
 - 22.5.2.2 reimburse any reasonable expenses that Supplier unavoidably incurs that relate directly and entirely to the termination of the Agreement and are not covered by clause 22.5.2.1;
 - 22.5.3 CHN will not be liable to pay, in respect of the Activity, amounts under clause 22.5.2 which:
 - 22.5.3.1 cannot be sourced from immediately available funds in CHN's possession that have been provided to CHN by the Funder with respect to the Activity;
 - 22.5.3.2 represent compensation for Supplier's loss of prospective profits, loss of opportunity or loss of any benefits that would have been conferred on Supplier if the termination had not occurred; or
 - 22.5.3.3 would, added to Funds already paid or payable to Supplier under the Agreement for the Activity, together exceed the total amount of the Funding set out in Schedule 3; and
 - 22.5.4 subject to the Law, Supplier must promptly provide to CHN such records or other information in the possession, custody or control of Supplier (or any of its Representatives) relating to the Activity, as directed by CHN from time to time.
- 22.6 CHN's liability to pay any compensation under clause 22.5.2 is subject to:
- 22.6.1 Supplier's strict compliance with the Agreement; and
 - 22.6.2 Supplier's substantiation of any amount claimed under clause 22.5.2.2 to CHN's satisfaction.

Accrued rights and continuing obligations

- 22.7 The termination or ending of the Agreement does not affect any accrued rights.
- 22.8 This clause, and clauses 1 (Definitions and interpretation), 4.12 and 4.13 (Reviews), 5.1 and 5.2 (Reports), 5.4 (Information), 5.5 and 5.6 (Records), 6.8 and 6.9 (Client Services), 12.13 (Unspent or misspent Funding), 12.15 and 12.16 (Interest and debt), 12.23 (Assets), 13 (Intellectual Property), 14 (Confidentiality), 15 (Privacy), 17 (Liability and indemnity), 18 (Insurance), 22 (Obligations at end of agreement), 24 (Goods and services tax), 26 (Funder requirements), 27 (Miscellaneous) and any other clause that makes provision for the continued operation of the Agreement or goes to the interpretation of the Agreement, continues to apply despite the termination or expiration of the Agreement (for whatever reason).

23. PRIORITY

- 23.1 In the event of any inconsistency, the Agreement must be interpreted in accordance with the following order of priority:
- 23.1.1 the terms and conditions set out in these standard terms and conditions; then
 - 23.1.2 the relevant Services Order, including Schedule 1, Schedule 2 and Schedule 3 (including any annexures or attachments to any of them); and then
 - 23.1.3 any other documents or information incorporated by reference into the Agreement.

24. GOODS AND SERVICES TAX

- 24.1 Nothing in this clause 24 limits clauses 11.4 to 11.10.
- 24.2 All consideration provided under the Agreement is exclusive of GST, unless it is expressed to be GST-inclusive. Where a party ("**GST Supplier**") makes a taxable supply to another party ("**GST Recipient**") under or in connection with the Agreement, the GST Recipient must pay to the GST Supplier an additional amount equal to the GST payable on the supply. The additional amount must be paid by the GST Recipient at the later of:
- 24.2.1 the date when any consideration for the taxable supply is first paid or provided; and
 - 24.2.2 the date when a RCTI is issued by CHN or, if no RCTI is issued by CHN, subject to clause 11.5, the date when the GST Supplier issues a tax invoice to the GST Recipient.
- 24.3 If an adjustment event varies the amount of GST payable by the GST Supplier in respect of a supply under the Agreement, then if clause 11.8 applies, CHN will adjust the amount payable by the GST Recipient to take account of the adjustment event. Otherwise, the GST Supplier will adjust the amount payable by the GST Recipient to take account of the adjustment event. Any payment will be made by the GST Recipient to the GST Supplier or by the GST Supplier to the GST Recipient within 10 business days of the GST Supplier (or CHN, as applicable) becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease (as appropriate) of the additional amount payable under clause 24.1. If clause 11.8 applies, CHN will issue Supplier with the original or a copy of a recipient created adjustment note in accordance with that clause. Otherwise, the GST Supplier will issue an adjustment note to the GST Recipient within 10 business days of becoming aware of the adjustment event.
- 24.4 Subject to an express provision in the Agreement to the contrary, any payment, amount, reimbursement or indemnity required to be made to a party (the "**Payee**") under the Agreement that is calculated by reference to a cost, expense, liability or other amount paid or payable by the Payee to a third party ("**Expense**") will be calculated by reference to that Expense inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Expense. The Payee is assumed to be entitled to a full input tax credit on an Expense unless it demonstrates otherwise before the date the payment, amount, reimbursement or indemnity is required to be made.

25. NOTICES

- 25.1 A notice, consent, information, application or request that must or may be given or made to a party under the Agreement is only given or made if it is in writing and delivered or posted to that party at its address set out in Item 7 or Item 8 of Schedule 1 (as the case may be) or emailed to that party at its email address set out in Schedule 1. If a party gives the other party 3 business days' notice of a change of its address or email address, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.
- 25.2 The following notices must not be sent by email:
- 25.2.1 any notice of termination; and
 - 25.2.2 any other notice specifically excluded by CHN in writing from time to time.
- 25.3 A notice, consent, information, application or request is to be treated as given or made at the following time:
- 25.3.1 if it is delivered, when it is left at the relevant address;
 - 25.3.2 if it is sent by post, 2 business days after it is posted; or
 - 25.3.3 if it is sent by email, on the earlier of:
 - 25.3.3.1 the sender receiving an automated message confirming delivery; or
 - 25.3.3.2 provided no automated message is received stating that the email has not been delivered, 3 hours (being between 8.30 am and 5.00 pm on a business day) after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent.
- 25.4 If a notice, consent, information, application or request is delivered, or an error free transmission report or acknowledgement in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

26. FUNDER REQUIREMENTS

Operation of this clause

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

General

- 26.2 Supplier:
- 26.2.1 acknowledges that CHN is bound by obligations to the Funder under the Agreement and that the acts or omissions of Supplier and, if applicable, Supplier's Representatives (including any breach of the Agreement by Supplier) may cause CHN to suffer or incur Loss, including as a result of claims by third parties and/or suspension or termination of the Agreement by the Funder;

- 26.2.2 acknowledges that the Funder's obligation to provide CHN with Funding is conditional and the Funder retains broad rights to defer, reduce, not pay or revoke Funding under the Agreement;
- 26.2.3 acknowledges that CHN's reporting and record-keeping obligations under the Agreement may be varied from time to time, in which case Supplier's reporting and record-keeping obligations under the Agreement may be similarly varied by written notice to Supplier;
- 26.2.4 must promptly comply (and ensure that its Representatives promptly comply) with all lawful and reasonable directions of CHN from time to time, and otherwise promptly do all things necessary to assist CHN to comply with the Agreement (at the Contractor's sole expense unless CHN agrees otherwise in writing), including providing CHN or its nominees with information, documents or data;
- 26.2.5 must not make any statement to or via the media in relation to the Agreement or the performance of the Activity which Supplier believes (or an organisation in Supplier's position should have realised) will, or may, negatively impact upon Supplier meeting its obligations under the Agreement, and must notify CHN immediately upon it or any of its Representatives being contacted by a media representative in relation to any aspect of the Agreement or the Activity;
- 26.2.6 must allow CHN and any Funder Official to:
 - 26.2.6.1 access premises at which any documents, information or data in any way relating to the Agreement is stored or at which any work directly or indirectly related to the Activity are performed, and (subject to Law) inspect and copy any such documents, information and data at no charge; and
 - 26.2.6.2 interview its Representatives,

from time to time (without limiting the Funder Official's other functions, rights, powers or entitlements) upon three business days' notice to Supplier, or immediately if CHN or the Funder Official believes that any work in any way relating to the Activity (including any Client Services) poses a risk to the safety, health or well-being of any person or there is a suspected or actual breach of Law. These rights may be exercised from time to time, without limiting the Funder Official's other functions, rights, powers or entitlements;
- 26.2.7 must promptly notify CHN in writing (providing full information) if Supplier:
 - 26.2.7.1 learns of any errors or omissions in any information, document or data provided by or on behalf of Supplier to CHN; or
 - 26.2.7.2 becomes aware of anything that may adversely impact upon the performance of the Activity or CHN's enjoyment of rights and performance of obligations under the Agreement; and
- 26.2.8 remains fully responsible for the performance of the Agreement and the Activity and will not be relieved of that responsibility because of any involvement by CHN in the performance of the Agreement or the Activity, any Subcontracting or

Sub-subcontracting or acceptance by CHN of any report, document or information provided by or on behalf of Supplier.

26.3 Where CHN honestly and reasonably determines that an amendment to the Agreement is necessary or desirable to ensure compliance with the Agreement or to better achieve the aims of the Agreement, CHN may (in CHN's absolute discretion):

26.3.1 consult with Supplier regarding the proposed amendment;

26.3.2 if reasonably required, adjust the amounts payable by CHN to Supplier under the Agreement; and

26.3.3 provide Supplier with an amended version of the Agreement,

in which event Supplier is deemed to have irrevocably agreed to such amendment to the Agreement if Supplier does not terminate the Agreement by written notice to CHN within 10 business days after the date on which CHN provided Supplier with the amended version in accordance with clause 26.3.3. To avoid doubt, clause 22 will apply if Supplier exercises its right of termination under this clause 26.3.

Conflicts

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

Workplace health and safety

26.5 In addition to its obligations under clause 8, Supplier must consult, cooperate and coordinate with CHN, the Funder and other "duty holders" (as that term is used in the WHS Act) in relation to Supplier's work health and safety duties.

26.6 If a "Health Management Adviser" is appointed to CHN under the Agreement and an event occurs in relation to Supplier's work under the Agreement that leads, or could lead, to the death, injury or harm to, or illness of, any person or a dangerous incident as defined in the applicable WHS Law ("**Notifiable Incident**"), Supplier must:

26.6.1 immediately report the matter to CHN, including all relevant details that are known to Supplier;

26.6.2 as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:

26.6.2.1 its cause; and

26.6.2.2 what adverse effects (if any) it will have on Supplier's performance, or (where authorised by CHN) procuring of the performance, of the Activity, including adverse effects on health and safety;

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

Vulnerable Persons

- 26.8 Unless CHN agrees otherwise in writing, clauses 26.9 to 26.18 apply to the performance of the Activity (including, as applicable, Client Services) that involve working, or contact, with Vulnerable Persons (in addition to the obligations set out in clause 9).
- 26.9 Supplier must:
- 26.9.1 before engaging, deploying or redeploying a Relevant Person in relation to the performance of the Activity that involves working or contact with a Vulnerable Person; and
 - 26.9.2 thereafter every three years that the Relevant Person is deployed or redeployed in relation to the performance of the Activity, or upon the lapsing of the Relevant Person's previous Working With Vulnerable People Check, as applicable), that involve working or contact with a Vulnerable Person,
- do the following:
- 26.9.3 unless CHN agrees otherwise in writing, obtain a Police Check for the Relevant Person and confirm that the Relevant Person holds a current and valid Working With Vulnerable People Check;

- 26.9.4 confirm that no applicable Commonwealth, State or Territory Law prohibits the Relevant Person from being engaged in a capacity where they may have contact with Vulnerable Persons;
 - 26.9.5 comply with all other applicable Laws of the place in which that part of the Activity is being provided in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
 - 26.9.6 comply with any other conditions specified by CHN from time to time regarding Vulnerable Persons.
- 26.10 If a Police Check indicates that a Relevant Person has a Serious Record, Supplier may not deploy or redeploy that Relevant Person in relation to the performance of the Activity that involves working or contact with a Vulnerable Person.
- 26.11 Supplier agrees:
- 26.11.1 if a Police Check indicates that a Relevant Person has a Criminal or Court Record, not to engage, deploy or redeploy that Relevant Person in relation to the performance of the Activity that involves working with Vulnerable Persons unless Supplier has conducted and documented a risk assessment for that Relevant Person in accordance with clauses 26.14 to 26.16;
 - 26.11.2 within 24 hours of becoming aware of any Relevant Person being charged or convicted of any Other Offence, or charged with any Serious Offence, to comply with clause 26.9.5 and conduct and document a risk assessment in accordance with clauses 26.14 to 26.16 to determine whether to allow that Relevant Person to continue performing any part of the Activity that involves working with Vulnerable Persons;
 - 26.11.3 on becoming aware of a Relevant Person being convicted of a Serious Offence, to comply with clause 26.9.5 and immediately cease to deploy the Relevant Person in relation to the performance of any part of the Activity that involves working or contact with a Vulnerable Person; and
 - 26.11.4 to document the actions Supplier will take as a result of conducting a risk assessment.
- 26.12 Where clause 9.1 applies, and without limiting Supplier's other obligations, Supplier must immediately notify CHN in writing if an occurrence specified in clause 26.11 occurs with respect to Supplier.
- 26.13 Unless CHN agrees otherwise in writing, Supplier must promptly notify CHN in writing if Supplier becomes aware of an occurrence specified in clause 26.11 or Supplier conducts a risk assessment in accordance with clauses 26.14 to 26.16.
- 26.14 Supplier acknowledges and agrees that Supplier is wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person who has:
- 26.14.1 a Criminal or Court Record;
 - 26.14.2 been charged or convicted of any Other Offence; or

- 26.14.3 been charged with an Serious Offence,
- to be involved in any way in the performance of any part of the Activity that involves working or contact with Vulnerable Persons.
- 26.15 In undertaking the risk assessment under clause 26.14 in respect of a Relevant Person, Supplier must take into account the following factors:
- 26.15.1 whether the Relevant Person’s Criminal or Court Record (or the offence that the Relevant Person has been charged with, or convicted of, as specified in clause 26.11.2) is directly relevant to the role that he or she will or is likely to perform in relation to the performance of any part of the Activity;
 - 26.15.2 the length of time that has passed since the Relevant Person’s charge or conviction and his or her record since that time;
 - 26.15.3 the nature of the offence pertaining to the Relevant Person’s charge or conviction and the circumstances in which it occurred;
 - 26.15.4 whether the Relevant Person’s charge or conviction involved Vulnerable Persons;
 - 26.15.5 the nature of the Activity in relation to which the Relevant Person is employed or engaged and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;
 - 26.15.6 the particular role the Relevant Person is proposed to undertake or is currently undertaking in relation to the performance of any part of the Activity, and whether the fact the Relevant Person has a Criminal or Court Record (or has been charged or convicted as specified in clause 26.11.2) is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;
 - 26.15.7 the Relevant Person’s suitability based on his or her merit, experience and references to perform the role he or she is proposed to undertake, or is currently undertaking, in relation to the performance of the Activity; and
 - 26.15.8 any other factors specified in Item 9 of Schedule 1 or as otherwise specified by CHN from time to time as factors that Supplier must take into account in conducting a risk assessment for the purpose of this clause 26.
- 26.16 After taking into account the factors set out in clause 26.15 in respect of a Relevant Person, Supplier agrees to determine whether it is reasonably necessary to:
- 26.16.1 not engage, deploy or redeploy the Relevant Person in relation to the performance of the Activity;
 - 26.16.2 remove the Relevant Person from working in any position or acting in any capacity in relation to the performance of the Activity that involve working or having contact with Vulnerable Persons;
 - 26.16.3 make particular arrangements or impose conditions in relation to the Relevant Person’s role in relation to the performance of the Activity and, where relevant, his or her contact with Vulnerable Persons; and/or

- 26.16.4 take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom that aspect of the Activity relates.
- 26.17 As and when required by CHN, Supplier must promptly provide evidence, in a form CHN requires, that Supplier has complied with the requirements of clauses 26.8 to 26.18.
- 26.18 Unless CHN agrees otherwise in writing, Supplier must reflect Supplier's obligations under clause 9 and clauses 26.8 to 26.17 in all Subcontracts that Supplier enters into, in relation to the performance of any part of the Activity that involves working with Vulnerable Persons.

Privacy

- 26.19 The rights and obligations set out in clauses 26.20 to 26.25 are in addition to, and do not restrict Supplier's obligations under clause 15, or any obligations Supplier may have under Privacy Law and that would apply to Supplier but for the application of clause 15 or clauses 26.20 to 26.25.
- 26.20 Supplier must ensure that ensure that each Subcontract contains equivalent provisions to clauses 26.21 to 26.25.
- 26.21 Supplier must, in performing, or (where authorised by CHN) procuring the performance of, the Activity, comply with any of the Funder's directions, guidelines, determinations or recommendations to the extent that they are consistent with the requirements set out in clause 15 and clauses 26.21 to 26.25.
- 26.22 Supplier expressly consents to:
- 26.22.1 the disclosure of its identity to the Funder; and
 - 26.22.2 the Funder publishing (including in media releases, annual reports and on the Funder's website), information about Supplier, including its identity and the existence and nature of the Agreement; and
- 26.23 Without limiting clause 26.20, Supplier must ensure that any Subcontract contains equivalent obligations to those specified in clause 26.22 (on the part of the relevant party), including the consent by the relevant party (if an individual) to the disclosure of his or her Personal Information to the Funder.
- 26.24 Supplier acknowledges and agrees that:
- 26.24.1 Personal Information may be collected from or about Supplier and its Representatives and may be used or disclosed to administer, monitor, review, promote and evaluate the Agreement;
 - 26.24.2 for the purposes set out in clause 26.24.1, the Funder may:
 - 26.24.2.1 collect, use and disclose the Personal Information of Supplier and its Representatives; and
 - 26.24.2.2 disclose information about Supplier and its Representatives to, and receive information about Supplier and its Representatives from, any other entity that maintains the Funder's electronic on-line grant management system or has a directly-related interest or a role in administering the Activity;

- 26.24.3 If Supplier provides a "health service" (as defined in the Privacy Act) to an individual, Supplier must:
- 26.24.3.1 comply with the requirements in the Privacy Act regarding the collection, use and disclosure of the individual's Health Information or other "sensitive information" (as that term is defined in the Privacy Act);
 - 26.24.3.2 use best endeavours to obtain the written consent of the individual to transfer of Personal Information (including Health Information) relating to them collected or held by Supplier in connection with that service being transferred to another Australian health service provider which is contracted by the Funder or CHN to provide similar health services to them;
 - 26.24.3.3 keep a record of the written consent provided by each individual in accordance with clause 26.24.3.2;
 - 26.24.3.4 ensure that records of individuals who do not consent are kept in such a way as to facilitate them being separated from other records in the event of a transfer of information to another Australian health provider;
 - 26.24.3.5 make any other notification, and provide any other information, to the individual that is required by the Privacy Act or Privacy Law; and
 - 26.24.3.6 otherwise comply with Privacy Law in respect of the provision of the health service; and
- 26.24.4 Supplier must promptly comply with any direction from CHN from time to time to transfer the Personal Information (including Health Information) of each individual who has provided consent under clause 26.24.3.2 to another Australian health service provider who is contracted by the Funder or CHN to provide similar health services to that individual.
- 26.25 Supplier acknowledges and agrees that it may be treated as a contracted service provider for the purpose of the Privacy Act.

27. MISCELLANEOUS

- 27.1 The Agreement is not to be construed against a party merely because that party was responsible for preparing it (or any part of it).
- 27.2 Except as otherwise set out in the Agreement, CHN may give or withhold an approval or consent to be given under the Agreement in its absolute discretion and subject to any conditions determined by it. CHN is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions. Where the Agreement refers to a matter being to the "satisfaction" of CHN, this means to the satisfaction of CHN in its absolute discretion.
- 27.3 Supplier must not assign or transfer any of its rights or obligations under the Agreement, or attempt or purport to do so, without the prior written consent of CHN.

- 27.4 Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing the Agreement and any document related to the Agreement.
- 27.5 Subject to clause 16.3, the Agreement contains everything the parties have agreed on in relation to the matters it deals with, and no party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before the Agreement was executed, save as permitted by Law. To avoid doubt:
- 27.5.1 any other terms and conditions and any other materials which Supplier may purport to apply or which are endorsed in any correspondence or other documents (whether before or after the date of the Agreement) are excluded and do not apply; and
- 27.5.2 upon Supplier's acceptance of a Services Order (whether in writing, orally or by conduct), Supplier agrees to these standard terms and conditions as applying to the agreement created by that Services Order.
- 27.6 The Agreement is properly executed if each party executes either a Services Order or identical copies of that Services Order. In the latter case, the Agreement takes effect when the separately executed documents are exchanged between the parties (unless the parties have provided for an earlier commencement date in Item 2 of Schedule 1 to that Services Order).
- 27.7 The rights of CHN under the Agreement are cumulative and are in addition to any other rights available to CHN whether those rights are provided for under the Agreement, any other document or by Law. CHN may exercise a right, power or remedy separately or concurrently with another right, power or remedy available to it at Law or under the Agreement. A single or partial exercise of a right, power or remedy by CHN does not prevent a further exercise of that or of any other right, power or remedy and a failure by CHN to exercise, or delay by CHN in exercising, a right, power or remedy does not prevent its exercise.
- 27.8 The parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete the Agreement and all transactions incidental to it.
- 27.9 The Agreement is governed by the law of the Australian Capital Territory. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts, either for forum non conveniens or on any other basis.
- 27.10 The relationship between the parties is that of principal and independent contractor. No party is an agent, representative or partner of any other party by virtue of the Agreement. Supplier must not represent itself as an agent, representative or partner of CHN in any circumstances, except to the extent expressly set out in the Agreement.
- 27.11 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in the Agreement or by express written agreement between the parties.
- 27.12 CHN may set off any amount it owes Supplier under the Agreement against any amount that Supplier owes CHN under the Agreement.

- 27.13 Each provision of the Agreement is individually severable. If a clause or part of a clause of the Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- 27.14 Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of the Agreement.
- 27.15 It is an essential term of the Agreement that an obligation must be performed, and a right or power must be exercised, by Supplier within the time specified.
- 27.16 Without limiting clause 26.3, no variation of the Agreement (including to avoid doubt a purported variation to or replacement of any Schedule to the relevant Services Order) will be of any force or effect unless it is in writing and signed by each of CHN and Supplier.
- 27.17 The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 27.18 To the maximum extent permitted by Law, all conditions and warranties that would be implied (by Law, custom or otherwise), including any implied term of good faith, are expressly excluded.