

ANNEXURE A - Supplementary Conditions

1. Incorporation of Supplementary Conditions

- 1.1 The parties agree that this Annexure A:
- (a) the Supplementary Conditions set out in Annexure A of the Primary Health Networks Core Funding Schedule are incorporated into this Annexure A, excluding Item A11.1.1 General Interpretation covering the order in which the funding agreement documents take priority. The order of priority of the documents forming part of this Agreement shall be the order as specified in clause 11.1.2 of the Department's Standard Terms and Conditions; and
 - (b) if any amendments are made to those Supplementary Conditions those amendments will automatically be incorporated into this Annexure A without the need for the parties to comply with the procedure in clause 11.1.5 of the Terms and Conditions.

2. General interpretation of Agreement

- 2.1 Clause 11.1.2 of the Terms and Conditions is replaced with the following clause:

If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- a. the Supplementary Conditions referred to in clause 1 of Annexure A to the Schedule;
- b. the Terms and Conditions;
- c. the Schedule;
- d. the Covering Letter; and
- e. any documents incorporated by reference into the above documents.

3. Additional information

- 3.1 The following clause in Item B of the Schedule is deleted:

Your Organisation must advise the Department of any change to the site location or service area information in writing within 30 days after that change.

If, however, the location or area is a Works Location for Capital Works or a site location for Real Property or information about the location or area was provided to the Department as part of a selection/agreement process, any such change must be agreed in advance in writing by the Department before Your Organisation may implement the change.

and replaced with the following wording:

Your Organisation must advise the Department of any change to the site location within 30 days after that change.

The Department may change the Service Area in accordance with clause A1.2 of the Supplementary Conditions referred to in clause 1 of Annexure A.

A1. CONTEXT AND TERM

A1.1. Compliance with additional Supplementary Conditions

A1.1.1. Subject to A1.1.2, the Department may notify Your Organisation during the Term of this Agreement that additional Supplementary Conditions apply to Your Organisation because the Department's periodic risk review process has identified a significant negative change in Your Organisation's risk rating (as compared with the risk rating that applied at the Commencement Date).

A1.1.2. The Department will give at least 28 days' prior notice to Your Organisation of the additional Supplementary Conditions. The purpose of this notice period is to give Your Organisation the opportunity to:

- a. obtain information about why the risk rating has changed;
- b. mitigate to the Department's satisfaction the risks that have impacted on Your Organisation's risk rating; and/or
- c. consult with the Department in relation to the additional Supplementary Conditions.

A1.2. Boundaries

A1.2.1. The Department may, at its absolute discretion, revise the geographical boundaries of the PHN Region. This may occur, without limitation, in the event that LHN (or equivalent) boundaries are revised by a state or territory government. Your Organisation agrees to execute any amendment required to this Agreement to reflect the change in the PHN Region. The Department will:

- a. endeavour to give Your Organisation advance notice of any proposed changes; and
- b. consult and negotiate with Your Organisation in relation to:
 - i. the activities required to transition to the new boundaries and the costs of undertaking those activities;
 - ii. where there is an increase in the volume or type of Health Services – any additional funding that is required; and
 - iii. where there is a decrease in the volume or type of Health Services – any reduction in the Grant payable to Your Organisation (recognising that Your Organisation may have fixed and third party costs which are reasonable and cannot be avoided).

A2. YOUR ORGANISATION'S RESPONSIBILITIES

A2.1. Activity already commenced

A2.1.1. Notwithstanding the Commencement Date, the Parties acknowledge and agree that Your Organisation commenced work, in relation to this Agreement, on the Activity Start Date. The Parties further agree that such work will be considered to be part of the Activity under this Agreement and that the Provisions of this Agreement, including without limitation clause 2.1.1 of the Terms and Conditions, will apply accordingly.

A2.2. Activity media events

A2.2.1. Where, as part of the Activity, Your Organisation intends to conduct any major or significant public launch or similar of any aspect of the Activity, Your Organisation must invite the Department's Minister to the opening or launch. Your Organisation must provide that invitation to the Department at least six weeks prior to the opening or launch.

A2.3. Statements made to or via the media

A2.3.1. Subject to clause 4.6 [No restriction on advocacy activities] of the Terms and Conditions, Your Organisation must not make any statement to or via the media regarding this Activity which

Your Organisation believes (or an organisation in your position should have realised) will, or may, negatively impact Your Organisation meeting its obligations under this Agreement.

A2.4. Disclaimer – websites

A2.4.1. Unless the Department agrees to another form of words, Your Organisation must include the following disclaimer in a prominent position on any website that is produced with the Grant funds or as part of the Activity:

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

A2.4.2. This Supplementary Condition A2.4 [Disclaimer – websites] does not limit any other Provision of this Agreement that requires Your Organisation to obtain approval from the Department, including the Department's approval of any form of acknowledgement.

A2.5. Disclaimer - Activity Material

A2.5.1. Unless the Department agrees to another form of words, Your Organisation must include either of the following disclaimers in a prominent position in any Activity Material that:

- a. contains health advice; and
- b. is published or disseminated to the public; and
- c. is produced with the Grant funds or as part of the Activity:

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

Or

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

A2.5.2. This Supplementary Condition A2.5 [Disclaimer – Activity Material] does not limit any other Provision of this Agreement that requires Your Organisation to obtain approval from the Department, including the Department's approval of any form of acknowledgement.

A2.6. Sensitive cultural information

A2.6.1. Where Your Organisation identifies that information provided to the Department in the Activity Material for the Activity is of a culturally sensitive nature, the Department agrees to treat that information as Your Organisation's Confidential Information and to deal with it only in accordance with clause 8.2 [Exceptions to non-disclosure] of the Terms and Conditions.

A2.7. Reports

A2.7.1. Clause 2.3.3 of the Terms and Conditions is amended to replace the words "30 days" with the words "60 days".

A2.8. Protection of Personal Information

A2.8.1. Clause 2.9.3 of the Terms and Conditions is replaced with the following clause:

- a. If Your Organisation provides a 'health service' (as defined in the Privacy Act 1988 (Cth) (Privacy Act)) to an individual, Your Organisation must:

- i. 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 those terms are defined in the Privacy Act);
 - ii. use best endeavours to obtain the written consent of the individual to the transfer of personal information relating to them collected or held by Your Organisation, in connection with that service being transferred to another Australian health service provider which is contracted by the Commonwealth or Your Organisation to provide similar health services to them;
 - iii. keep a record of the written consent provided by each individual in accordance with a.ii.; and
 - iv. 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.
- b. If the Department:
- i. terminates this Agreement;
 - ii. removes all or part of an Activity from the scope of this Agreement; or
 - iii. changes the boundaries of your PHN Region, then Your Organisation must comply with any direction from the Department to transfer the personal information (including health information) of each individual who has provided consent under clause a.ii to another Australian health service provider who is contracted by the Commonwealth to provide similar health services to that individual.
- c. Where Your Organisation Purchases or Commissions Health Services it must ensure that the Services Agreement:
- i. contains equivalent provisions to clauses 2.9.3a and b; and
 - ii. supports Your Organisation's ability to change its Purchasing or Commissioning arrangements over the Term.

A3. FINANCIAL PROVISIONS

A3.1. Your Organisation's use of the Grant

A3.1.1. Without limiting clause 3.3.1 of the Terms and Conditions, Your Organisation must:

- a. provide Value for Money within budget parameters, including minimising administrative overheads and ensuring the efficient delivery of nationally and locally determined priorities; and
- b. manage the Grant Funds appropriately and ethically.

A3.2. Prohibited use of the Grant

A3.2.1. Without limiting clause 3.4.1 of the Terms and Conditions and Supplementary Condition A5.4, unless otherwise agreed by the Department in writing, the Grant must not be used for:

- a. capital infrastructure such as the purchase of real estate or for building or construction or demolition;
- b. security for the purpose of obtaining commercial loans or for the purpose of meeting existing loan obligations;
- c. legal or other costs (including damages) to settle unfair dismissal grievances and/or settle other claims brought against Your Organisation;
- d. retrospective items/activities; or
- e. activities undertaken by political organisations.

A3.2.2. Clause 3.4.1 of the Terms and Conditions is amended to delete clause 3.4.1f (prohibition on sitting fees). No further approval is required under clause 9.5.2 of the Terms and Conditions to the payment of sitting fees to Board members.

A3.3. Other Contributions

A3.3.1. For the avoidance of doubt, clauses 2.2.1, 3.2.3 and 3.8 of the Standard Funding Agreement Terms and Conditions 2015 do not apply to additional contributions received for activities that enhance the service delivery of an Activity.

A3.4. Medicare Benefits

A3.4.1. For the purposes of this Supplementary Condition A3.3 [Medicare Benefits], 'Medicare Benefits' means Other Contributions in the form of benefits or rebates paid to Your Organisation for professional services performed as part of the Activity which are:

- a. listed in the Medicare Benefits Schedule; and
- b. rendered by Your Organisation to its clients, in accordance with the Health Insurance Act 1973 (Cth).

A3.4.2. Your Organisation must use all Medicare Benefits that it receives, and all interest that it earns on those Medicare Benefits, solely for the purpose of providing comprehensive primary health care services in the course of the Activity.

A4. PARTIES' RELATIONSHIP AND PERSONNEL

A4.1. Services that cannot be subcontracted

A4.1.1. Without limiting clause 4.2 of the Terms and Conditions, Your Organisation must not subcontract the following services:

- a. governance structures including Clinical Councils and Community Advisory Committees;
- b. stakeholder relationship management and engagement; and
- c. supporting general practice.

A4.2. Purchasing or Commissioning of services

A4.2.1. Subject to this Supplementary Condition A4.2, where Your Organisation contracts a third party to provide Health Services using Flexible Funding, funding under programme schedules or other types of Grant funds notified by the Department in writing:

- a. Your Organisation does not need to obtain the Department's approval under clause 4.2 [Subcontractors to be approved] of the Terms and Conditions;
- b. the contract between Your Organisation and the third party (Services Agreement) is not a Subcontract for the purposes of this Agreement; but
- c. Your Organisation must include information about the Services Agreement (including the identity of the third party and the nature of the Health Services it is providing) in its next report to the Department.

A4.2.2. Your Organisation:

- a. must not Purchase or Commission services from a third party named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth);
- b. must ensure that the agreement with the third party (Services Agreement) contains a right of termination to take account of the Department's rights of termination and reduction under clause 10 [Termination] of the Terms and Conditions and Your Organisation must, where the Department considers appropriate, make use of that right in the event of a termination or reduction in scope of an Activity or this Agreement;
- c. must ensure that the third party has necessary relevant expertise and the appropriate types and amounts of insurance to perform the work it is engaged by Your Organisation to perform;
- d. must ensure that the third party expressly consents to the disclosure of its identity (and their Personal Information if the third party is an individual) to the Department. The consent obtained must extend to allowing the Commonwealth to publish, in the types of publications specified in this

clause 2.8 [Permission to publicise the Grant] of the Terms and Conditions, information about the third party, including its identity and the existence and nature of the arrangement;

e. must ensure that the Services Agreement contains provisions that will enable Your Organisation to comply with Your Organisation's obligations under clause 6.2 [Access to documents] of the Terms and Conditions;

f. must ensure that the Services Agreement contains provisions that will require the third party to comply with the same obligations as Your Organisation under clause 2.9 [Protection of Personal Information] of the Terms and Conditions; and

g. must require that the third party acknowledge that it may be considered a 'Commonwealth service provider' for the purposes of the Ombudsman Act 1976 (Cth) and subject to investigation by the Ombudsman under that Act. The Department will not be liable for the cost of any such investigation by the Ombudsman.

A4.2.3. Your Organisation must achieve Value for Money whenever it Purchases or Commissions services. The Department reserves the right to review whether Your Organisation's procurement decisions represent Value for Money. If Value for Money cannot be demonstrated, Your Organisation may be subject to further audits and action in line with the Agreement.

A4.3. Co-ordination and co-operation

A4.3.1. Subject to clause 4.6 [No restriction on advocacy activities] of the Terms and Conditions and Supplementary Condition A4.3.2, your Organisation must comply with reasonable requests from the Department in relation to matters such as:

- a. facilitating and hosting visits from public officials;
- b. supporting PHN programme objectives in relation to delivery of primary health care;
- c. supporting dissemination of public announcements including but not limited to public health announcements; and
- d. implementing suggestions in relation to best practice in health services delivery.

A4.3.2. If your Organisation considers that it cannot comply with a request under Supplementary Condition A4.3.1 then your Organisation must engage in co operative and responsive discussions with the Department with a view to identifying an alternative response from your Organisation that will assist the Department to meet its objectives.

A5. ASSETS

A5.1. Procurements that achieve Value for Money

A5.1.1. Your Organisation must Acquire any Assets in accordance with principles of open and effective competition, Value for Money and fair dealing.

A5.1.2. If the GST inclusive cost of Your Organisation Acquiring an Asset for the Activity is more than \$55,000 (or any other amount that is specified in the Schedule for the purpose of this Supplementary Condition A5.1 [Procurements that achieve Value for Money]), Your Organisation must obtain:

- a. written quotes; or
- b. tenders in response to a public invitation, to provide the Asset from:
- c. three or more suitable suppliers; or
- d. one or two suitable suppliers, if Your Organisation reasonably determines it is not possible or practicable to obtain tenders or quotes from three or more suitable suppliers and Your Organisation informs the Department within 14 days after making that determination.

A5.2. Assistance with the procurement process

A5.2.1. If the Activity requires Your Organisation to undertake a procurement process and Your Organisation does not have the capacity to undertake that procurement process, the Department

may require Your Organisation to engage an appropriate person, approved by the Department, to assist Your Organisation to undertake that procurement.

A5.3. Asset not procured as required

A5.3.1. If:

- a. the Activity requires Your Organisation to Acquire an Asset; and
- b. Your Organisation does not Acquire the Asset within 90 days (or if another timeframe is specified in the Schedule for the purpose of this Supplementary Condition A5.3 [Asset not procured as required], that other timeframe) after the date the Department pays Your Organisation an amount of Grant funds for that purpose, then:
- c. Your Organisation must notify the Department that the Asset has not been acquired and the reason for this; and
- d. the Department may reduce the Grant funds remaining payable under this Agreement (for any Activity) by the amount of Grant funds for the Asset referred to in paragraph b.

A5.4. Motor vehicles

A5.4.1. If, as part of the Activity, the Department provides Grant funds to Your Organisation to enable Your Organisation to acquire an Asset that is a motor vehicle, Your Organisation must:

- a. have it regularly serviced and maintained in accordance with the manufacturer's specifications or recommendations, and keep full records of its servicing and maintenance;
- b. ensure that it is driven only by Your Organisation's officers, employees, volunteers and/or contractors who are authorised by Your Organisation to do so and who hold an appropriate driver's licence;
- c. if the vehicle is purchased, ensure that it is unencumbered when acquired; and
- d. if the vehicle is second-hand, have the vehicle certified by a qualified mechanic as to its roadworthiness and mechanical suitability for its intended purpose before Your Organisation Commits or spends any of the Activity's Grant funds on the vehicle.

A5.5. Personal Property Security Act - Assets

A5.5.1. Your Organisation agrees that:

- a. Your Organisation hereby grants the Commonwealth a security interest within the meaning of the Personal Property Securities Act 2009 (Cth) (PPS Act) over the Assets and the proceeds of the Assets;
- b. the security interest in this clause secures Your Organisation's obligations under clauses 5.1.5, 5.1.7 and 5.1.8 of the Terms and Conditions and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by Your Organisation to the Commonwealth under or in connection with this Agreement;
- c. the entering into of this Agreement is 'attachment' for the purposes of the PPS Act;
- d. Your Organisation must provide all information to the Commonwealth or its representative and provide anything or do anything that the Commonwealth needs to receive or have done in order to be able to effectively register its security interest in any Asset and the proceeds on the Personal Property Securities Register established by section 147 of the PPS Act ('PPSR'), including any information set out in Item H of the Schedule for the Activity within 5 days after the Commencement Date;
- e. if at any time the information provided under Supplementary Condition A5.5.1.c, or any other details, change in a way that will have an impact on the Commonwealth's security interest (including but not limited to any change in Your Organisation's name, any dealing with the Asset or the proceeds or purchasing of any additional Asset), Your Organisation must notify the Commonwealth of that change within 7 days after the change occurs and provide all information and do anything that the Commonwealth requires in order for its security interest to be maintained;

f. any Asset in which the Commonwealth has a security interest is not to become 'accessions', 'fixtures' or 'commingled goods' as defined in the PPS Act without the Department's prior written consent; and

g. nothing in this Agreement is to be construed as an agreement to subordinate any security interest of the Commonwealth in favour of any other person.

A5.5.2. If Your Organisation defaults in the timely performance of the obligations referred to in Supplementary Condition A5.5.1b, the Commonwealth may repossess the Asset and otherwise enforce its security interest. The Commonwealth or an agent of the Commonwealth, may, for that purpose, enter any premises occupied by Your Organisation and remove the Asset, including by detaching the Assets from any other items to which they may be attached, or by detaching the Assets from any land to which they may be fixed.

A5.5.3. Your Organisation and the Commonwealth agree that for the purposes of section 14(6) of the PPS Act, any payments made in respect of obligations secured by a security interest under this Agreement will be applied in the following order:

- a. to obligations secured by a general security interest; and then
- b. to obligations secured by a purchase money security interest.

A5.5.4. To the extent the Law permits, for the purposes of sections 115(1) and 115(7) of the PPS Act, the Commonwealth need not comply with sections 95, 121(4), 130 (to the extent that it requires the secured party to give a notice to the grantor), 132 or 137(3) of the PPS Act.

A5.5.5. Your Organisation must not, without the Department's prior written consent, grant or purport to grant a security interest as defined in the PPS Act over any Asset owned by Your Organisation or do any other thing or allow any other dealing that will impact on the Department's security interest whether or not registered on the PPSR. For the avoidance of doubt, Your Organisation must not grant a security interest as defined in the PPS Act to any third party without the Department's prior written consent. Any consent by the Department may be subject to conditions, including requiring Your Organisation to ensure that any other secured party enters into a subordination agreement with the Commonwealth to ensure the Commonwealth's security interest in the Asset is not subordinated to other interests.

A6. WORK HEALTH AND SAFETY

A6.1.1. The obligations in this Supplementary Condition A6 [Work health and safety] operate in addition to clause 4.7 [Work health and safety] of the Terms and Conditions.

A6.1.2. Your Organisation must ensure, so far as is reasonably practicable, the health and safety of the following workers while they are working in relation to the Activity:

- a. workers engaged or caused to be engaged by Your Organisation; and
- b. workers whose activities in carrying out work are influenced or directed by Your Organisation.

A6.1.3. Your Organisation must also ensure, so far as is reasonably practicable, that the health and safety of other persons (including Commonwealth Personnel) is not put at risk as a result of work carried out in relation to this Activity.

A6.1.4. Your Organisation must consult, cooperate and coordinate with the Department and other 'duty holders' (as that term is used in the WHS Act) in relation to Your Organisation's work health and safety duties.

A6.1.5. If a Health Management Adviser is appointed to Your Organisation and an event occurs in relation to Your Organisation's work under this 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), Your Organisation must:

- a. immediately report the matter to the Department, including all relevant details that are known to Your Organisation;

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

i. its cause; and

ii. what adverse effects (if any) it will have on Your Organisation's conduct of the Activity, including adverse effects on health and safety;

c. as soon as possible after the Notifiable Incident, take all reasonable steps to remedy the effects of the Notifiable Incident on health and safety;

d. as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that the kinds of events or circumstances which led to the Notifiable Incident do not reoccur;

e. within 3 business days after the Notifiable Incident, give the Department a written report detailing the Notifiable Incident, including the results of the investigations required by Supplementary Condition A6.1.5.b, and a statement of the steps Your Organisation has taken or that Your Organisation proposes to take, as required by this Supplementary Condition A6.1.5;

f. within 60 business days after the Notifiable Incident, give the Department a written report giving full details of Your Organisation's actions in relation to the Notifiable Incident;

g. provide the Department with a copy of any report from the Government Authority investigating the Notifiable Incident within 5 business days after Your Organisation receives a copy of that report; and

h. 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.

A6.1.6. Your Organisation must not enter into any Subcontract for the purpose of directly or indirectly fulfilling obligations under this Agreement, unless such a Subcontract requires the Subcontractor to comply with provisions equivalent to those contained in this Supplementary Condition A6 [Work health and safety]. This requirement does not apply to Contracted Services that Your Organisation Purchases or Commissions using Flexible Funding or other types of Grant funds notified by the Department in writing.

A7. COMPLAINTS HANDLING

A7.1.1. Throughout the Activity Period for the Activity, Your Organisation must implement a procedure for addressing complaints from Your Organisation's clients and their representatives in connection with the Activity. The procedure must be:

a. simple for complainants to understand and follow;

b. fair;

c. free of charge for complainants; and

d. set out in a document which is available for viewing by any person on request and free of charge (for example, on Your Organisation's website).

A7.1.2. In performing the Activity, Your Organisation must not:

a. cease providing a person with goods or services;

b. refuse a person access to those goods or services;

c. otherwise recriminate against any person,

because they have made a complaint to, or about, Your Organisation in connection with an Activity. This does not, however, preclude Your Organisation from taking necessary action to ensure safety and prevent harm to any person.

A7.1.3. Your Organisation's obligations under this Supplementary Condition A7 [Complaints handling] are in addition to, and do not replace, any other obligations Your Organisation may have to implement complaints processes or procedures (for example, in accordance with any Law).

A9. REMEDIATION PLAN

A9.1. Defined terms

A9.1.1. For the purposes of this Supplementary Condition A9 [Remediation Plan], a 'Remediation Plan' is a plan for the Activity, in a form and containing the information required by the Department, that details the actions that Your Organisation will take to address any concerns about the Activity that the Department has notified to Your Organisation under Supplementary Condition A9.2.1.

A9.2. The Department may request a Remediation Plan

A9.2.1. If, following access to and a review of the premises, Material or anything else used for the Activity, the Department is concerned about Your Organisation's performance of any aspect of the Activity, the Department may (but is not obliged to) give Your Organisation a notice summarising those concerns and requiring Your Organisation to provide the Department with a draft Remediation Plan for the Activity.

A9.2.2. Your Organisation must provide a draft Remediation Plan to the Department for its approval within 14 days after Your Organisation receives the notice specified in Supplementary Condition A9.2.1 or if a later date is agreed in writing by the Parties, by that later date.

A9.2.3. The Department may approve the draft Remediation Plan or it may require changes to the draft Remediation Plan before the Department approves it.

A9.2.4. If the Department acting reasonably requires changes to a draft Remediation Plan, Your Organisation must make the changes and provide the modified Remediation Plan to the Department within 14 days after the Department notifies Your Organisation of the required changes, or if a later date is agreed in writing by the Parties, by that later date.

A9.2.5. The Department may approve or reject a modified Remediation Plan.

A9.3. Your Organisation's compliance with a Remediation Plan

A9.3.1. Your Organisation must comply with a (draft or modified) Remediation Plan that has been approved by the Department.

A9.4. Rejection of a modified Remediation Plan

A9.4.1. If the Department rejects a modified Remediation Plan, it may terminate the Activity or the Agreement under clause 10.2 [Termination for default] of the Terms and Conditions.

A9.4.2. This Supplementary Condition A9 [Remediation Plan] does not restrict or limit any other rights that the Department has under clause 10.1 [Termination or reduction in scope for convenience] or 10.2 [Termination for default] of the Terms and Conditions or otherwise at Law.

A10. TERMINATION AND DISPUTES

A10.1. Department's rights to withhold or reduce the Grant

A10.1.1. Without limiting clause 10.1.1 of the Terms and Conditions, where Your Organisation provides services to multiple PHN areas, the Department may remove one or more PHN areas from the scope of the Activities.

A11. INTERPRETATION

A11.1. General interpretation of this Agreement

A11.1.1. Clause 11.1.2 of the Terms and Conditions is replaced with the following clause: If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- a. the Supplementary Conditions in Annexure A to the Schedule;
- b. the Terms and Conditions;
- c. the Schedule;
- d. Annexure D – Budget;
- e. Annexure B – Definitions;
- f. Annexure C – PHN – grant Opportunity Guidelines;
- g. the Covering Letter; and
- h. any documents incorporated by reference into the above documents.

A11.2. Definitions

A11.2.1. The definition of "Asset" in clause 11.4 of the Terms and Conditions is amended to:

- a. replace "\$10,000 (GST inclusive)" with "\$10,000 (GST exclusive)"; and
- b. add a new paragraph d as follows:
 - d. includes any item transferred from a Medicare Local to your Organisation if at the time of the transfer the value of the item is greater than the amount set out in Item H of the Schedule for the Activity, or, if no amount is set out in that Item H, \$10,000 (GST exclusive)

A11.3. Additional information

A11.3.1. The following clause in Item B of the Schedule is deleted:

Your Organisation must advise the Department of any change to the site location or service area information in writing within 30 days after that change.

If, however, the location or area is a Works Location for Capital Works or a site location for Real Property or information about the location or area was provided to the Department as part of a selection/agreement process, any such change must be agreed in advance in writing by the Department before Your Organisation may implement the change. and replaced with the following wording:

Your Organisation must advise the Department of any change to the site location within 30 days after that change.

The Department may change the Service Area in accordance with clause A1.2 of the Supplementary Conditions.

G1. INTEREST EARNED ON THE GRANT FUNDS FORMS PART OF THE GRANT

G1.1.1. Clause 3.3.7.a of the Terms and Conditions is replaced with the following: 'a. identify all receipts and payments for the Activity and all interest earned by Your Organisation on the Grant funds for that Activity; and'. G1.1.2. The definition of 'Grant' in clause 11.4 [Definitions] of the Terms and Conditions is amended by adding the following words after the words 'Item F of the Schedule' in paragraph a. of that definition: 'and any interest earned by Your Organisation on those amounts after the date that Supplementary Condition G1 [Interest earned on the Grant funds forms part of the Grant] is included in the Agreement.'

G4. CORPORATE GOVERNANCE

G4.1. Constitution

G4.1.1. If the Department requests, Your Organisation must give the Department a copy of Your Organisation's Constitution within 7 days after Your Organisation receives the Department's request.

G4.1.2. Your Organisation must inform the Department in writing of any material change in:

- a. Your Organisation's Constitution, corporate or ownership structure, which it is required to report to the Australian Charities and Not-for-profits Commission (ACNC) at the same time that it informs the ACNC of that change; or
- b. Your Organisation's CEO, CFO or COO, or equivalent executive or managerial positions, within 28 days after that change takes effect.

G4.2. Your Organisation's management

G4.2.1. Before allowing a person to:

- a. have responsibility for the financial administration of the Grant Funds; or
- b. act as CEO, CFO or COO, or equivalent executive or managerial positions;

Your Organisation must undertake reasonable enquiries as to whether any of the following apply to the person:

- c. the person is an undischarged bankrupt;
- d. a composition, deed of arrangement, or deed of assignment, is in operation with the person's creditors under bankruptcy Law;
- e. a final judgement for a debt has been made against the person and it remains unsatisfied;
- f. the person has been convicted of an offence within the meaning of subsection 85ZM(1) of the Crimes Act 1914 (Cth), unless:
 - i. that conviction is regarded as spent under subsection 85ZM(2);
 - ii. the person was granted a free and absolute pardon because the person was wrongly convicted; or
 - iii. the conviction has been quashed;
- g. the person is or was a director or occupied an influential position in the management or financial administration of an organisation that breached Commonwealth funding requirements; or
- h. the person is otherwise prohibited from being a member, director, employee or responsible officer of Your Organisation under any relevant legislation.

Unless the Department otherwise agrees in writing, if Your Organisation is or becomes aware that any of paragraphs c to h apply to a person, Your Organisation must not appoint that person to a position referred to in paragraph a or b (or must remove them from that position or change their position so they no longer have that responsibility).

G4.2.2. Your Organisation must not indemnify (whether by agreement or by making a payment, and whether directly or through an interposed entity) a Director or any person concerned in its management against any of the following liabilities:

- a. a liability that person owes to Your Organisation or a Related Body Corporate of Your Organisation (as that term is defined in the Corporations Act 2001 (Cth));
- b. a liability that person owes to someone, other than Your Organisation or a Related Body Corporate of Your Organisation, that arose out of actions taken in bad faith; or
- c. a liability that person incurs by making improper use of the person's position with Your Organisation, or by making improper use of information obtained through that position.

G5. APPOINTMENT OF GRANT ADMINISTRATOR OR HEALTH MANAGEMENT ADVISER

G5.1. Circumstances where a Grant Administrator or Health Management Adviser may be appointed

G5.1.1. Where:

- a. Your Organisation is unable to properly manage the Grant Funds;
- b. there is a significant or continuing material breach of this Agreement; or
- c. the whole or any material part of a Activity is, or may be, compromised because of Your Organisation's management or governance, and previous attempts to address the performance management issues through other mechanisms, including Clause 10.3 Procedure for dispute resolution have not been successful, Your Organisation consents to the Department appointing either a Grant Administrator or a Health Management Adviser or both to Your Organisation.

G5.2. Role of Grant Administrator or Health Management Adviser

G5.2.1. The function of the Grant Administrator is to ensure that the Grant funds for each Activity are committed, spent and administered for that Activity in accordance with this Agreement. This may include the Grant Administrator providing financial, management and corporate governance assistance, support and advice to Your Organisation.

G5.2.2. The Grant Administrator may control all or part of the Grant funds. If the Grant Administrator makes a request to the Board of Your Organisation under G5.2.2 (a) or (b), Your Organisation must:

- a. include the Grant Administrator as an additional mandatory signatory for each bank account that contains the Grant funds; and
- b. permit the Grant Administrator to establish, and be a mandatory signatory for, a new bank account in Your Organisation's name that is separate from Your Organisation's other bank accounts, and Your Organisation must deposit all Grant funds currently in Your Organisation's possession, as well as any Grant funds received in the future, into that account.

G5.2.3. While the Department will determine the terms and conditions of the Grant Administrator's appointment, the Grant Administrator will perform its functions independently of the Commonwealth and:

- a. the Commonwealth will not direct or control the Grant Administrator's performance of that function; and
- b. the Grant Administrator will not perform that function as the Commonwealth's agent.

G5.2.4. The role of a Health Management Adviser is to provide support to Your Organisation as determined by the Department (other than the functions of a Grant Administrator). This may include:

- a. providing advice to Your Organisation in relation to service delivery; or
- b. where Your Organisation consents, assisting Your Organisation with:
 - i. Your Organisation's corporate governance and constitutional issues; or
 - ii. the management of Your Organisation's Personnel.

G5.2.5. If the Department appoints both a Grant Administrator and a Health Management Adviser, the Health Management Adviser must cooperate with the Grant Administrator.

G5.3. Notice of intention to appoint a Grant Administrator or Health Management Adviser

G5.3.1. The Department will notify Your Organisation in writing of its intention to appoint a Grant Administrator or Health Management Adviser. Unless this is not practicable the notice will:

- a. set out the names of three alternative appointees; and
- b. give Your Organisation 14 days after Your Organisation's receipt of the Department's notice to:
 - i. advise the Department which of the three alternative appointees it prefers; and/or

ii. provide the Department with reasons why a Grant Administrator or Health Management Adviser should not be appointed.

G5.4. Notification of appointment of a Grant Administrator or Health Management Adviser

G5.4.1. Upon appointment of a Grant Administrator or Health Management Adviser, the Department will inform Your Organisation of the appointment and its duration. The Department will also advise Your Organisation of any subsequent extension of the period of appointment.

G5.5. Cooperation with the Grant Administrator or Health Management Adviser

G5.5.1. Where a Grant Administrator or Health Management Adviser is appointed to Your Organisation by the Department, Your Organisation must cooperate with them and comply with any lawful directions and recommendations given by:

- a. the Grant Administrator in relation to the administration of the Grant funds for each Activity; or
- b. the Health Management Adviser in relation to the performance of this Agreement.

G5.5.2. Failure by Your Organisation to cooperate with the Grant Administrator or Health Management Adviser in the performance of their contracted role may be treated by the Department as a breach of this Agreement, giving the Department a right to terminate the Activity or this Agreement under clause 10.2 [Termination for default] of the Terms and Conditions.

G5.6. Your Organisation's relationship with the Grant Administrator or Health Management Adviser

G5.6.1. A Grant Administrator or Health Management Adviser who provides a report to the Department in relation to Your Organisation:

- a. does so independently of Your Organisation; and
- b. does not reduce Your Organisation's obligations to provide Reports to the Department under this Agreement.

G5.6.2. A Grant Administrator or Health Management Adviser is not appointed to act, and does not act, as a member or shadow member of Your Organisation's governing board and cannot incur debts on Your Organisation's behalf without Your Organisation's express authority..

G5.6.3. A copy of a report from the Grant Administrator or Health Management Adviser will not be unreasonably withheld from Your Organisation.

G5.7. Survival

G5.7.1. This Supplementary Condition G5 [Appointment of Grant Administrator or Health Management Adviser] survives the expiry or earlier termination of an Activity or this Agreement.

G8. WORKING WITH VULNERABLE PERSONS

G8.1.1. For the purposes of this Supplementary Condition G8 [Working with Vulnerable Persons]:

- a. 'Child' means an individual under the age of 18;
- b. 'Criminal or Court Record' means any record of any Other Offence;
- c. 'Other Offence' means, in relation to any Relevant Person, a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - i. an apprehended violence or protection order made against the Relevant Person;
 - ii. the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance;
 - iii. violence against a person or the injury, but excluding the death, of a person; or
 - iv. an attempt to commit a crime or offence, or to engage in any conduct or activity, described in paragraphs i. to iii.
- d. 'Police Check' means a formal inquiry made to the relevant police authority in each Australian State or Territory in which Your Organisation knows 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;

e. 'Relevant Person' means a natural person who is an actual or potential officer, employee, volunteer, agent or contractor of Your Organisation;

f. 'Serious Offence' means:

- i. a crime or offence involving the death of a person;
- ii. a sex-related offence or a crime, including sexual assault (whether against an adult or Child); Child pornography, or an indecent act involving a Child;
- iii. 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
- iv. an attempt to commit a crime or offence described in Supplementary Conditions G8.1.1.f.i to iii;

g. 'Serious Record' means a conviction or any finding of guilt regarding a Serious Offence; and

h. 'Vulnerable Person' means:

i. a Child; or

ii. 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, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

G8.1.2. This Supplementary Condition G8.1 [Working with Vulnerable Persons] applies to any part of an Activity that involves working, or contact, with Vulnerable Persons except as otherwise specified in Item M of the Schedule.

G8.1.3. Your Organisation must:

- a. before engaging, deploying or redeploying a Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person; and
- b. thereafter every three years that the Relevant Person is deployed or redeployed in relation to any part of an Activity that involves working or contact with a Vulnerable Person, do the following:
- c. obtain a Police Check for the Relevant Person, except as otherwise specified in Item M of the Schedule;
- d. 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;
- e. comply with all other applicable Laws of the place in which that part of the Activity is being conducted in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
- f. comply with any other conditions set out in Item M of the Schedule in respect of the Activity.

G8.1.4. If a Police Check indicates that a Relevant Person has a Serious Record, Your Organisation may not deploy or redeploy that Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person.

G8.1.5. Your Organisation agrees:

- a. if a Police Check indicates that a Relevant Person has a Criminal or Court Record, not to engage, deploy or redeploy that Relevant Person in respect of any part of an Activity that involves working with Vulnerable Persons unless Your Organisation has conducted and documented a risk assessment for that Relevant Person in accordance with Supplementary Conditions G8.1.7 to G8.1.9;
- b. 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 Supplementary Condition G8.1.3.e and conduct and document a risk assessment in accordance with Supplementary Conditions G8.1.7 to G8.1.9 to determine whether to allow that Relevant Person to continue performing any part of an Activity that involves working with Vulnerable Persons;

- c. on becoming aware of a Relevant Person being convicted of a Serious Offence, to comply with Supplementary Condition G8.1.3.e and immediately cease to deploy the Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person; and
- d. to document the actions Your Organisation will take as a result of conducting a risk assessment.

G8.1.6. Your Organisation must promptly notify the Department if Your Organisation becomes aware of an occurrence specified in Supplementary Condition G8.1.5 or Your Organisation conducts a risk assessment in accordance with Supplementary Conditions G8.1.7 to G8.1.9, except to the extent otherwise specified in Item M of the Schedule or agreed in writing by the Department.

G8.1.7. Your Organisation is wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person who has:

- a. a Criminal or Court Record;
- b. been charged or convicted of any Other Offence;
- c. been charged with an Serious Offence, to work on any part of an Activity that involves working or contact with Vulnerable Persons.

G8.1.8. In undertaking the risk assessment under Supplementary Condition G8.1.7 in respect of a Relevant Person, Your Organisation agrees to take into account the following factors:

- a. 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 Supplementary Condition G8.1.5.b) is directly relevant to the role that he or she will or is likely to perform in relation to an Activity;
- b. the length of time that has passed since the Relevant Person's charge or conviction and his or her record since that time;
- c. the nature of the offence pertaining to the Relevant Person's charge or conviction and the circumstances in which it occurred;
- d. whether the Relevant Person's charge or conviction involved Vulnerable Persons;
- e. the nature of the Activity for which the Relevant Person is employed or engaged and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;
- f. the particular role the Relevant Person is proposed to undertake or is currently undertaking in relation to an Activity and whether the fact the Relevant Person has a Criminal or Court Record (or has been charged or convicted as specified in Supplementary Condition G8.1.5.b) is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;
- g. the Relevant Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake, or are currently undertaking, in relation to an Activity; and
- h. any other factors specified in Item M of the Schedule as factors that Your Organisation must take into account in conducting a risk assessment for the purpose of this Supplementary Condition G8 [Working with Vulnerable Persons].

G8.1.9. After taking into account the factors set out in Supplementary Condition G8.1.8 in respect of a Relevant Person, Your Organisation agrees to determine whether it is reasonably necessary to:

- a. not engage, deploy or redeploy the Relevant Person in relation to an Activity or any part of an Activity;
- b. remove the Relevant Person from working in any position or acting in any capacity in relation to any part of an Activity that involves working or having contact with Vulnerable Persons;
- c. make particular arrangements or impose conditions in relation to the Relevant Person's role in relation to an Activity (or any part of an Activity) and, where relevant, his or her contact with Vulnerable Persons; and/or
- d. take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.

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THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH



Australian Government

Department of Health



An Australian Government Initiative

PHN Program Performance and Quality Framework

September 2018

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1 Introduction

1.1 The Primary Health Networks Program

The Primary Health Networks Program (PHN Program) commenced in 2015 with the establishment of 31 Primary Health Networks (PHNs). Individual PHNs are responsible for identifying and addressing the primary health needs in their region through strategic planning, commissioning services, supporting general practices and other health care providers and supporting the integration of local health care services.

The PHN Program has two objectives and seven priority areas for targeted work:

Table 1: PHN Program objectives and priority areas

| PHN Program Objectives | PHN priority areas for targeted work |
|--|--|
| <p>Increase the efficiency and effectiveness of medical services, particularly for patients at risk of poor health outcomes.</p> <p>Improve coordination of care to ensure patients receive the right care in the right place at the right time.</p> | <p>Mental Health</p> <p>Aboriginal and Torres Strait Islander Health</p> <p>Population Health</p> <p>Workforce</p> <p>Digital Health</p> <p>Aged Care</p> <p>Alcohol and Other Drugs</p> |

PHNs are expected to respond to the health needs of their region while being guided by the priority areas for targeted work and National priorities as decided by the Government.

PHNs receive funding from the Australian Government for a range of activities and functions:

- Commissioning health services to meet local service needs – this includes analysing relevant health data; prioritising local health needs; working with providers, clinicians and communities to co-design services to meet those needs; and monitoring and evaluating service delivery to inform future needs. PHNs are provided with specific funding to commission services for core primary health care activities, as well as mental health treatment services, drug and alcohol treatment services, and Indigenous-specific health services.

- Health systems improvement – with the alignment of PHN and Local Hospital Networks (LHN) boundaries, PHNs are in a position to support joint planning, collaborative commissioning and health service integration between Commonwealth and state and territory funded health services. PHNs are working closely with service providers to agree referral pathways and support secure sharing of patient information.
- Sector support activities – PHNs play an important role in providing support to general practice, as a key part of strengthening the primary health care system. PHNs' work in this area includes: supporting general practice and other health care providers with quality improvement and accreditation; cultural awareness and competency; workforce development; digital health systems; and patient centred care and best practice service delivery models.
- Operational functions – including the administration, governance (including the establishment and maintenance of Clinical Councils and Community Advisory Committees) and core functions of PHNs.

Some PHNs also receive other Australian Government funding, for specific activities such as Health Care Homes, Palliative Care or Per- and poly-fluoroalkyl substances (PFAS). In addition, PHNs may deliver activities funded by State and Territory Governments or other funding bodies.

1.2 Purpose of the PHN Program Performance and Quality Framework

The PHN Program Performance and Quality Framework (the Framework) aims to consider how the broad range of activities and functions delivered by PHNs contribute towards achieving the Program's objectives.

PHNs determine where to direct their activities and resources as a result of the needs assessment of their region. The Framework does not intend to change this approach or direct PHNs to undertake work in priority areas that are not relevant to their region.

The Framework has three purposes:

- providing opportunities to identify areas for improvement for individual PHNs and the PHN Program;
- supporting individual PHNs in measuring their performance and quality against tangible outcomes; and
- measuring the PHN Program's progress towards achieving its objectives of improving efficiency and effectiveness of medical services for patients and improving coordination of care to ensure patients receive the right care, in the right place, at the right time.

In addition, individual PHN performance against the Framework will be used to inform Department of Health (the Department) decisions concerning eligibility for future contract extensions, as well as any associated negotiations with individual PHNs.

The Framework encompasses the activities that are delivered by all PHNs from 1 July 2018. It offers a structure which can accommodate additional activities and functions, should the Australian Government seek to deliver these through PHNs in the future.

The Framework is effective from 1 July 2018 and supersedes the PHN Performance Framework Version 1 (March 2016 – June 2018).

1.3 Principles

The following principles underpin the Framework:

- Minimise burden – the Framework should focus on minimising reporting requirements for PHNs and gathering information that is useful for assessing performance and quality.
- Transparent – the Framework should be clear about what it is measuring and how it will assess performance.
- Outcomes based – the Framework should measure progress towards outcomes and program objectives, to build a strong picture of the impact of the PHN Program.
- Quality – the Framework should provide an opportunity to identify continuous quality improvement for the PHN Program and individual PHNs.
- Holistic – the Framework should consider the performance of the PHN Program as a whole and any future functions of the Program.
- Alignment – the Framework should align with the PHN Program objectives, national performance frameworks in health, and the health priorities of the Australian Government.
- Flexibility – the Framework needs to accommodate the different priorities of PHNs depending on the health needs of their region.

2 Conceptual Framework

Version 1 of the Framework primarily reflected program performance monitoring under the PHN Program's Core Schedule. The new Framework has been designed to provide a structure for monitoring and assessing PHNs' individual performance and progress towards achieving outcomes under all Funding Schedules of the PHN Program.

The conceptual framework consists of the following four components:

- PHN Program Objectives – describe what the PHN Program is intended to achieve
- Outcome Themes – five themes which link the outcomes to the PHN Program objectives
- Outcomes – drawn from the program logic models which describe the activities, outputs and outcomes for the PHN Program
- Indicators – for assessing progress towards the outcomes

2.1 Outcome themes

There are five outcome themes which link to the PHN Program's objectives. This grouping helps explain how different activities contribute to the overall PHN Program objectives.

Table 2: Outcome themes

| Outcome theme | Outcomes |
|-----------------------|---|
| Addressing Needs | Activities conducted by PHNs to address the needs of people in their local region, including an equity focus |
| Quality Care | Activities and support offered by PHNs to general practices and other health care providers to improve quality of care for patients |
| Improving Access | Activities by PHNs to improve access to primary health care by patients |
| Coordinated Care | Activities and support by PHNs to improve coordination of care for patients and integration of health services in their region |
| Capable Organisations | Operational activities of PHNs which support the successful delivery of the PHN Program |

2.2 Outcomes

The primary health care system is a complex mix of service delivery with many interdependencies and stakeholders. Consideration also needs to be given to social determinants of health, individual behaviour and personal circumstances. There are a large number of determinants at play which produce changes in outcomes.

Program logics for the PHN Program and the seven priority areas have been developed to simply describe the activities and outputs PHNs deliver (including by commissioning) and the outcomes these activities are designed to achieve. While there are a number of contextual and environmental factors at play, the program logics attempt to reflect outcomes which are most closely aligned to the actions of individual PHNs. The PHN Program and priority area program logics are set out in Appendix A - Program Logics.

The Framework acknowledges that PHNs are individual organisations using different approaches to address the needs of their region. PHNs may find that they have few activities against some outcomes due to the different priorities of their region. The Framework offers a way to consider how different activities can contribute to broader outcomes.

The Framework reflects that PHNs are working towards intermediate outcomes, which can be expected to be achieved in the near future, and longer term outcomes, which accord with both the PHN Program's objectives and PHN's strategic visions.

In addition, PHNs aim to meet organisational capability outcomes to demonstrate their ongoing viability as commissioning organisations.

Table 3 on the next page maps the outcomes to four of the outcome themes, and to the PHN Program's priority areas. Longer term outcomes are also included in a separate column. The outcomes for the Capable Organisations outcome theme can be found in Table 13.

Table 3: Outcomes and outcome themes

| Areas | Addressing Needs | Quality Care | Improving Access | Coordinated Care | Longer Term |
|---|--|---|--|--|---|
| Program | PHN activities and initiatives address local needs | PHNs support general practices and other health care providers to provide quality care to patients | <p>People in the PHN region are able to access general practices and other services as appropriate</p> <p>PHNs support general practices and other health care providers to provide appropriate after hours access</p> | People in the PHN region receive coordinated, culturally appropriate services from local health care providers | <p>PHNs support local primary health care services to be efficient and effective, meeting the needs of patients at risk of poor health outcomes</p> <p>Patients in local region receive the right care in the right place at the right time</p> |
| Mental Health | - | PHN commissioned mental health services improve outcomes for patients | People in PHN region access mental health services appropriate to their individual needs | Health care providers in PHN region have an integrated approach to mental health care and suicide prevention | People in PHN region enjoy better mental health and social and emotional wellbeing |
| Aboriginal and Torres Strait Islander health | PHNs address needs of Aboriginal and Torres Strait Islander people in their region | Local health care providers provide culturally appropriate services to Aboriginal and Torres Strait Islander people | Aboriginal and Torres Strait Islander people are able to access primary health care services as required | Aboriginal and Torres Strait Islander people with chronic conditions receive coordinated care | PHNs contribute to closing the gap and Aboriginal and Torres Strait Islander people experience improved emotional, social and physical wellbeing |

| Areas | Addressing Needs | Quality Care | Improving Access | Coordinated Care | Longer Term |
|--------------------------|---|---|------------------|------------------|---|
| | | Aboriginal and Torres Strait Islander identified health workforce capability and capacity matches needs of region | | | |
| Population Health | Fewer preventable hospitalisations in PHN region for people with chronic and vaccine preventable diseases | PHNs support health care providers to address factors impacting population health | - | - | Improved health outcomes for all population groups in the PHN region |
| Workforce | - | Local workforce has suitable cultural and clinical skills to address health needs of PHN region PHNs support general practices and other health care providers to provide quality care to patients | - | - | People in PHN region are able to access a high quality, culturally safe and appropriately trained workforce |

| Areas | Addressing Needs | Quality Care | Improving Access | Coordinated Care | Longer Term |
|--------------------------------|------------------|---|---|--|--|
| Digital Health | - | PHNs support health care providers to use digital health systems to improve patient care and communication General practices and other health care providers use data to improve care | - | Health care providers are aware of digital health systems and technologies | Digital health enables better coordinated care and better informed treatment decisions |
| Aged Care | - | Fewer preventable hospitalisations in PHN region for older people Local health and other care providers are supported to deliver coordinated, effective and appropriate care to older people in the PHN region | Older people in the PHN region are supported to access primary health care services that meet their needs including self-care in the home | - | Older people in the PHN region are supported to enjoy a greater quality of life Local health care system provides coordinated, quality care to older people |
| Alcohol and Other Drugs | - | - | People in PHN region are able to access appropriate drug and alcohol treatment services | Health care providers in PHN region have an integrated approach to drug and alcohol treatment services | Decrease in harm to population in PHN region from drug and alcohol misuse |

2.3 Indicators

Indicators have been selected to monitor and assess progress towards achieving the outcomes for the Program, each priority area and organisational capability. All of the indicators will be used to measure the performance of the PHN Program as a whole and a subset of the indicators will be used to assess individual PHN performance. See Table 14 for the subset of indicators for individual PHN performance.

The indicators selected are a mix of output/process indicators, existing health outcome indicators, existing performance indicators from PHN Schedules and qualitative statements of activities and expected change. The mix of indicators reflects that measuring outcomes under the PHN Program is new. As the Program continues to mature, the Framework's indicators will be reviewed and updated to reflect the progress to achieving Program outcomes. This includes a review of performance criteria of indicators.

2.4 Alignment to other frameworks

The outcome themes of the Framework can be used to align the PHN Program outcomes, activities and functions against other existing health Frameworks. The two most relevant for PHNs are the new Australian Health Performance Framework (AHPF), which seeks to support system-wide reporting of Australia's health and health care performance, and the Quadruple Aim¹, which many PHNs use as a tool for measuring their progress towards achieving optimal health system performance.

Table 4 on the next page shows how the outcome themes are aligned to the AHPF and the Quadruple Aim.

¹ Bodenheimer T and Sinsky C. 2014 From Triple to Quadruple Aim: Care of the Patient Requires Care of the Provider. Ann Fam Med November/December 12:573-576; doi:10.1370/afm.1713

Table 4: Alignment between outcome themes and AHPF and Quadruple Aim

| Framework | Elements of Framework | Addressing Needs | Quality Care | Improving Access | Coordinated Care | Capable Organisations |
|-------------------------------|--|------------------|--------------|------------------|------------------|-----------------------|
| AHPF Health System Dimensions | Effectiveness | ✓ | ✓ | ✓ | ✓ | ✓ |
| | Safety | — | ✓ | — | — | — |
| | Appropriateness | ✓ | ✓ | — | — | — |
| | Continuity of Care | — | — | — | ✓ | — |
| | Accessibility | — | — | ✓ | — | — |
| | Efficiency and Sustainability | ✓ | ✓ | ✓ | ✓ | ✓ |
| Quadruple Aim | Improving patient experience | ✓ | ✓ | ✓ | ✓ | — |
| | Improved population health outcomes | ✓ | ✓ | ✓ | ✓ | — |
| | Reducing the per capita cost of health care ² | ✓ | ✓ | ✓ | ✓ | ✓ |
| | Improved clinician experience | — | ✓ | ✓ | ✓ | ✓ |

² Many PHNs are adapting this aim to ensure a focus on the importance of achieving value for money

3 Performance Indicators

The Framework contains 54 indicators:

- 39 performance indicators – which are used to measure performance towards PHN Program and priority area outcomes
- 15 organisational indicators – which are used to measure performance towards the capable organisations outcomes³.

PHNs will provide information against individual Schedule performance indicators and an additional 24 indicators. The amount of information or data that a PHN provides against each indicator will vary depending on the activities it has undertaken to address prioritised needs in that area. For some indicators PHNs may have no or limited input. The Framework includes sufficient flexibility to ensure where this occurs a PHN's performance assessment will not be negatively impacted.

PHNs will be individually assessed against a sub-set of 39 indicators, which consists of all of the organisational indicators and 24 of the performance indicators. Indicators have been selected which reflect areas where PHNs can and should have influence (see Table 14). Section 7 explores how PHNs will be assessed on their performance. Appendix B - Indicator Specifications provides the necessary details for reporting against each indicator.

3.1 Indicator selection

Each outcome has been assigned at least one indicator. In some cases, multiple indicators have been used to account for the different factors that contribute to achieving outcomes.

Indicators have been selected by considering:

- Alignment – does the indicator assist in measuring progress towards the relevant outcome, either independently or in consideration with other indicators?
- Practicality – do the data already exist, or could they be derived from existing data sets or by PHN activity data?
- Availability – are the data frequently available, with limited time lags?
- Reliability – are the data sourced from reliable and stable sources?

³ Note that three indicators from the PHN Program and priority area outcomes are also used to assess organisational capability

Wherever possible indicators have been selected using measures that already exist within the Australian health care system. This includes data reported by the Australian Institute of Health and Welfare (AIHW) and the Australian Bureau of Statistics (ABS), along with Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Scheme (PBS) data which is collected by the Department of Human Services and provided to the Department. The use of this data has been prioritised as a way to minimise the burden on PHNs.

In addition, existing performance indicators for specific programs of work, contained in the Primary Mental Health and Suicide Prevention (MH) Schedule, the Drug and Alcohol Treatment Information Strategy (DATIS) and the My Health Record Expansion Program (MHREP) Schedule (managed by the Australian Digital Health Agency (ADHA)) have been selected for inclusion in the Framework.

3.2 Aspirational indicators

There are a number of outcomes in the Framework where no suitable indicator is currently available. Instead, an aspirational indicator has been included which describes what could be collected as part of future versions of the Framework. This includes potential indicators for assessing progress towards the longer-term outcomes.

3.3 Indicator tables

The tables on the following pages contain the outcome, the selected indicators and where the data for each indicator will be obtained from. The same indicator may be used to report against several outcomes.

Table 5: PHN Program indicators

| Outcomes | Indicators | Data Provision |
|---|--|----------------|
| Addressing Needs: PHN activities and initiatives address local needs | P1 PHN activities address prioritised needs | PHN |
| | P2 Health system improvement and innovation | PHN |
| | To be developed: an indicator of health literacy in each PHN region | TBD |
| Quality Care: PHNs support general practices and other health care providers to provide quality care to patients | P3 Rate of general practice accreditation | PHN |
| | P4 Support provided to general practices and other health care providers | PHN |
| | P5 Rate of regular uploads to My Health Record | ADHA |

| Outcomes | Indicators | Data Provision |
|---|---|--|
| | To be developed: an indicator of use of Patient Reported Experience Measures in determining provision of quality care | TBD |
| Improving Access: People in the PHN region are able to access general practices and other services as appropriate PHNs support general practices and other health care providers to provide appropriate after hours access | P6 Rate of general practices receiving payment for after hours services. | DHS |
| | P7 Rate of GP style emergency department presentations | AIHW |
| | P8 Measure of patient experience of access to GP | ABS |
| Coordinated Care: People in the PHN region receive coordinated, culturally appropriate services from local health providers | P9 Rate of GP team care arrangements/ case conferences | DoH / ABS |
| | P10 Cross views of My Health Record (MHREP indicators 9-10) | MHREP reporting |
| | P11 Rate of discharge summaries uploaded to My Health Record | AIHW / ADHA |
| | To be developed: indicator on cultural appropriateness | TBD |
| Longer Term: Patients in local region receive the right care in the right place at the right time | P12 Rate of potentially preventable hospitalisations | AIHW / ABS |
| | P13 Numbers of health professionals available | PHN / National Health Workforce Dataset / healthdirect |

| Outcomes | Indicators | Data Provision |
|---|---|----------------|
| <p>Longer Term:</p> <p>PHNs support local primary health care services to be efficient and effective, meeting the needs of patients at risk of poor health outcomes</p> | <p>To be developed: indicators on system integration and impact on health outcomes for patients</p> | <p>TBD</p> |

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Table 6: Mental Health indicators

(Note: all indicators are drawn from the MH Schedule item B.3 5)

| Outcomes | Indicators | Data Provision |
|---|---|----------------|
| Improving Access: People in PHN region access mental health services appropriate to their individual needs | MH1 Rate of regional population receiving PHN commissioned low intensity psychological interventions (MH indicator Acc-1) | MH reporting |
| | MH2 Rate of regional population receiving PHN commissioned psychological therapies delivered by mental health professionals (MH indicator Acc-2) | MH reporting |
| Coordinated Care: Health care providers in PHN region have an integrated approach to mental health care and suicide prevention | MH3 Rate of regional population receiving PHN commissioned clinical care coordination services for people with severe and complex mental illness (MH indicator Acc-3) | MH reporting |
| | MH4 Formalised partnerships with other regional service providers to support integrated regional planning and service delivery (MH indicator regional integration) | MH reporting |
| | MH5 Proportion of people referred to PHN commissioned services due to a recent suicide attempt or because they were at risk of suicide followed up within 7 days of referral (MH indicator App-3) | MH reporting |
| Quality Care: PHN commissioned mental health services improve outcomes for patients | MH6 Outcomes Readiness - Completion rates for clinical outcome measures (MH Indicator Out-3) | MH reporting |
| Longer term outcome: People in PHN region enjoy better mental health and social and emotional wellbeing | - | - |

Table 7: Aboriginal and Torres Strait Islander Health indicators

(Note: some indicators drawn from MH Schedule and DATIS)

| Outcomes | Indicators | Data Provision |
|--|--|-----------------|
| Addressing Needs: PHNs address needs of Aboriginal and Torres Strait Islander people in their region | IH1 Numbers of ITC services delivered by PHN | ITC reporting |
| | IH2 Types of organisations delivering ITC services | ITC reporting |
| Quality Care: Local health care providers provide culturally appropriate services to Aboriginal and Torres Strait Islander people | IH3 Evidence that all drug and alcohol commissioned services are culturally appropriate for Aboriginal and Torres Strait Islander people (DATIS indicator 4.2) | DATIS reporting |
| | IH4 Proportion of PHN commissioned mental health services delivered to the regional Aboriginal and Torres Strait Islander population that were culturally appropriate (MH indicator App-2) | MH reporting |
| | IH5 ITC improves the cultural competency of mainstream primary health care services | ITC reporting |
| | To be developed: indicator on patient experience of cultural appropriateness | TBD |
| Quality Care: Aboriginal and Torres Strait Islander identified health workforce capability and capacity matches needs of regions | IH6 PHN provides support for Aboriginal and Torres Strait Islander identified health workforce | PHN |

| Outcomes | Indicators | Data Provision |
|--|--|----------------|
| Coordinated Care: Aboriginal and Torres Strait Islander people with chronic conditions receive coordinated care | IH7 ITC processes support Aboriginal and Torres Strait Islander people enrolled in the program to access coordinated care | ITC reporting |
| | P9 Rate of GP team care arrangements/ case conferences | P9 |
| | P12 Rate of potentially preventable hospitalisations for Aboriginal and Torres Strait Islander people | P12 |
| Improving Access: Aboriginal and Torres Strait Islander people are able to access primary health care services as required | IH8 Rate of Aboriginal and Torres Strait Islander population receiving specific health assessments | MBS / ABS |
| Longer term outcome: PHNs contribute to closing the gap and Aboriginal and Torres Strait Islander people experience improved emotional, social and physical wellbeing | To be developed: indicators on contribution to closing the gap and Aboriginal and Torres Strait Islander experiences of care | TBD |

Table 8: Population Health indicators

| Outcomes | Indicators | Data Provision |
|--|--|--|
| Addressing Needs: Fewer preventable hospitalisations in PHN region for people with chronic and vaccine preventable diseases | P12 Rate of potentially preventable hospitalisations - for specific chronic diseases | P12 |
| Quality Care: PHNs support health care providers to address factors impacting population health | PH1 Rate of children fully immunised at 5 years | DoH – Australian Immunisation Register |
| | PH2 Cancer screening rates for cervical, bowel and breast cancer | DoH – screening programs |
| | P4 Support provided to general practices and other health care providers – population health | P4 |
| Longer term outcome: Improved health outcomes for all population groups in the PHN region | To be developed: indicators on improving health outcomes for all population groups | TBD |

Table 9: Workforce indicators

(Note: some indicators drawn from MH Schedule and DATIS)

| Outcomes | Indicators | Data Provision |
|---|--|-----------------|
| Quality Care: Local workforce has suitable cultural and clinical skills to address health needs of PHN region | W1 Rate of drug and alcohol treatment service providers with suitable accreditation (DATIS indicator 3.2) | DATIS reporting |
| | W2 PHN support for drug and alcohol commissioned health professionals (DATIS indicator 3.1) | DATIS reporting |
| | W3 PHN Commissioning Framework | PHN |
| | IH3 Evidence that all drug and alcohol commissioned services are culturally appropriate for Aboriginal and Torres Strait Islander people (DATIS indicator 4.2) | IH3 |
| | IH4 Rate of PHN commissioned mental health services for the Aboriginal and Torres Strait Islander people that are culturally appropriate (MH indicator App-2) | IH4 |
| | IH5 ITC improves the cultural competency of mainstream primary health care services | IH5 |
| | P4 Support provided to general practices and other health care providers - workforce | P4 |
| | To be developed: indicator on patient experience of cultural appropriateness | TBD |
| Quality Care: PHNs support general practices and other health care providers to provide quality care to patients | P3 Rate of general practice accreditation | PHN |
| | P4 Support provided to general practices and other health care providers | PHN |
| | P5 Rate of regular uploads to My Health Record | ADHA |

| Outcomes | Indicators | Data Provision |
|--|--|----------------|
| <p>Longer term outcome:</p> <p>People are able to access a high quality, culturally safe and appropriately trained workforce</p> | <p>To be developed: indicators on improved access, delivery of culturally appropriate services and skill levels of workforce</p> | <p>TBD</p> |

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Table 10: Digital Health indicators

(Note: some drawn from MHREP Schedule section 1.13)

| Outcomes | Indicators | Data Provision |
|---|---|-----------------|
| Coordinated Care: Health care providers are aware of digital health systems and technologies | DH1 Rate of health care providers informed about My Health Record (MHREP indicators 1-4) | MHREP reporting |
| Quality Care: PHNs support health care providers to use digital health systems to improve patient care and communication | DH2 Rate of health care providers using specific digital health systems | PHN |
| | P4 Support provided to general practices and other health care providers – digital health | P4 |
| | P5 Rate of regular uploads to My Health Record | P5 |
| | P10 Cross views of My Health Record | MHREP reporting |
| Quality Care: General practices and other health care providers use data to improve care | DH3 Rate of accredited general practices sharing data with PHN | PHN |
| Longer term outcome: Digital health enables better coordinated care and better informed treatment decisions | To be developed: indicator on improvements to health outcomes from use of digital health | TBD |

Table 11: Aged Care indicators

| Outcomes | Indicators | Data Provision |
|--|---|----------------|
| Improving Access: Older people in the PHN region are supported to access primary health care services that meet their needs including self-care in the home | AC1 Rate of MBS services provided by primary care providers in residential aged care facilities | DoH |
| | AC2 Rate of people aged 75 and over with a GP health assessment | DoH / ABS |
| Quality care: Fewer preventable hospitalisations in the PHN region for older people | P4 Support provided to general practices and other health care providers – aged care | P4 |
| Local health and other care providers are supported to deliver coordinated, effective and appropriate care to older people in the PHN region | P12 Rate of potentially preventable hospitalisations - for older people | P12 |
| Longer term: Older people in the PHN region are supported to enjoy a greater quality of life | To be developed: indicator on improved quality of life for older people | TBD |
| Longer term outcome: Local health care system provides coordinated, quality care to older people | To be developed: indicator on improvements to health care system to support quality care for older people | TBD |

Table 12: Alcohol and Other Drugs indicators

(Note: all indicators are drawn from DATIS section 3)

| Outcomes | Indicators | Data Provision |
|---|---|-----------------|
| Improving Access: People in PHN region are able to access appropriate drug and alcohol treatment services | AOD1 Rate of drug and alcohol commissioned providers actively delivering services (bi-monthly AOD reporting) | AOD reporting |
| Coordinated Care: Health care providers in PHN region have an integrated approach to drug and alcohol treatment services | AOD2 Partnerships established with local key stakeholders for drug and alcohol treatment services (DATIS 1.3 and 1.4) | DATIS reporting |
| Longer term outcome: Decrease in harm to population in PHN region from drug and alcohol misuse | To be developed: indicators on impact of services on health outcomes for patients | TBD |

4 Capable Organisations

The Framework has identified six aspects that contribute to a PHN being a successful and capable commissioning organisation. Outcomes have been developed for each aspect along with indicators to measure progress towards achieving the outcome. These indicators will all be used to measure an individual PHN's performance.

Figure 1: Aspects of the Capable Organisations outcome theme

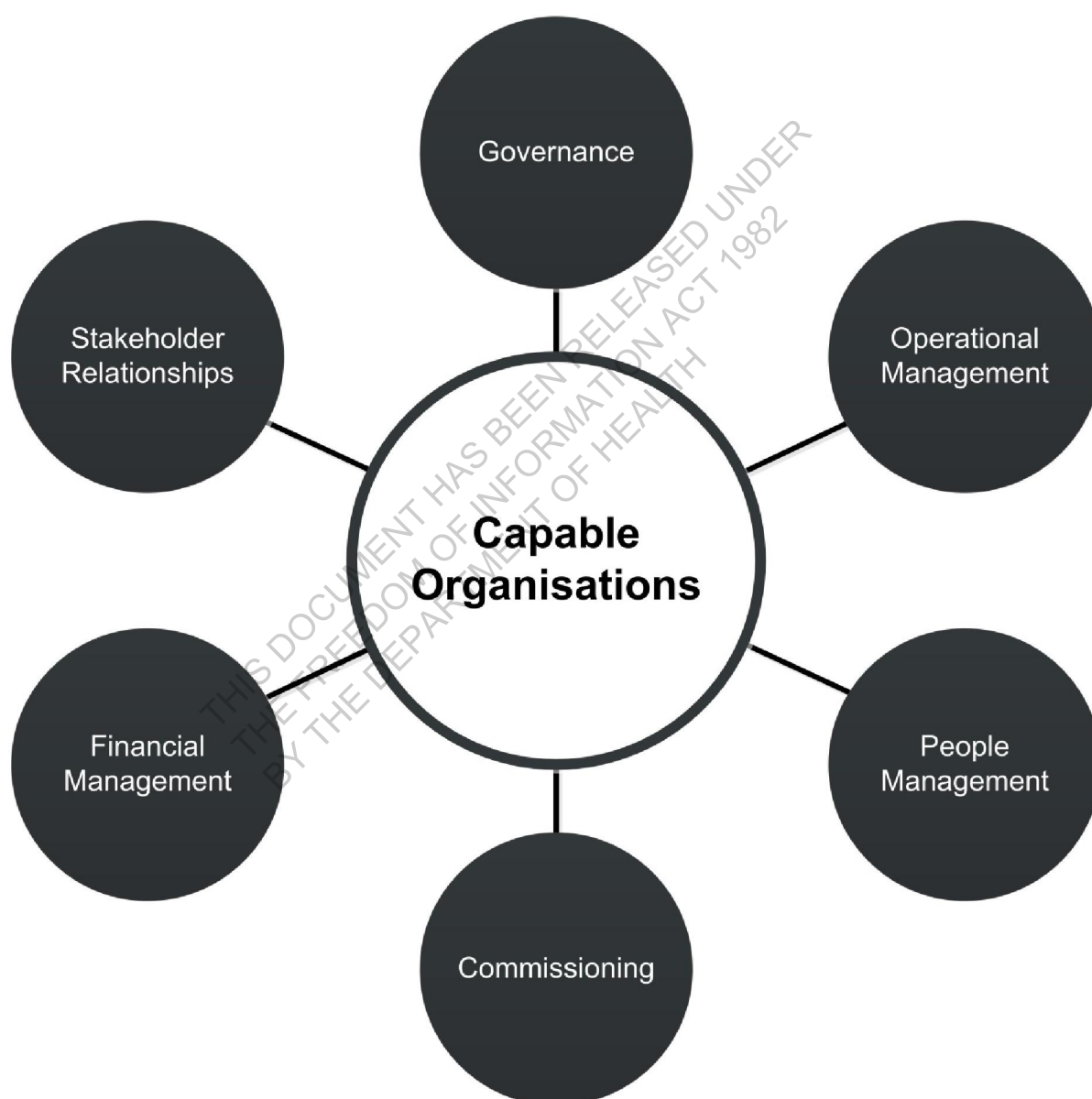


Table 13 below lists the outcomes for each aspect and the indicators being used to measure performance towards achieving that outcome.

Table 13: Organisational indicators

| Outcomes | Indicator | Data Provision |
|--|---|----------------|
| <p>Governance</p> <p>The PHN's governance structures support the delivery of the organisation's objectives through providing oversight and direction</p> | O1 PHN has an independent and diverse skills based Board | PHN |
| | O2 PHN Clinical Council and Community Advisory Committee membership | PHN |
| | O3 PHN Board considers input from committees | PHN |
| | O4 Record of PHN Board member attendance at meetings | PHN |
| | O5 PHN Board has a regular review of its performance | PHN |
| | O6 PHN Board approves strategic plan | PHN |
| <p>Operational Management</p> <p>The PHN has policies and processes which support the effective and efficient delivery of the organisation's objectives</p> | O7 Variance report of scheduled activities | PHN |
| | O8 Quality Management System | PHN |
| <p>People Management</p> <p>The PHN has a well-trained and supported workforce that is able to deliver to a high standard to meet the needs of the organisation, stakeholders and region</p> | O9 Staff satisfaction | PHN |
| | O10 Performance management process | PHN |
| | O11 Cultural awareness training | PHN |

| Outcomes | Indicator | Data Provision |
|--|--|----------------|
| Commissioning The PHN uses commissioning cycle processes to plan, procure, monitor and evaluate services to respond to the prioritised health needs of its region | P1 PHN activities address identified needs | P1 |
| | W3 PHN Commissioning Framework | W3 |
| | O12 Rate of contracts for commissioned health services that include both output and outcome performance indicators | PHN |
| Financial Management The PHN manages its finances in a manner that maximises efficiency without compromising effectiveness | O13 Annual Report and audited financial statements | PHN |
| Stakeholder relationships The PHN creates and maintains relationships that facilitate the improvement of the health care system within its region | O14 PHN stakeholder engagement | PHN |
| | O15 Engaging with complaints | DoH and PHN |
| | P4 Support provided to general practices and other health care providers | P4 |

5 Interpreting Indicators

Each indicator has a one page indicator specification (found in the Indicator Specifications document at Appendix B) which provides details about the purpose of the indicator, the outcome it relates to, what data will be collected and importantly, what the performance criteria is for each indicator. The performance criteria helps to interpret the information or data collected for the indicator.

The performance criteria may require qualitative or data based input. Where an indicator uses qualitative information the Department will assess the information supplied and determine whether it meets the specification. For indicators which use data, the performance criteria may require an improvement over time or may require a specific benchmark or target to be met.

5.1 Review of performance criteria

The performance criteria for each indicator will be reviewed as part of the regular review of the Framework. In particular, consideration will be given to whether the performance criteria continue to be relevant or if they need to be amended to reflect changes in activities or expected standards. Quality standards, benchmarks or agreed targets may be introduced as the Framework matures and more data is collected against the indicators. PHNs will be consulted as part of this review.

5.2 Peer grouping

Over time, PHN performance peer groups will be established in order to share results across different indicators. Sharing successes and challenges can help drive improvements.

Comparison between individual PHNs presents challenges due to the demographic, geographic and other differences in the regions that PHNs cover. Establishing peer groups as measurement criteria can address this issue. PHNs will be informed of their peer group and encouraged to work within their peer group to share information.

PHN peer groups will initially be based on:

- geographic characteristics
- demographic characteristics
- baseline health status on a range of indicators
- sophistication of the health system in the region
- density of general practices and other health care providers

PHN peer grouping will be used in three ways:

- peer group best practice sharing – where best practice ideas and strategies are shared, with permission, between PHNs in the same peer group; and
- peer group trends – where individual PHNs will compare against trends within their group; and
- peer group benchmarking – as the Program continues to mature, internal peer group benchmarks can be established.

In the early stages of the Framework's implementation the best practice sharing will be the prime focus of peer grouping. As the PHN Program and the Framework matures, trend analysis and benchmarking will be introduced.

The Department will continue to review performance information and data to establish a robust peer grouping process.

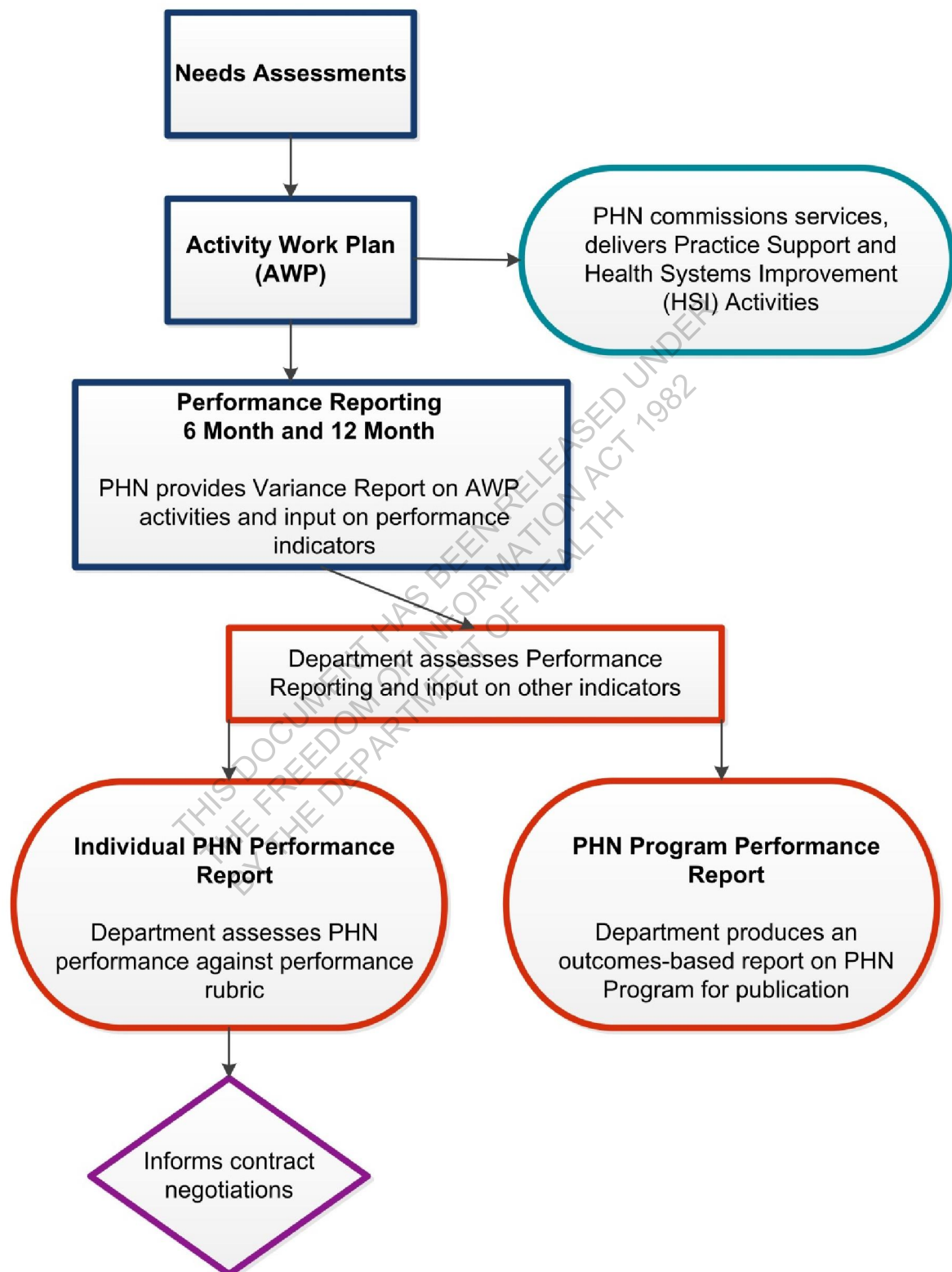
6 Performance and Quality Reporting

6.1 PHN Deliverables

PHNs will continue to submit the deliverables required in their contracts: a Needs Assessment, Activity Work Plan and six and twelve month performance reports. The Activity Work Plan should continue to be based on the needs identified and prioritised through the Needs Assessment process. The Framework's outcomes and indicators should not be used to frame or guide Needs Assessments or Activity Work Plans.

The Framework uses information supplied in the six and twelve month performance reports, along with other data, to prepare individual PHN and PHN program performance assessments.

The diagram on the following page (Figure 2) demonstrates the links between the Framework and deliverables.

Figure 2: Deliverables and Framework

6.2 PHN Performance Reports

The six month performance reports will consist of:

- a Variance Report for all activities in approved AWP's for all Schedules;
- input for other indicators specified in Funding Schedules and any other documentation.

The twelve month performance reports will consist of:

- a Variance Report for all activities in approved AWP's for all Schedules;
- input for Framework performance indicators requiring information from PHNs;
- contextual information for performance indicators used for PHN Program assessment (optional);
- input for other indicators specified in Funding Schedules and any other documentation.

The Variance Report will track progress for delivery of scheduled activities, including spend, meeting milestones and stakeholder engagement. PHNs will be able to flag where there are issues with delivery of an activity and what strategies they have in place to address these issues.

PHNs can choose to provide contextual information for 13 of the performance indicators that are used to measure the performance of the PHN Program (excluding indicators which are drawn from existing PHN Schedule reporting). This may include information on PHN activities, contextual information about the region or a statement explaining that the outcome is not a priority. This additional information will be used in the PHN Program performance report.

7 Assessment

7.1 Assessing individual PHN performance

The Department will use the information provided by PHNs in their six and twelve month reporting to assess individual PHN performance. This can include additional information PHNs supply as part of PHN Schedule reporting. PHNs will be assessed against all of the organisational indicators and 24 of the other performance indicators which reflect areas where PHNs can and should have influence. For some of these indicators PHNs may have limited input as the area may not be a priority for their region. This will not negatively affect their performance assessment.

Each outcome theme will be reported separately in the individual assessment. The input for each indicator will be assessed against the performance criteria and then an overall assessment for the outcome theme made based on a performance rubric. The performance rubric can be found in Table 14. The performance rubric contains three assessment standards: *On Track*, *Progressing* and *Initial*.

The Department will work closely with any PHNs which rate as Initial for an outcome theme, with the intention to improve their assessment in following years. It is expected over time that PHNs will rate as On Track for all outcome themes. The Department will communicate performance expectations to PHNs as part of reviewing their performance under the Framework.

A performance report for each PHN will be produced annually. PHNs will have an opportunity to comment on their draft report before it is finalised. The performance report will identify achievements and areas where the PHN could make improvements. This report will be supplied to each PHN but not publicly shared. The report will also be considered during contract extension negotiations

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Table 14: Performance rubric for individual PHN assessment

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|------------------|--|---|---|
| Addressing Needs | P1 PHN activities address prioritised needs | 100% of delivered activities address prioritised needs and/or national priorities | <ul style="list-style-type: none"> Initial: PHN has met performance criteria for one indicator Progressing: PHN has met performance criteria for two indicators and is working towards meeting the other indicators On Track: PHN has met performance criteria for all indicators |
| | P2 Health system improvement and innovation | At least one example of a health system improvement, innovation or commissioning best practice | |
| | IH1 Numbers of ITC services delivered by PHN | Services are being delivered across the range of services allowed within ITC Guidelines | |
| | IH2 Types of organisations delivering ITC services | A range of organisations are engaging in ITC program | |
| Quality Care | P4 Support provided to general practices and other health care providers | PHN delivers a range of support activities to general practices and other health care providers | <ul style="list-style-type: none"> Initial: PHN has met performance criteria for one indicator Progressing: PHN has met performance criteria for at least half of the indicators and is working towards meeting the other indicators On Track: PHN has met performance criteria for all indicators |
| | MH6 Outcomes Readiness - Completion rates for clinical outcome measures | 70% of completed episodes of care have recorded valid outcome measures at Episode Start and Episode End | |
| | IH3 Evidence that all drug and alcohol commissioned services are culturally appropriate for Aboriginal and Torres Strait Islander people | PHN supplies evidence that commissioned drug and alcohol services are culturally appropriate | |

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|---------------|---|--|----------------------|
| | IH4 Proportion of PHN commissioned mental health services delivered to the regional Aboriginal and Torres Strait islander population that were culturally appropriate | At least 5% growth on proportion of previous year or where all services were culturally appropriate, maintenance of this | |
| | IH5 ITC improves the cultural competency of mainstream primary health care services | PHN provides evidence that as part of ITC it is working to improve cultural competency of mainstream primary health care services | |
| | IH6 PHN provides support for Aboriginal and Torres Strait Islander identified health workforce | PHN supplies evidence of support provided to Aboriginal and Torres Strait Islander identified workforce in its region | |
| | W1 Rate of drug and alcohol treatment service providers with suitable accreditation | All specialist drug and alcohol treatment service providers have or are working towards accreditation | |
| | W2 PHN support for drug and alcohol commissioned health professionals | PHN supplies evidence of support provided to drug and alcohol commissioned health professionals | |
| | W3 PHN Commissioning Framework | The PHN has a Commissioning Framework which includes strategic planning, procuring services and monitoring and evaluation phases, with cultural appropriateness and stakeholder engagement considered throughout the process | |

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|------------------|---|--|---|
| | DH2 Rate of health care providers using specific digital health systems | <p>Increase in the rate of health care providers using smart forms, e-referrals and/or telehealth</p> <p>Where the rate has been stable for at least 3 years, the performance criteria is to maintain the existing rate of using specific digital health systems</p> | |
| | DH3 Rate of accredited general practices sharing data with PHN | <p>At least 5% growth on rate of accredited general practices sharing data with the PHN each year</p> <p>Where the rate is over 60%, the performance criteria is to maintain the existing rate</p> | |
| Improving Access | MH1 Rate of regional population receiving PHN commissioned low intensity psychological interventions | At least 5% growth in number of people accessing Low Intensity episodes compared with previous year, or where service capacity has been reached, a maintenance of the previous year's rate | <ul style="list-style-type: none"> Initial: PHN has met performance criteria for one indicator Progressing: PHN has met performance criteria for at least half of the indicators and is working towards meeting the other indicators On Track: PHN has met performance criteria for all indicators |
| | MH2 Rate of regional population receiving PHN commissioned psychological therapies delivered by mental health professionals | At least 5% growth in number of people accessing Psychological Therapy episodes compared with previous year, or where service capacity has been reached, a maintenance of the previous year's rate | |
| | AOD1 Rate of drug and alcohol commissioned providers actively delivering services | Rate of drug and alcohol commissioned providers actively delivering services increases or remains the same | |

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|------------------|--|--|--|
| Coordinated Care | MH3 Rate of regional population receiving PHN commissioned clinical care coordination services for people with severe and complex mental illness | At least 5% growth in number of people accessing Care Coordination episodes compared with previous year, or where service capacity has been reached, a maintenance of the previous year's rate | <ul style="list-style-type: none"> Initial: PHN has met performance criteria for one indicator Progressing: PHN has met performance criteria for at least three of the indicators and is working towards meeting the other indicators On Track: PHN has met performance criteria for all indicators |
| | MH4 Formalised partnerships with other regional service providers to support integrated regional planning and service delivery | Comprehensive regional mental health and suicide prevention plans to be jointly developed with LHNs by mid 2020 | |
| | MH5 Proportion of people referred to PHN commissioned services due to a recent suicide attempt or because they were at risk of suicide followed up within 7 days of referral | 100% of people referred are followed up within 7 days | |
| | IH7 ITC processes support Aboriginal and Torres Strait Islander people enrolled in the program to access coordinated care | PHN provides evidence of its ITC processes | |
| | DH1 Rate of health care providers informed about My Health Record | 100% of general practices are aware of and provided with access to My Health Record education | |
| | AOD2 Partnerships established with local key stakeholders for drug and alcohol treatment services | A range of organisations are involved in delivering drug and alcohol treatment services | |

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|-----------------------|---|--|---|
| Capable Organisations | O1 PHN has an independent and diverse skills based Board | PHN has an independent and diverse skills based Board | <ul style="list-style-type: none"> Initial: PHN has met performance criteria for one indicator Progressing: PHN has met performance criteria for at least half of the indicators and is working towards meeting the other indicators On Track: PHN has met performance criteria for all indicators |
| | O2 PHN Clinical Council and Community Advisory Committee membership | PHN has at least one Clinical Council and Community Advisory Committee | |
| | O3 PHN Board considers input from committees | PHN Board considers input from committees | |
| | O4 Record of PHN Board member attendance at meetings | Board members meet the minimum attendance requirement defined under their PHN Board constitution or where a PHN does not have a minimum attendance requirement, attended at least 50% of meetings. | |
| | O5 PHN Board has a regular review of its performance | PHN Board is reviewed every three years | |
| | O6 PHN Board approves strategic plan | PHN Board approves strategic plan | |
| | O7 Variance report of scheduled activities | All variations are accounted for by PHN | |
| | O8 Quality Management System | PHN has or is moving towards a fit-for-purpose quality management system | |
| | O9 Staff satisfaction | PHN has a fit for purpose process to measure staff satisfaction at least every two years | |

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|---------------|---|--|----------------------|
| | O10 Performance management process | PHN has a fit for purpose process to measure staff satisfaction at least every two years | |
| | O11 Cultural awareness training | PHN conducts or offers cultural awareness training to staff at least every two years | |
| | P1 PHN activities meet identified needs | 100% of delivered activities address prioritised needs and/or national priorities | |
| | W3 PHN Commissioning Framework | PHN has a Commissioning Framework which includes strategic planning, procuring services and monitoring and evaluation phases, with cultural appropriateness and stakeholder engagement considered throughout the process | |
| | O12 Rate of contracts that include both output and outcome performance indicators | Increase in the number of contracts containing both output and outcome performance indicators | |
| | O13 Annual Report and audited financial statements | Annual Report meets requirements. Audited financial reports have unqualified auditor statement. | |
| | O14 PHN stakeholder engagement | PHN engages with a broad range of stakeholders in its region | |

| Outcome Theme | Indicators | Performance criteria | Assessment standards |
|---------------|--|---|----------------------|
| | O15 Engaging with complaints | PHN attempts to address all complaints referred to it by the Department | |
| | P4 Support provided to general practices and other health care providers | PHN delivers a range of support activities to general practices and other health care providers | |

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7.2 PHN Program Performance and Quality Report

The Department will produce an annual PHN Program Performance and Quality Report. All indicators will be used to assess progress towards achieving Program outcomes. Each outcome will then be considered as part of its outcome theme, to provide an overall assessment of the PHN Program's performance in meeting its objectives.

The report will draw on the contextual information provided by PHNs and identify opportunities for improvement for the Program. The report will not discuss individual PHN performance except in a generalised aggregated way. Individual examples of best practice in commissioning or achievement may be included with the agreement of the PHN.

8 Review of the Framework

The Framework will be reviewed every two years. The review will consider whether:

- program logics and outcomes remain relevant;
- new outcomes should be included in the Framework;
- the indicator specifications, including performance criteria, require amendment;
- new indicators should be included to assess outcomes; and
- indicators that are no longer fit for purpose should be removed

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9 Acronyms and Abbreviations

Below is a list of acronyms and abbreviations utilised in this document, and its corresponding documents Appendix A – Program Logics and Appendix B – Indicator Specifications, with their names, titles or descriptions spelled out in full.

| | |
|----------------------|---|
| ABS | Australian Bureau of Statistics |
| ADHA | Australian Digital Health Agency |
| AHPF | Australian Health Performance Framework |
| AIHW | Australian Institute of Health and Welfare |
| AOD | Alcohol and Other Drugs |
| AWP | Activity Work Plan |
| CAC | Community Advisory Committee |
| CC | Clinical Council |
| DATIS | Drug and Alcohol Treatment Information Strategy |
| HSI | Health System Improvement |
| ITC | Integrated Team Care |
| LHN | Local Hospital Network |
| MBS | Medicare Benefits Schedule |
| MH Schedule | Primary Mental Health Care Schedule |
| MHREP | My Health Record Expansion Program |
| PBS | Pharmaceutical Benefits Scheme |
| PFAS | Per- and poly-fluoroalkyl substances |
| PHN | Primary Health Network |
| the Department / DoH | Commonwealth Department of Health |
| the Framework | PHN Program Performance and Quality Framework |

10 Version History

| Version | Description of change | Author | Effective date |
|---------|--|----------------------|----------------|
| 1.0 | Initial release version | Department of Health | 1 / 7 / 18 |
| 1.1 | Addition of Version History, Creative Commons licence notification, clarification of performance criteria wording for indicators MH1, MH2 & MH3, and the collapse of Mental Health indicators MH6 and MH7 into a single performance indicator. | Department of Health | 1 / 9 / 18 |

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BY THE DEPARTMENT OF HEALTH

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FOR STANDARD FUNDING AGREEMENT

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BY THE DEPARTMENT OF HEALTH

Introduction

This Agreement is made in the following context:

- A. Subject to the Terms and Conditions and any Supplementary Conditions contained in this Agreement, the Department agrees to provide Your Organisation with the Grant for each Activity.
- B. Your Organisation must use the Grant for an Activity to conduct that Activity subject to the Terms and Conditions and any Supplementary Conditions specified in this Agreement.

The Parties agree as follows:

1 Context and Term

1.1 Context of this Agreement

- 1.1.1 This Agreement is made between Your Organisation and the Commonwealth, represented by the Department, for the performance of each Activity specified in the Schedule to this Agreement.
- 1.1.2 This Agreement consists of:
 - a. the Covering Letter;
 - b. these Terms and Conditions;
 - c. the Schedule, including any Supplementary Conditions specified in Annexure A to the Schedule; and
 - d. any documents incorporated by reference into these Terms and Conditions or the Schedule.
- 1.1.3 Provisions regarding the interpretation of this Agreement are contained in clause 11 [Interpretation].
- 1.1.4 In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters (for example, 'Activity').
- 1.1.5 Where a defined word or phrase is used only in one clause of these Terms and Conditions or only in a Supplementary Condition, it is usually defined in that clause or Supplementary Condition. All other definitions used in these Terms and Conditions are set out in clause 11.4 [Definitions] of these Terms and Conditions.

1.2 Compliance with Supplementary Conditions

- 1.2.1 Your Organisation must, in Your Organisation's performance of an Activity, comply with any Supplementary Conditions for that Activity.

1.3 Term of the Agreement

- 1.3.1 This Agreement commences on the Commencement Date and, unless terminated earlier, it expires on the Completion Date.

2 Your Organisation's responsibilities

2.1 Conduct of the Activity

- 2.1.1 Your Organisation must carry out each Activity in accordance with this Agreement and any Guidelines for the Activity and:
- a. within its Activity Period and so as to meet the Milestones and other timeframes specified in the Schedule for that Activity;
 - b. diligently, efficiently, effectively and in good faith to a high standard and so as to achieve the Aim of the Activity and assist in meeting the Programme's Objectives; and
 - c. so as to ensure that Your Organisation and Your Organisation's Personnel comply with:
 - i. all applicable Laws, including maintaining all qualifications, permits, registrations and licences required for the lawful performance of the Activity;
 - ii. any codes of ethics, regulations or other industry standards relevant to the Activity; and
 - iii. any Department or Commonwealth policy of which the Department gives Your Organisation notice.
- 2.1.2 Your Organisation remains fully responsible for the performance of this Agreement and each Activity and will not be relieved of that responsibility because of any:
- a. involvement by the Commonwealth in the performance of the Activity;
 - b. payment of the Grant funds to Your Organisation for each Activity;
 - c. Subcontracting or Sub-subcontracting of the Activity;
 - d. acceptance by the Department of any Report; or
 - e. acceptance by the Department of any Specified Personnel.
- 2.1.3 Your Organisation acknowledges that under section 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence.

2.2 Records

- 2.2.1 Your Organisation must keep accurate records and accounts regarding each Activity including receipts, proof of purchase and invoices and other documents to show how Your Organisation spent the Grant funds and any Other Contributions for that Activity for at least 7 years after the Activity End Date for that Activity (or any such longer period required by legislation).

2.3 Reports

- 2.3.1 Your Organisation must provide the Department with a completed declaration for each Activity, in the form provided by the Department and containing the information specified in that form:
- a. at the time(s) specified in Item E or F of the Schedule for that Activity; and
 - b. at any other time(s) notified to Your Organisation by the Department.
- 2.3.2 Your Organisation must also provide the Department with all other Reports specified in the Schedule for each Activity. Each Report must contain the information, and be given at the times and in the manner, specified in Items E and F of the Schedule for the Activity.
- 2.3.3 If the Department terminates this Agreement or this Activity, it may issue Your Organisation with a written notice requiring Your Organisation to provide an audited financial acquittal Report for each terminated Activity, which contains all of the information specified by the Department, within 30 days after the date on which the Activity is terminated.
- 2.3.4 Your Organisation must ensure that all Reports, and any publications referred to in clause 2.7, which Your Organisation provides to the Department under this Agreement comply with:
- a. the Level AA accessibility requirements in the *Web Content Accessibility Guidelines 2.0*; and
 - b. *the World Wide Web Access: Disability Discrimination Act Advisory Notes version 4.0* (2010) issued by the Australian Human Rights Commission¹,
- except to the extent the Department notifies Your Organisation otherwise.

2.4 Provision of information and liaison

- 2.4.1 Your Organisation must:
- a. liaise with and provide the Department with any information that it reasonably requires, including information regarding Your Organisation's ability to conduct an Activity and Your Organisation's financial and non-financial viability; and
 - b. comply with all of the Department's reasonable requests, directions and monitoring requirements,
- in relation to this Agreement or any review or evaluation of the Programme that is conducted by or for the Department.

¹ At the time of printing these Terms and Conditions, the *Web Content Accessibility Guidelines 2.0* were available on-line at <http://www.w3.org/TR/WCAG20/> and the Advisory Notes were available on-line at <https://www.humanrights.gov.au/world-wide-web-access-disability-discrimination-act-advisory-notes-ver-40-2010>.

- 2.4.2 Your Organisation must promptly advise the Department about any issue that may delay, stop or adversely affect an Activity.

2.5 Acknowledgement of support

- 2.5.1 Your Organisation must acknowledge the financial and other support Your Organisation has received from the Department for each Activity:

- a. in all publications, promotional and advertising materials, public announcements and activities published, made or carried out by Your Organisation, or on Your Organisation's behalf, which relate to the Activity and in any products, processes or inventions developed as a result of the Activity; and
- b. in the form that is approved by the Department prior to the publication of the acknowledgement,

except to the extent the Department notifies Your Organisation otherwise.

2.6 Use of Australian Government logos

- 2.6.1 Except to the extent the Department advises Your Organisation otherwise, Your Organisation must not use an Australian Government logo relating to the Programme without the prior written consent of the Department to that use.

2.7 Copies of publications

- 2.7.1 Where Your Organisation has been provided with Grant funds to produce a publication as part of an Activity, Your Organisation must provide the Department with a final copy of the publication prior to it being published and comply with the relevant *Web Content Accessibility Guidelines 2.0* requirements specified in clause 2.3.4 as well as any additional publication requirements specified in Item B of the Schedule for the Activity.

2.8 Permission to publicise the Grant

- 2.8.1 Your Organisation permits the Department to publicise and report on the awarding of the Grant to Your Organisation for an Activity. This may include, but is not limited to, the Department publishing Your Organisation's name, the amount of the Grant and the title, location and a brief description of the Activity in media releases, annual reports and on the Department's website.
- 2.8.2 Your Organisation must ensure that any Subcontractor or Sub-subcontractor expressly consents to the disclosure of its identity (and their Personal Information if the Subcontractor or Sub-subcontractor is an individual) to the Department. The consent obtained must extend to allowing the Commonwealth to publish, in the types of publications specified in this clause 2.8 [Permission to publicise the Grant], information about the Subcontractor or Sub-subcontractor, including its identity and the existence and nature of the Subcontract or Sub-subcontract.

2.9 Protection of Personal Information

2.9.1 Your Organisation must, in conducting the Activity:

- a. not do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle;
- b. comply with the obligations contained in the Australian Privacy Principles that apply to Your Organisation; and
- c. comply with any of the Department's directions, guidelines, determinations or recommendations to the extent that they are consistent with the requirements in this clause 2.9 [Protection of Personal Information].

2.9.2 Your Organisation must notify the Department immediately if Your Organisation becomes aware of a breach or possible breach of any of Your Organisation's obligations under this clause 2.9 [Protection of Personal Information].

2.9.3 If Your Organisation provides a 'health service' (as defined in the *Privacy Act 1988* (Cth)) to an individual, Your Organisation must:

- a. comply with the requirements in that Act regarding the use and disclosure of 'health information' or other 'sensitive information' (as those terms are defined in that Act) about the individual to the extent those requirements apply to Your Organisation;
- b. disclose that 'health information' and any other 'sensitive information' to another Australian health service provider when the Department directs Your Organisation to do so; and
- c. inform the individual:
 - i. as required by the *Privacy Act 1988* (Cth); and
 - ii. at the time the information is collected, that the information may be disclosed to another health service provider if required by the Department.

2.10 Commonwealth collection of Personal Information

2.10.1 Personal Information may be collected from or about Your Organisation's Personnel and may be used or disclosed to administer, monitor, review, promote and evaluate this Agreement, the Programme and any other grant programmes administered by the Department and for directly-related purposes.

2.10.2 Your Organisation agrees to notify Your Organisation's Personnel that the Department may do the following for the purposes specified in clause 2.10.1:

- a. collect, use and disclose the Personal Information of Your Organisation's Personnel; and

- b. disclose information about Your Organisation's Personnel to, and receive information about Your Organisation's Personnel from, any Commonwealth or other entity that maintains the Department's electronic on-line grant management system or has a directly-related policy interest or a role in administering the Programme.

3 Financial provisions

3.1 Payment of Grant funds

- 3.1.1 Subject to parliamentary appropriation for the Programme and Your Organisation's compliance with this Agreement, the Department will pay the Grant funds to Your Organisation for an Activity at the times, and in the manner, specified for that Activity in Item C and Item F of the Schedule.
- 3.1.2 Subject to any other Provision of this Agreement, a payment of Grant funds will be made for an Activity within 30 days after:
 - a. Your Organisation satisfies the preconditions (if any) specified in the Schedule for that payment; and
 - b. the Department provides Your Organisation with an RCTI, or where this Agreement requires Your Organisation providing the Department with a tax invoice (or where a tax invoice is not required, an invoice), for that payment.
- 3.1.3 The Department is not responsible for providing any money for an Activity in excess of the Grant funds specified for that Activity in Item C of the Schedule.

3.2 Department's rights to withhold or reduce the Grant funds

- 3.2.1 Where Your Organisation has not met a Milestone for an Activity by the date specified for that Milestone in the Schedule, the Department may withhold, in whole or part, the Grant funds remaining payable under this Agreement for the Activity until such time (if any) that the Milestone is completed to the Department's satisfaction.
- 3.2.2 The Department may, at its discretion and in addition to any other rights it has under this Agreement, withhold (either permanently or temporarily) or reduce one or more Grant payments under this Agreement where Your Organisation has breached a provision of:
 - a. this Agreement; or
 - b. another arrangement or agreement with the Department.
- 3.2.3 The Department may, at its discretion and in addition to any other rights it has under this Agreement, reduce the amount of the Grant payable for an Activity under this Agreement:
 - a. by the amount of any monetary or in-kind contributions (other than the Grant funds and the Other Contributions identified in the Schedule for the Activity) that Your Organisation receives, or is entitled to receive,

for the Activity or another project that is similar to the Activity, including any contributions to which clause 3.8.5 applies; and/or

- b. by the amount of any:
 - i. money that Your Organisation owes to the Department; or
 - ii. money in respect of which Your Organisation is required to provide, but has not provided, a declaration or other financial acquittal report,
 under this Agreement or any other arrangement (whether contractual, statutory or otherwise) between Your Organisation and the Department.

3.2.4 Your Organisation must continue to perform Your Organisation's obligations under this Agreement notwithstanding any withholding or reduction of some or all of the Grant funds.

3.3 Your Organisation's use of the Grant funds

3.3.1 Your Organisation must use the Grant funds provided for an Activity:

- a. subject to clause 3.6.1.e, solely for that Activity; and
- b. in accordance with this Agreement.

3.3.2 Your Organisation may use the Grant funds provided for the Activity for domestic travel and accommodation expenses that Your Organisation's Personnel incur in the course of the Activity provided that:

- a. the Department considers that the travel is reasonable and necessary for the Activity and in accordance with any Budget for the Activity;
- b. the travel is taken by the most cost-effective and direct means possible;
- c. the claimed rate for any accommodation, food and drink and incidentals is equal to or lower than the lowest rate for accommodation, food and drink and incidentals that the Commissioner of Taxation has determined for the relevant financial year for the purpose of ATO Ruling TR 2004/6 (which for the 2014/15 financial year are the rates in Table 1 of Taxation Determination 2014/19 available from www.ato.gov.au); and
- d. receipts are obtained for the cost of travel, accommodation, food and drink and incidentals and are provided to the Department upon request.

3.3.3 Except as otherwise agreed in writing by the Department and subject to clauses 3.3.4 and 3.3.5, Your Organisation must not Commit or spend any part of the Grant funds for an Activity beyond its Activity End Date.

3.3.4 Your Organisation may pay an amount of Grant funds to a third party after the Activity End Date for an Activity provided that the amount was Committed for that Activity before its Activity End Date in accordance with the Activity Budget (if any) and this Agreement.

- 3.3.5 If there is no Budget for an Activity, Your Organisation may use a reasonable amount of the Activity's Grant funds for the preparation of the Activity's Reports that are due after its Activity End Date. If there is a Budget for an Activity, Your Organisation may only spend the Grant funds for that Activity on the preparation of the Activity's Reports to the extent that the Budget for that Activity provides for the Grant funds to be used for that purpose.
- 3.3.6 Your Organisation must immediately deposit and hold the Grant funds provided for each Activity in an Australian bank account that:
- a. is controlled solely by Your Organisation;
 - b. enables the tracking of the Grant funds (that is, the records for the account must show how Your Organisation spent the Grant funds in undertaking the Activity); and
 - c. complies with any other requirements set out in Item C of the Schedule, and Your Organisation must notify the Department as soon as practicable if the details of this bank account change.
- 3.3.7 Your Organisation must keep separate financial accounts and records for each Activity that:
- a. identify all receipts and payments for the Activity; and
 - b. enable the preparation of the declaration referred to in clause 2.3.1 and any other financial Report required for the Activity under clause 2.3 and Item E of the Schedule except to the extent otherwise notified by the Department.
- 3.3.8 If:
- a. the Department, acting reasonably, considers that Your Organisation is in breach of a Provision of this Agreement; or
 - b. the Department is considering terminating or reducing the scope of this Agreement under clause 10.1 [Termination or reduction in scope for convenience],
- the Department may direct Your Organisation, by written notice, to suspend Your Organisation's Commitment and expenditure of some or all of the Grant funds for an Activity as specified in the notice and Your Organisation must fully comply with that notice.
- 3.4 Prohibited use of the Grant**
- 3.4.1 Except to the extent that the Department has otherwise agreed in writing, Your Organisation must not use any of the Grant funds provided for an Activity:
- a. for any international travel or expenses related to international travel;
 - b. to pay fines or penalties;

- c. 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;
- d. to lend or gift money or Assets to any person;
- e. to provide redundancy payments, advances, commissions, bonuses, performance based benefits or similar benefits to any person;
- f. to pay sitting fees to any person, including a member of Your Organisation's governing board for his or her attendance at a meeting, or involvement in the business of the board;
- g. for a sale and lease back arrangement;
- h. to lease an item of property that Your Organisation owns;
- i. for the purpose of establishing a subsidiary or other commercial entity or activity;
- j. to pay Your Organisation any fee or charge that is calculated on a basis other than the costs Your Organisation actually incurs in the performance of the Activity;
- k. to purchase a car or other vehicle; or
- l. 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.

3.4.2 For the purposes of clause 3.4.1.j, and subject to any other Provision of this Agreement, 'costs Your Organisation actually incurs in the performance of the Activity' includes the proportion of any general operational overhead or expense of Your Organisation that is reasonably required for, and thus attributable to, Your Organisation's performance of the Activity. The Department may require Your Organisation to demonstrate that Your Organisation's attribution of an operational overhead or expense to the Activity is reasonable.

3.4.3 Your Organisation 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:

- a. the Grant funds for an Activity;
- b. this Agreement or any of the Department's obligations under this Agreement; or
- c. any Assets, land, building or other real property or Intellectual Property rights in Activity Material,

except to the extent that the Department has agreed in writing otherwise.

3.5 Budget

- 3.5.1 Subject to clause 3.5.2, where there is a Budget for an Activity, Your Organisation must only spend the Grant funds specified in that Budget on that Activity and in accordance with that Budget.
- 3.5.2 Where there is a Budget for an Activity, Your Organisation may reallocate the Grant funds for the Activity between the expenditure items of the Activity's Budget, up to the percentage (if any) specified in Item D without the Department's prior written approval.
- 3.5.3 Where there is a Budget for an Activity, Your Organisation must seek the Department's prior written approval for any Grant funds reallocation:
- within the Activity's Budget where no percentage is specified in Item D for that Budget;
 - between expenditure items in the Activity's Budget that exceeds the percentage specified in Item D of the Schedule for that Budget; and
 - between the Budgets of two or more Activities.

3.6 Unspent or misspent Grant funds

- 3.6.1 If at any time the Department determines, having discussed (or made a reasonable attempt to discuss) the relevant aspects of this clause 3.6 [Unspent or misspent Grant funds] with Your Organisation, that:
- Your Organisation has received Grant funds for an Activity that have not been spent or Committed for the Activity in accordance with this Agreement including as a result of Your Organisation having a surplus and/or underspend for the Activity;
 - the Department has made an overpayment of Grant funds to Your Organisation; or
 - Your Organisation has spent or Committed an amount of Grant funds other than:
 - for the Activity for which it was provided; and
 - in accordance with this Agreement,
 then at the Department's discretion:
 - Your Organisation must repay those Grant funds to the Department within 30 days after receiving a notice from the Department requiring Your Organisation to do so;
 - Your Organisation must deal with those Grant funds as directed by the Department; or
 - the Department may reduce one or more further Grant payments for an Activity by up to the amount of those Grant funds.
- 3.6.2 If, after the Department applies clause 3.6.1.a to an amount of Grant funds that were provided to Your Organisation for an Activity and subject to the

other Provisions of this Agreement, Your Organisation demonstrates to the Department's reasonable satisfaction that Your Organisation requires some or all of that amount (in addition to the part of the Grant that remains payable for the Activity) to complete the Activity, the Department will repay the required amount to Your Organisation within 10 days after the Department is satisfied that the amount is required.

3.7 Interest and debt

- 3.7.1 In this clause 3.7 [Interest and debt], 'Interest' means interest calculated on a daily compounding basis at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia).
- 3.7.2 If Your Organisation is required to pay an amount to the Department under a Provision of this Agreement and does not repay that amount in full by the date referred to in that provision, Your Organisation must pay Interest on the outstanding amount until it is paid in full, except to the extent the Department notifies Your Organisation in writing otherwise.
- 3.7.3 Your Organisation acknowledges that any Interest payable under a Provision of this Agreement represents a reasonable and genuine pre-estimate of loss to the Department.
- 3.7.4 Your Organisation must, upon the Department's request, pay an amount owed or payable to the Department, or which the Department is entitled to recover from Your Organisation, under this Agreement without prejudice to any other rights available to the Department (whether under this Agreement or Law) as a debt due by Your Organisation to the Department without further proof of the debt by the Department being necessary.

3.8 Other Contributions

- 3.8.1 Your Organisation must ensure that any Other Contributions specified in the Schedule for an Activity are obtained or provided for that Activity at the times and in the amounts specified in the Schedule. If no times are specified in the Schedule for the provision of an Activity's Other Contributions, Your Organisation must ensure that those Other Contributions are obtained or provided in sufficient time to enable the Activity to be completed in accordance with this Agreement.
- 3.8.2 Your Organisation must use the Other Contributions specified in the Schedule for an Activity for that Activity and in accordance with any Budget set out in Item D of the Schedule for that Activity.
- 3.8.3 If Your Organisation does not obtain or provide an amount of Other Contributions for an Activity by the date specified in the Schedule for that amount, or Your Organisation is otherwise unable to obtain or provide that amount of Other Contributions in time to enable completion of the Activity, then the Department may:

- a. withhold payment of some or all of the Grant funds for that Activity until Your Organisation has obtained or provided that amount of Other Contributions;
- b. reduce the amount of the Grant payable under the Agreement for that Activity; or
- c. terminate the affected Activity or this Agreement in accordance with clause 10.2 [Termination for default].

3.8.4 Subject to the Department notifying Your Organisation otherwise, Your Organisation must notify the Department within 14 days after entering into any arrangement or agreement under which Your Organisation receives, or is entitled to receive, any additional monetary or in-kind contributions for an Activity that are not specified as Other Contributions for that Activity in the Schedule. The notice must include the amount of any such additional contributions and the purpose for which they will be used.

3.8.5 Any additional contributions referred to in clause 3.8.4 that Your Organisation becomes entitled to receive for an Activity constitute Other Contributions for that Activity for the purposes of the Agreement. Consistent with clause 11.1.6, Item D of the Schedule will be deemed to be varied accordingly on the earlier of the date that Your Organisation receives the additional contributions or the date that Your Organisation notifies the Department of those contributions under clause 3.8.4.

3.9 Taxes, duties and government charges

3.9.1 In this clause 3.9 [Taxes, duties and government charges]:

- a. the term 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- b. the terms 'supply', 'supplier', 'taxable supply', 'tax invoice', 'GST', 'input tax credit', 'decreasing adjustment' and 'adjustment note' have the same meaning as given in the GST Act;
- c. the term 'RCTI' means a 'recipient created tax invoice' as defined in the GST Act. For the purpose of this Agreement, an RCTI is a tax invoice belonging to a class of tax invoices that the Australian Commissioner of Taxation has determined in writing may be issued by the receiver of the supply; and
- d. 'receiver of the supply' has the same meaning as the term 'recipient' has in the GST Act.

3.9.2 Your Organisation must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this clause 3.9 [Taxes, duties and government charges].

3.9.3 If one Party (for the purposes of this clause 3.9 [Taxes, duties and government charges], 'the supplier') makes a taxable supply to the other

Party (for the purposes of this clause 3.9 [Taxes, duties and government charges], the 'receiver of the supply') under this Agreement the receiver of the supply will pay without set-off, on provision of a tax invoice or RCTI, an additional amount to the supplier equal to the GST imposed on the supply in question.

- 3.9.4 Any amount on account of GST that has been included in the consideration for a supply under this Agreement is specified in Items C and/or F of the Schedule.
- 3.9.5 If an amount on account of GST is paid as part of the consideration for a supply under this Agreement and the supply is not a taxable supply for any reason, the supplier must, on demand, refund the amount paid on account of GST to the receiver of the supply.
- 3.9.6 No Party may claim or retain from the other Party any amount in relation to a supply made under this Agreement for which the first Party can obtain an input tax credit or decreasing adjustment.
- 3.9.7 The Parties acknowledge and agree that each Party:
 - a. is registered for GST purposes;
 - b. has quoted its Australian Business Number to the other; and
 - c. must tell the other of any changes to the matters covered by this clause 3.9.7.
- 3.9.8 The Department (as the receiver of the supply) will issue RCTI(s) and any adjustment notes for any taxable supplies Your Organisation makes to the Department under this Agreement within 28 days after the Department determines the value of the taxable supplies in question.
- 3.9.9 Your Organisation must not issue tax invoices or adjustment notes for taxable supplies Your Organisation makes to the Department under this Agreement.
- 3.9.10 Both Parties must comply with the determination scheduled to GST Ruling 2000/10.
- 3.9.11 The Department will not issue RCTI(s) or adjustment notes for taxable supplies Your Organisation makes to the Department under this Agreement at any time that either Party fails to comply with any of the requirements in clauses 3.9.7 to 3.9.10.

4 Parties' relationship and Personnel

4.1 Working with vulnerable persons

- 4.1.1 Your Organisation agrees to comply, and ensure that Your Organisation's Personnel comply, with:
 - a. any obligations under any Laws relating to working or contact with vulnerable persons or police checks; and

- b. any other requirements in the Supplementary Conditions regarding working or contact with vulnerable persons or police checks.

4.2 Subcontractors to be approved

- 4.2.1 Your Organisation must not Subcontract any of Your Organisation's obligations under this Agreement without the Department's prior written approval except to the extent the Schedule otherwise permits.
- 4.2.2 The Department may impose any conditions it considers appropriate when giving its approval under clause 4.2.1, and Your Organisation must comply with those conditions.
- 4.2.3 The Subcontractors, if any, specified or referred to in Item I of the Schedule for an Activity are approved by the Department to undertake the part of the Activity specified in that Item I of the Schedule.
- 4.2.4 If the Department requests, Your Organisation must provide the Department with details of all Subcontractors (and any Sub-subcontractors) engaged in the performance of each Activity.
- 4.2.5 Unless the Department agrees otherwise in writing, where a Subcontractor that is specified or referred to in Item I of the Schedule or is otherwise approved by the Department under this clause 4.2 [Subcontractors to be approved] is unable to perform the Subcontracted work, Your Organisation must notify the Department of this inability no later than 7 days after Your Organisation becomes aware of it. Your Organisation must also notify the Department of any inability of a Sub-subcontractor to perform the part of an Activity that has been Sub-subcontracted to it within 7 days after Your Organisation becomes aware of that inability.
- 4.2.6 The Department may, at any time:
 - a. revoke its approval of a Subcontractor or Sub-subcontractor; and/or
 - b. require Your Organisation to:
 - i. replace a Subcontractor (whether or not the Subcontractor was originally approved by the Department); or
 - ii. require the relevant Subcontractor to arrange for the replacement of a Sub-subcontractor,

in which case Your Organisation must, at no additional cost to the Department 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 the Department, except to the extent the Schedule specifies or the Department agrees otherwise in writing.
- 4.2.7 If Your Organisation does not comply with Your Organisation's obligations under clause 4.2.6, the Department may terminate the affected Activity or this Agreement in accordance with clause 10.2 [Termination for default].

4.2.8 Your Organisation must:

- a. have a Subcontract with each Subcontractor; and
- b. ensure in respect of all of Your Organisation's Subcontracts (including any that the Department was not required to approve under clause 4.2.1) that:
 - i. each Subcontract gives effect to, and is not inconsistent with, Your Organisation's obligations and the Department's rights under this Agreement;
 - ii. without limiting the operation of clause 4.2.8.b.i, each Subcontract contains a right of termination to take account of the Department's rights of termination and reduction under clause 10 [Termination] and Your Organisation must, where the Department considers appropriate, make use of that right in the event of a termination or reduction in scope of an Activity or this Agreement;
 - iii. each Subcontractor has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work it is engaged by Your Organisation to perform;
 - iv. each Subcontractor is prohibited under its Subcontract with Your Organisation from any further subcontracting in respect of an Activity (whether by it or a Sub-subcontractor) without the Department's prior written consent, which the Department may give subject to any conditions it considers appropriate; and
 - v. each Subcontract requires the Subcontractor to acknowledge that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Ombudsman under that Act. The Department will not be liable for the cost of any such investigation by the Ombudsman,

except to the extent that the Department has agreed in writing otherwise.

4.2.9 If the Department requests a copy of a Subcontract or a Sub-subcontract, Your Organisation must provide a copy of the Subcontract or Sub-subcontract to the Department within 7 days after the Department's request and at no additional expense to the Department.

4.2.10 If the Department consents to the engagement of a Sub-subcontractor under clause 4.2.8.b.iv, Your Organisation must ensure that the Sub-subcontract with that Sub-subcontractor imposes requirements on that Sub-subcontractor that are substantially the same as those imposed on a Subcontractor under clause 4.2.8. For this purpose, references in clause 4.2.8 to:

- a. 'Your Organisation' are to be read as references to the entity engaging the Sub-subcontractor;

- b. 'Subcontractor' are to be read as references to the Sub-subcontractor being engaged; and
- c. 'Subcontract' are to be read as references to the Sub-subcontract under which the Sub-subcontractor is being engaged.

4.2.11 Your Organisation must not enter into a Subcontract under this Agreement with a Subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

4.3 Your Organisation's Personnel and Specified Personnel

4.3.1 Your Organisation agrees that the Specified Personnel listed in Item J of the Schedule for an Activity will perform the work in relation to the Activity as specified in this Agreement, including Item J of the Schedule.

4.3.2 If:

- a. Your Organisation receives a notice from the Department requesting Your Organisation remove a natural person who is a member of Your Organisation's Personnel (including Specified Personnel) from an Activity or Your Organisation and the Parties have first discussed (or the Department has first made a reasonable attempt to discuss with Your Organisation) the removal of that person from that Activity or Your Organisation; or
- b. any Specified Personnel are unable to undertake work in respect of an Activity as required under this Agreement,

Your Organisation must remove that person as requested by the Department, or notify the Department of that inability, within 7 days after Your Organisation receives that notice or becomes aware of that inability. Your Organisation must then replace that person with another natural person who is a member of Your Organisation's Personnel, and who is acceptable to the Department, at no additional cost to the Department and within 7 days after:

- c. in the case of clause 4.3.2.a - Your Organisation's receipt of the notice; and
- d. in the case of clause 4.3.2.b - Your Organisation's notice to the Department.

4.3.3 If Your Organisation does not comply with clause 4.3.2, the Department may terminate the affected Activity or this Agreement in accordance with clause 10.2 [Termination for default].

4.4 Relationship of the Parties

4.4.1 This Agreement does not make Your Organisation the Commonwealth's employee, partner or agent.

4.4.2 This Agreement does not give Your Organisation any power or authority to bind or represent the Commonwealth in any way or for any purpose. Your

Organisation must not, and must ensure that Your Organisation's Personnel do not, misrepresent themselves, as being the Commonwealth's officer, employee, partner or agent, or as otherwise able to bind or represent the Commonwealth.

4.5 Notices

- 4.5.1 A Party ('First Party') notifying, or giving notice, to the other Party under this Agreement must do so in writing and that notice must be:
- a. hand delivered or sent by pre-paid post, facsimile or email to the other Party's address specified in Item L of the Schedule (or any other address which that other Party has most recently notified to the First Party); and
 - b. marked for the attention of the other Party's contact officer specified in Item L of the Schedule (or any other contact officer which that other Party has most recently notified to the First Party).
- 4.5.2 A notice given in accordance with clause 4.5.1 is received:
- a. if hand delivered, on delivery to the relevant address;
 - b. if sent by pre-paid post, on delivery to the relevant address; or
 - c. if sent by email or facsimile, when received by the addressee or when the sender's computer or facsimile machine generates written notification that the notice has been received by the addressee, whichever is earlier.

4.6 No restriction on advocacy activities

- 4.6.1 The Department confirms that, subject to this clause 4.6 [No restriction on advocacy activities]:
- a. no right or obligation arising under this Agreement should be interpreted as restricting or preventing Your Organisation's or Your Organisation's Personnel's ability to comment on, advocate support for or oppose change to any matter established by a Law, policy or practice of the Commonwealth; and
 - b. the Department does not require Your Organisation to obtain advance approval from the Department of any involvement by Your Organisation or Your Organisation's Personnel in any of the activities referred to in clause 4.6.1.a.
- 4.6.2 Nothing in this clause 4.6 [No restriction on advocacy activities] limits or derogates from Your Organisation's obligations arising under this Agreement or otherwise to not disclose 'confidential information' as defined in the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth) or 'personal information' as defined in the *Privacy Act 1988* (Cth).

4.7 Work health and safety

4.7.1 Without limiting clause 2.1.1, Your Organisation must:

- a. ensure that the work conducted by Your Organisation and any of Your Organisation's Personnel in respect of this Agreement complies with all applicable legislative requirements, standards and policies and requirements of this Agreement that relate to the health and safety of any person; and
- b. 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 the WHS. This paragraph b is not limited by paragraph a.

4.7.2 In this clause 4.7 [Work health and safety]:

- a. 'WHS Act' means the *Work Health and Safety Act 2011* (Cth);
- b. 'WHS Law' means the WHS Act and any 'corresponding work health and safety law' as defined in section 4 of the WHS Act; and
- c. a word or expression that is:
 - i. used or defined in the applicable WHS Law; and
 - ii. not otherwise defined in this clause 4.7 [Work health and safety] or elsewhere in this Agreement,

has, for the purpose of this clause 4.7 [Work health and safety], the meaning given to it under the applicable WHS Law.

5 Assets

5.1 Assets

5.1.1 Your Organisation may only use an amount of the Grant funds provided for an Activity to Acquire an Asset for that Activity if:

- a. that Asset is specified for that Activity in Item H of the Schedule; or
- b. the Department has given its prior written consent to Your Organisation using that amount of the Grant funds for the Acquisition of that specific Asset. Any such consent may be given by the Department subject to any conditions it considers appropriate.

5.1.2 If the Commonwealth owns the Asset, Your Organisation may only deal with the Asset as directed by the Department (and clauses 5.1.5 and 5.1.7 to 5.1.9 do not apply to the Asset) except to the extent that the Department has agreed in writing otherwise.

5.1.3 If a third party owns the Asset, Your Organisation must ensure that the terms of the lease, hire or other arrangement for the Asset are consistent with clause 5.1.4 and clauses 5.1.7 to 5.1.9 do not apply to the Asset.

- 5.1.4 In respect of each Asset for an Activity, for the duration of the relevant Activity Period Your Organisation must:
- a. use the Asset for the purposes of the Activity and in accordance with this Agreement;
 - b. not encumber or Dispose of the Asset (or otherwise deal with the Asset inconsistently with this clause 5 [Assets]) without the Department's prior written approval;
 - c. hold the Asset securely and safeguard it against theft, loss, damage or unauthorised use;
 - d. maintain the Asset in good working order;
 - e. maintain insurance for the Asset to its full replacement cost noting the Department's interest, if any, in the Asset under this Agreement;
 - f. maintain any registration or licensing of the Asset required by Law;
 - g. be responsible for, and bear all risks relating to, the use or Disposal of the Asset (where the Asset is not subject to clause 5.1.3 and noting the Disposal must be approved by the Department);
 - h. comply with the terms of any lease, hire or other agreement relating to the Asset; and
 - i. include the Asset in a register of Assets in the form of and containing the details described in Item H of the Schedule and provide that register to the Department within 7 days after a request from the Department to do so.
- 5.1.5 If Your Organisation Disposes of an Activity's Asset during its Activity Period, the greater of the following proportions form part of the Grant funds for the Activity and must be used to perform the Activity:
- a. the proportion of the sale proceeds for the Asset; or
 - b. the proportion of the Undepreciated value of the Asset,
- that is equivalent to the proportion of the cost of the Asset that was paid for with the Grant or Other Departmental Monies.
- 5.1.6 If, during the Activity Period for an Activity, an Asset for that Activity is lost, damaged or destroyed Your Organisation must promptly:
- a. advise the Department of the loss, damage or destruction of the Asset; and
 - b. reinstate, or seek the reinstatement of, the Asset, including from the proceeds of insurance, except to the extent the Department notifies Your Organisation otherwise,
- and this clause 5 [Assets] continues to apply to the reinstated Assets.
- 5.1.7 On:

- a. expiry of the Activity Period for an Activity; or
- b. the earlier termination of that Activity or this Agreement,

the Department may, by notice, require Your Organisation to deal with one or more of the Activity's Assets as the Department may, at its sole discretion, direct. This may involve Your Organisation transferring an Asset to a third party.

5.1.8 Subject to clause 5.1.7, if on expiry of the Activity Period for an Activity, or the earlier termination of that Activity or this Agreement, an Asset for that Activity has not been fully depreciated, the Department may, by written notice, require Your Organisation to:

- a. pay to the Department within 30 days after the Activity End Date for that Activity, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the Asset's cost that was paid for with the Grant or Other Departmental Monies;
- b. sell the Asset at a public auction, or for market value using an arms-length process, and pay to the Department within 30 days after the Asset's sale, an amount equal to the proportion of the sale proceeds (minus an amount equal to the reasonable Disposal costs for the Asset) that is equivalent to the proportion of the Asset's cost that was paid for with the Grant or Other Departmental Monies;
- c. continue to use the Asset, or the amount specified in clause 5.1.8.a or 5.1.8.b, for a purpose approved in writing by the Department and subject to any conditions imposed by the Department; and/or
- d. transfer the Asset to a third party for that third party to use the asset for a purpose approved in writing by the Department and subject to any conditions imposed by the Department.

5.1.9 Amounts payable to the Department under clause 5.1.8 form part of the Grant for the relevant Activity and are recoverable as such.

6 Access to premises and information

6.1 Access to premises and Material

6.1.1 Subject to clause 6.1.3, Your Organisation must allow access by:

- a. the Department;
- b. the Auditor-General;
- c. any person appointed under Commonwealth legislation to perform information management, privacy or freedom of information functions in relation to the Government;
- d. the Commonwealth Ombudsman; and
- e. any person authorised by a person described in clause 6.1.1.a to 6.1.1.d,

to sites or premises at which records and Materials associated with this Agreement are stored or work related to an Activity is undertaken.

- 6.1.2 Subject to clause 6.1.3, Your Organisation must arrange for the persons listed in clause 6.1.1 to:
- a. inspect and copy Materials in Your Organisation's possession or control; and
 - b. access any Assets and Your Organisation's Personnel, wherever they may be located,

for purposes associated with this Agreement or any review of Your Organisation's performance of this Agreement.

- 6.1.3 The rights referred to in clauses 6.1.1 and 6.1.2 are, wherever practicable, subject to:
- a. the Department providing Your Organisation (or, where applicable, a Subcontractor or Sub-subcontractor) with 3 business days' prior notice (or, if a longer period of notice is agreed in writing by the Department, that longer period of notice); and
 - b. Your Organisation's (or, where applicable, a Subcontractor's or Sub-subcontractor's) reasonable security procedures,

except where a person listed in clause 6.1.1 or his or her delegate believes that the Activity poses a risk to the safety, health or well-being of any person or there is a suspected or actual breach of Law.

- 6.1.4 Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the persons listed in clause 6.1.1 or their respective delegates.

6.2 Access to documents

- 6.2.1 In this clause 6.2 [Access to documents], 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

- 6.2.2 This clause 6.2 [Access to documents] only applies to the Agreement if it is a 'Commonwealth contract' as defined in the *Freedom of Information Act 1982* (Cth).

- 6.2.3 Where the Commonwealth has received a request for access to a document created by or in the possession of Your Organisation, a Subcontractor or a Sub-subcontractor that relates to the performance of this Agreement (and not to the entry into this Agreement), the Department may at any time by notice require Your Organisation to provide, or arrange for the provision of, the document to the Department and Your Organisation must, at no additional cost to the Commonwealth, promptly comply with the notice.

- 6.2.4 Your Organisation must include in any Subcontract relating to the performance of this Agreement, and ensure that any Sub-subcontract contains, provisions that enable Your Organisation to comply with Your Organisation's obligations under this clause 6.2 [Access to documents].

7 Intellectual Property

7.1 Activity Material

- 7.1.1 Subject to this clause 7 [Intellectual Property], as between the Commonwealth and Your Organisation, Intellectual Property rights in the Activity Material vest, or will vest upon creation, in Your Organisation.
- 7.1.2 Your Organisation grants to (or must procure for) the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit the Activity Material for any purpose.
- 7.1.3 Your Organisation agrees that the licence granted in clause 7.1.2 includes a right for the Commonwealth to license the Activity Material in respect of an Activity to the public under an Open Access Licence, except to the extent otherwise specified in Item B of the Schedule in respect of that Activity.

7.2 Existing Material

- 7.2.1 Clause 7.1.1 does not affect the ownership of Intellectual Property rights in any Existing Material. However, Your Organisation grants (or must procure for) the Commonwealth, a perpetual, irrevocable, royalty-free and licence fee-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit the Existing Material for an Activity as part of, or in conjunction with, the Activity Material for that Activity.
- 7.2.2 Your Organisation agrees that the licence granted in clause 7.2.1 includes a right for the Commonwealth to license the Existing Material for an Activity to the public under an Open Access Licence as part of, or in conjunction with, the Activity Material for that Activity, except to the extent otherwise specified in Item B of the Schedule in respect of that Activity.

7.3 Intellectual Property warranties

- 7.3.1 Your Organisation represents and warrants that the following will not infringe the Intellectual Property rights of any person:
- a. Your Organisation's performance of Your Organisation obligations under this Agreement; and
 - b. the Commonwealth's use of Activity Material and Existing Material in accordance with the licences granted or procured by Your Organisation under this clause 7 [Intellectual Property].

- 7.3.2 If the Department requires, Your Organisation must bring into existence, sign or otherwise deal with any document which the Department considers is necessary or desirable to give effect to this clause 7 [Intellectual Property].

7.4 Moral Rights

- 7.4.1 Your Organisation must obtain from each author of Activity Material and Existing Material a written consent which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, Your Organisation must upon request, provide the executed original of any such consent to the Department.

7.5 Commonwealth Material

- 7.5.1 The Commonwealth owns:
- a. the Intellectual Property rights in the Commonwealth Material provided for the Activity; and
 - b. the original and all copies of the Commonwealth Material, except as otherwise specified in Item B of the Schedule for an Activity.
- 7.5.2 Except as otherwise specified in Item B of the Schedule for an Activity, the Commonwealth grants to Your Organisation a royalty-free and licence fee-free, worldwide, non-exclusive licence (including a limited right to sub-license a Department approved Subcontractor or Sub-subcontractor) to use, reproduce, modify, adapt and communicate the Commonwealth Material provided for that Activity solely for the purpose of performing that Activity in accordance with this Agreement.
- 7.5.3 Your Organisation must use the Commonwealth Material strictly in accordance with any conditions or restrictions notified to Your Organisation by the Department.
- 7.5.4 Your Organisation must keep safe all Commonwealth Material in Your Organisation's custody or control and accept all risks relating to that Material.

8 Confidentiality

8.1 Confidential Information not to be disclosed

- 8.1.1 Subject to clause 8.2.1, a Party must not disclose Confidential Information of the other Party to a third party, without the prior written consent of that other Party, who may give that consent subject to conditions.

8.2 Exceptions to non-disclosure

- 8.2.1 A Party can disclose Confidential Information of the other Party to the extent that it:

- a. is disclosed by the Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- b. is disclosed by the Party to its internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. is disclosed by the Party to the Party's Minister;
- d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. if Your Organisation is another Commonwealth entity, is disclosed by Your Organisation in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- f. if Your Organisation is a State or Territory agency, is disclosed by Your Organisation in response to a request by a House or a Committee of the Parliament of Your Organisation's State or Territory;
- g. is shared by the Department within the Commonwealth, or with another Government Agency, where this serves the Commonwealth's or the Government Agency's legitimate interests;
- h. is authorised or required by Law to be disclosed;
- i. is disclosed by the Department in order to protect the health or safety of any person; or
- j. is in the public domain otherwise than due to a breach of this clause 8 [Confidentiality].

8.2.2 Where a Party discloses Confidential Information to another person under clauses 8.2.1.a to 8.2.1.g and 8.2.1.i, the disclosing Party must notify the receiving person that the information is confidential.

8.2.3 In the circumstances referred to in clauses 8.2.1.a and 8.2.1.b, the disclosing Party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 8 [Confidentiality]).

8.3 Security of Commonwealth's Confidential Information

8.3.1 Your Organisation agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

8.4 Written undertakings

8.4.1 Your Organisation must, on request by the Department at any time, arrange for:

- a. Your Organisation's Personnel; or
- b. any person (other than the Parties) who has a legal or equitable right, interest, power or remedy in connection with the Agreement,

to give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of the Commonwealth's Confidential Information.

8.5 Period of confidentiality

8.5.1 The obligations under this clause 8 [Confidentiality] will continue, notwithstanding the expiry or termination of an Activity or this Agreement:

- a. in relation to an item of information described in Item K of the Schedule – for the period set out in respect of that item, and if no such period is specified, in perpetuity;
- b. subject to clause 8.5.1.c, in relation to any item of information agreed by the Parties to be Confidential Information and not described in Item K of the Schedule – for the period agreed by the Parties in writing in respect of that item, and if no such period is agreed by the Parties, in perpetuity; and
- c. in relation to Secret and Sacred Material, in perpetuity.

8.5.2 The obligations contained in this clause 8 [Confidentiality] are in addition to those specified in clause 6.2 [Access to documents] and clause 2.9 [Protection of Personal Information].

9 Risk Management

9.1 Proportionate liability regime

9.1.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against Your Organisation under or in connection with this Agreement.

9.2 Indemnity

9.2.1 Your Organisation indemnifies the Commonwealth and the Commonwealth's Personnel from and against any:

- a. loss or liability incurred by the Commonwealth or its Personnel;
- b. loss of or damage to property of the Commonwealth or its Personnel; or
- c. loss or expense incurred by the Commonwealth or its Personnel in dealing with any claim against it or them including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,

arising from:

- d. any breach of Your Organisation's obligations or warranties in this Agreement;
- e. any act or omission by Your Organisation or Your Organisation's Personnel in connection with this 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 liability, loss, damage or expense;

- f. Your Organisation or Your Organisation's Personnel's acquisition or use of the Assets, land, building or other real property, the Activity Material and/or the Existing Material; or
- g. the use by the Commonwealth or its Personnel of the Activity Material or Existing Material in accordance with this Agreement, and/or any claim by a third party relating to any ownership or right to use Intellectual Property rights or Moral Rights in the Activity Material or Existing Material.

9.2.2 Your Organisation's liability to indemnify the Commonwealth and the Commonwealth's Personnel under clause 9.2.1 will be reduced proportionately to the extent that any negligent or other tortious or unlawful act or omission of the Commonwealth or its Personnel contributed to the relevant liability, loss, damage or expense.

9.2.3 The right of the Commonwealth or its Personnel to be indemnified under clause 9.2.1:

- a. is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
- b. does not entitle the Commonwealth or its Personnel to be compensated in excess of the amount of the relevant liability, loss, damage or expense.

9.3 Insurance

9.3.1 Your Organisation must take out and maintain for the period specified in clause 9.3.2 or 9.3.3 as applicable, all types and amounts of insurance necessary to cover Your Organisation's obligations in relation to an Activity under this Agreement (including those which survive the expiration or earlier termination of this Agreement), including the types and amounts of insurance specified in Item G of the Schedule, or the Supplementary Conditions, in respect of the Activity.

9.3.2 If Your Organisation takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, Your Organisation must maintain the policy during the Term of this Agreement and a policy in like terms for 7 years, plus any longer period specified in Item G for the relevant Activity, after the expiry or early termination of this Agreement.

9.3.3 If Your Organisation takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of the event can occur at any time subsequently, Your Organisation must maintain the policy throughout the Term of this Agreement.

- 9.3.4 Your Organisation must, within 7 days after a request from the Department, provide the Department with any relevant certificates of currency for inspection.

9.4 Conflicts

- 9.4.1 Your Organisation warrants that, to the best of Your Organisation's knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in Your Organisation, or Your Organisation's Personnel's, performance of this Agreement.
- 9.4.2 If, during the Term of this Agreement, a Conflict arises, or appears likely to arise, in respect of Your Organisation or any of Your Organisation's Personnel, Your Organisation must:
- a. immediately notify the Department of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps Your Organisation proposes that Your Organisation or Your Organisation's Personnel will take to resolve or otherwise deal with the Conflict; and
 - b. take such steps as have been proposed by Your Organisation, or at the discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.
- 9.4.3 If Your Organisation fails to notify the Department as required under clause 9.4.2, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate the relevant Activity or this Agreement in accordance with clause 10.2 [Termination for default].
- 9.4.4 Your Organisation must not, and will use Your Organisation's best endeavours to ensure that any of Your Organisation's Personnel do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict Your Organisation or Your Organisation's Personnel in performing each Activity fairly and independently.

9.5 Related Parties

- 9.5.1 For the purpose of this clause 9.5 [Related Parties], a 'Related Party' is:
- a. an entity that controls or has significant influence over Your Organisation at any time;
 - b. an entity that Your Organisation controls or has significant influence over at any time, including Your Organisation's subsidiary;
 - c. a person who is a member of Your Organisation's board or governing body;
 - d. a member of the board of an entity referred to in clause 9.5.1.a or 9.5.1.b;

- e. a member of Your Organisation's Personnel, other than in their capacity as an employee; or
 - f. a spouse or immediate family member of:
 - i. a member of Your Organisation's Personnel; or
 - ii. a person specified in clause 9.5.1.c or 9.5.1.d, who is not themselves an employee of Your Organisation.
- 9.5.2 Apart from reimbursing Your Organisation's employee or board member for their travel expenditure incurred in accordance with clause 3.3.2, Your Organisation must not pay any part of the Grant funds, or transfer any Asset, to a Related Party without the Department's prior written consent.
- 9.5.3 To request the Department's consent, Your Organisation must provide it with a written notice setting out:
- a. the relevant Activity;
 - b. the amount of Grant funds that Your Organisation proposes to pay to the Related Party and how this amount was determined;
 - c. Your Organisation's relationship with the Related Party;
 - d. a complete description of the part of the Activity that Your Organisation expects the Related Party to perform; and
 - e. the reason(s) why it is necessary to pay the Grant funds to the Related Party for that part of the Activity.
- 9.5.4 If the Department receives a request under clause 9.5.3, it may:
- a. request further information from Your Organisation, and Your Organisation must provide the requested information within 7 days of receiving the request; and
 - b. consent, or not consent, to Your Organisation making the payment to the Related Party. Any consent may be given by the Department on any terms or conditions that it thinks fit, and Your Organisation must comply with those terms and conditions.
- 9.6 Your Organisation's warranties, representations and undertakings**
- 9.6.1 Your Organisation represents and warrants to the Department that:
- a. where Your Organisation is a corporation it is duly incorporated;
 - b. Your Organisation has full power and authority to enter into, perform and comply with Your Organisation's obligations under this Agreement;
 - c. Your Organisation has duly and validly authorised the execution, delivery and performance of this Agreement;
 - d. Your Organisation's execution of, and compliance with, this Agreement does not and will not contravene any Law, any of Your Organisation's

constituent documents or any other agreement or arrangement to which Your Organisation is a party;

- e. at the date of signing this Agreement Your Organisation is not bankrupt, insolvent or in the process of being wound up;
- f. unless otherwise disclosed in this Agreement, Your Organisation is not entering into this Agreement as trustee of any trust or settlement;
- g. Your Organisation has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
- h. Your Organisation has, and will continue to have and to use, the skills, qualifications and experience, to deliver each Activity in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;
- i. Your Organisation has the necessary resources, including financial resources, to deliver each Activity and will use those resources to deliver each Activity;
- j. the recruitment and management of Personnel that Your Organisation employs or engages with the use of the Grant funds will be fair, open, and based on merit;
- k. Your Organisation will, as soon as practicable, notify and fully disclose to the Department if:
 - i. a termination event specified in clause 10.2 [Termination for default] has occurred or is likely to occur;
 - ii. Your Organisation seeks, or proposes to seek, expert advice to address or avoid significant governance, management or financial issues; or
 - iii. proceedings are taking place, are pending, or are threatened against Your Organisation which could have an adverse effect upon Your Organisation's reputation or upon Your Organisation's capacity to perform Your Organisation's obligations under this Agreement.

9.6.2 Your Organisation acknowledges that the Department, in entering into this Agreement, is relying on the warranties and representations contained in this clause 9.6 [Your Organisation's warranties, representations and undertakings]. Your Organisation agrees that the warranties and representations contained in this clause 9.6 [Your Organisation's warranties, representations and undertakings] are deemed to be repeated by Your Organisation each time a Grant payment is made under this Agreement.

9.6.3 Your Organisation:

- a. acknowledges that it has been chosen to carry out the Activity in an area of expertise that is outside those of the Department; and

- b. represents to the Department that it has the necessary knowledge and expertise to carry out the Activity,

and the Department relies on Your Organisation's representation that it is an expert and the Department has engaged Your Organisation to carry out the Activity on that basis.

10 Termination and disputes

10.1 Termination or reduction in scope for convenience

- 10.1.1 The Department may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement (including by reducing or terminating one or more Activities) immediately.
- 10.1.2 Your Organisation must, on receipt of a notice of termination or reduction issued under clause 10.1.1:
 - a. stop or reduce the performance of Your Organisation's obligations as specified in the notice;
 - b. take all available steps to minimise the losses, costs and expenses resulting from that termination or reduction;
 - c. continue performing any Activity, or any part of an Activity, not affected by the notice, except to the extent the Department notifies Your Organisation otherwise; and
 - d. immediately return to the Department, or comply with the Department's directions regarding, the part of the Grant funds specified in clause 10.1.5.
- 10.1.3 In the event of a termination under clause 10.1.1, the Commonwealth will be liable only:
 - a. to make a Grant payment that was due and payable to Your Organisation under this Agreement prior to the date of the notice of termination; and
 - b. to reimburse any reasonable expenses that Your Organisation unavoidably incurs that relate directly and entirely to the termination of the Agreement and are not covered by clause 10.1.3.a.
- 10.1.4 The Commonwealth will not be liable to pay, in respect of an Activity, amounts under clause 10.1.3 which would, added to any Grant funds already provided to Your Organisation under this Agreement for that Activity, together exceed the total amount of the Grant set out in Item C of the Schedule for that Activity.
- 10.1.5 In the event of termination under clause 10.1.1, the Department is entitled to recover from Your Organisation (or direct the use of) any part of the Grant funds provided for an Activity which:

- a. has not been spent or Committed by Your Organisation as at the date that the notice of termination is received; or
 - b. has, in the Department's opinion, been spent or Committed by Your Organisation other than for that Activity and in accordance with this Agreement.
- 10.1.6 In the event of a reduction in the scope of the Agreement under clause 10.1.1:
- a. the Department is entitled to recover any Grant funds that:
 - i. have been provided to Your Organisation for an Activity (or part thereof) that has been removed by the reduction in scope; and
 - ii. have not been spent or Committed for that Activity in accordance with the Agreement as at the date that notice of reduction is received; and
 - b. the Commonwealth's liability to pay any part of the Grant funds for an Activity will, except to the extent the Parties agree in writing otherwise, reduce in accordance with the reduction in, or termination of, the Activity resulting from that reduction in scope.
- 10.1.7 The Commonwealth's liability to pay any compensation under clause 10.1.3.b is subject to:
- a. Your Organisation's strict compliance with this clause 10.1 [Termination or reduction in scope for convenience]; and
 - b. Your Organisation's substantiation of any amount claimed under clause 10.1.3.b.
- 10.1.8 Your Organisation will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on Your Organisation if the termination or reduction had not occurred.
- 10.1.9 This clause 10.1 [Termination or reduction in scope for convenience] does not affect the Commonwealth's other rights under this Agreement or otherwise at Law.
- 10.2 Termination for default**
- 10.2.1 The Department may:
- a. terminate this Agreement immediately by notice to Your Organisation if any of the termination events specified in clause 10.2.2 occur; or
 - b. at its sole discretion, choose to immediately terminate one or more of the Activities affected by a termination event specified in clause 10.2.2 instead of terminating the entire Agreement.
- 10.2.2 For the purposes of clause 10.2.1, the termination events are:
- a. Your Organisation breaches any Provision of this Agreement and the Department considers that the breach cannot be rectified;

- b. Your Organisation breaches any Provision of this Agreement and does not rectify the breach within 14 days after receipt of the Department's notice to do so;
- c. the Department considers that its decision to approve the Grant for an Activity was affected by a statement in Your Organisation's Grant application that was incorrect, incomplete, false or misleading;
- d. the Department is satisfied on reasonable grounds that Your Organisation is unable or unwilling to satisfy the terms of this Agreement;
- e. Your Organisation:
 - i. fails to submit a Report in the form, and containing the information, required by this Agreement; or
 - ii. submits a Report that is incomplete or that the Department, acting reasonably, considers is inadequate;
 and Your Organisation fails to rectify this within 14 days of being notified to do so by the Department;
- f. Your Organisation comes under a form of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to local governments or to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or has an order made against Your Organisation for the purpose of placing Your Organisation under external administration;
- g. Your Organisation is unable to pay all Your Organisation's debts as and when they become payable or Your Organisation fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- h. proceedings are initiated with a view to obtaining an order for winding Your Organisation up, or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for winding Your Organisation up;
- i. if Your Organisation is a local government organisation, the relevant State Government takes action to cease Your Organisation's operations and/or to amalgamate them with the operations of another local government organisation;
- j. Your Organisation becomes bankrupt or enters into a scheme of arrangement with creditors;
- k. anything analogous to, or of a similar effect to, anything described in clauses 10.2.2.f to 10.2.2.j occurs in respect of Your Organisation;
- l. another Provision of this Agreement allows for termination under this clause 10.2 [Termination for default];

- m. Your Organisation has breached a provision of another arrangement or agreement with the Commonwealth and that breach allows the Commonwealth to terminate that other arrangement or agreement;
 - n. the Department considers that an Activity poses a threat to the health, safety or well-being of any person; or
 - o. in respect of an Activity, the Department considers that Your Organisation's purposes and activities are no longer compatible with the Aim of the Activity or the Programme's Objectives.
- 10.2.3 If the Department terminates an Activity, but not the entire Agreement under this clause 10.2 [Termination for default], the Commonwealth:
- a. will not be liable to make any further payments to Your Organisation in respect of that Activity; and
 - b. will be entitled to recover from Your Organisation any part of the Grant funds provided to Your Organisation for that Activity which:
 - i. is not spent or due and payable by Your Organisation as at the date that the notice of termination is received; or
 - ii. has, in the Department's opinion, been spent or is due and payable by Your Organisation other than for that Activity and in accordance with this Agreement.
- 10.2.4 If the Department terminates this Agreement under this clause 10.2 [Termination for default], the Commonwealth:
- a. will not be liable to make any further payments to Your Organisation in respect of this Agreement; and
 - b. will be entitled to recover from Your Organisation any part of the Grant funds provided to Your Organisation for an Activity which:
 - i. is not spent or due and payable by Your Organisation as at the date that the notice of termination is received; or
 - ii. has, in the Department's opinion, been spent or is due and payable by Your Organisation other than for that Activity and in accordance with this Agreement.
- 10.2.5 On termination of an Activity or this Agreement under this clause 10 [Termination and disputes], Your Organisation must hold the Grant funds provided for that Activity or under this Agreement (whichever applies) in utmost good faith for use only in accordance with the directions of the Department and Your Organisation must cease all other dealings with those Grant funds.
- 10.2.6 If a purported termination by the Department under this clause 10.2 [Termination for default] is determined by a competent authority not to be a proper termination under this clause 10.2 [Termination for default], then that termination by the Department will be deemed to be a termination for

convenience under clause 10.1 [Termination or reduction in scope for convenience] with effect from the date of the notice of termination referred to in this clause 10.2 [Termination for default].

- 10.2.7 This clause 10.2 [Termination for default] does not affect the Commonwealth's other rights under this Agreement or otherwise at Law.

10.3 Procedure for dispute resolution

- 10.3.1 Except for the circumstances set out in clause 10.3.2, a Party must not commence any legal proceedings in respect of any dispute arising under this Agreement until the following procedure has been followed:

- a. the Party claiming that there is a dispute will send the other Party a notice setting out the nature of the dispute;
- b. the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- c. if:
 - i. there is no resolution of the dispute within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 10.3.1.a;
 - ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 10.3.1.a; or
 - iii. the Parties agree, within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 10.3.1.a, to submit to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 30 days of that submission, or such extended time as the Parties may agree in writing before the expiration of the 30 days,

then, either Party may commence legal proceedings.

- 10.3.2 Clause 10.3.1 does not apply to the following circumstances:

- a. either Party commences legal proceedings for urgent interlocutory relief;
- b. action is taken by the Department under, or purportedly under clauses 3.2 [Department's rights to withhold or reduce the Grant funds], 3.3 [Your Organisation's use of the Grant funds], 3.6 [Unspent or misspent Grant funds], 3.7 [Interest and debt], 6.1 [Access to premises and Material], 10.1 [Termination or reduction in scope for convenience] or 10.2 [Termination for default]; or

- c. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by Your Organisation.
- 10.3.3 Each Party will bear its own costs of complying with this clause 10.3 [Procedure for dispute resolution], and the Parties will bear equally the cost of any person engaged under clause 10.3.1.b.
- 10.3.4 Despite the existence of a dispute and subject to clause 10.3.5, both Parties must (except to the extent notified by the other Party not to do so) continue to perform their respective obligations under this Agreement.
- 10.3.5 Clause 10.3.4 does not require the Department to make a Grant payment to Your Organisation during a dispute under this clause 10.3 [Procedure for dispute resolution] except to the extent the Department notifies Your Organisation otherwise.

11 Interpretation

11.1 General interpretation of this Agreement

- 11.1.1 In this Agreement, unless the contrary intention appears:
 - a. words in the singular include the plural and words in the plural include the singular;
 - b. words importing a gender include any other gender;
 - c. the word 'person' includes an individual, partnership and a body (whether corporate or otherwise) and Government Agencies;
 - d. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - e. all references to dollars are to Australian dollars;
 - f. where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - g. an uncertainty or ambiguity in the meaning of a Provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
 - h. a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
 - i. a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation;
 - j. a Provision of this Agreement that provides that it will not apply to the extent that the Department notifies Your Organisation, or agrees in writing otherwise, will also not apply to the extent that an Item of the Schedule or a Supplementary Condition specifies otherwise; and

- k. a reference to a 'clause' is to a clause in this document, a reference to 'Item' is to an Item in the Schedule to this Agreement, and a reference to 'Annexures' or 'Attachments' is a reference to documents attached to the Schedule.
- 11.1.2 If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:
- a. the Supplementary Conditions (if any) in Annexure A to the Schedule;
 - b. the Terms and Conditions;
 - c. the Schedule;
 - d. any Annexures or Attachments to the Schedule other than Annexure A;
 - e. the Covering Letter; and
 - f. any documents incorporated by reference into the above documents.
- 11.1.3 This Agreement is governed by the Law of the Australian Capital Territory and the Parties submit to the jurisdiction of the courts of the Australian Capital Territory.
- 11.1.4 This Agreement:
- a. records the entire agreement between the Parties about its subject matter; and
 - b. supersedes all prior communications, negotiations and agreements, whether oral or written, between the Parties about that subject matter.
- 11.1.5 This Agreement may only be varied by the signed written agreement of both Parties, subject to clause 11.1.6.
- 11.1.6 Clause 11.1.5 does not apply to a change to the Agreement, or an Activity, resulting from a Party exercising its existing rights under the Agreement.
- 11.1.7 Where Your Organisation is a partnership or unincorporated joint venture comprising two or more persons, any agreement, representation, warranty or indemnity given by Your Organisation binds those persons jointly and severally.
- 11.1.8 If part of this Agreement is found to be invalid, the rest of this Agreement continues in effect as if the invalid part were severed. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 11.1.9 A waiver of any Provision of this Agreement by a Party must be in writing and signed by that Party to be effective.
- 11.1.10 No waiver of a term or condition of this Agreement will operate as a waiver of another breach of the same, or of any other, term or condition contained in this Agreement.

- 11.1.11 A single or partial exercise by a Party of any of its rights under this Agreement or at Law does not prevent the further exercise of any right.
- 11.1.12 Your Organisation must not assign, novate or transfer Your Organisation's rights or obligations under this Agreement without the Department's prior written approval.
- 11.1.13 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.

11.2 Schedule may contain multiple Activities

- 11.2.1 The Schedule may contain one or more Activities for which Grant funds are provided under the Programme.
- 11.2.2 These Terms and Conditions and the Supplementary Conditions apply to each Activity separately, except to the extent the contrary intention appears.
- 11.2.3 If the Parties wish to add an Activity to the Schedule after the Commencement Date, they must sign a variation as specified in clause 11.1.5.

11.3 Survival

- 11.3.1 Neither the termination nor the expiry of an Activity or this Agreement will affect the continued operation of:
 - a. clauses 2.2 [Records] and 2.3 [Reports];
 - b. clauses 2.4 [Provision of information and liaison], 2.5 [Acknowledgement of support], 2.6 [Use of Australian Government logos], 2.7 [Copies of publications], 2.8 [Permission to publicise the Grant], 2.9 [Protection of Personal Information] and 2.10 [Commonwealth collection of Personal Information];
 - c. clauses 3.3.3, 3.3.7, 3.6 [Unspent or misspent Grant funds], 3.7 [Interest and debt] and 3.9 [Taxes, duties and government charges];
 - d. clause 4.1 [Working with vulnerable persons];
 - e. clauses 5.1.7 and 5.1.8;
 - f. clause 6 [Access to premises and Material];
 - g. clause 7 [Intellectual Property];
 - h. clause 8 [Confidentiality];
 - i. clauses 9.1 [Proportionate liability regime], 9.2 [Indemnity] and 9.3 [Insurance];
 - j. clause 10 [Termination];
 - k. this clause 11.3 [Survival]; nor

- l. any other Provision of this Agreement that is, expressly or by implication from its nature, intended to survive the termination or expiry of an Activity and this Agreement.

11.4 Definitions

11.4.1 Unless the contrary intention appears, in this Agreement, a term in bold type in this clause 11.4.1 has the meaning shown opposite it:

| Defined term | Meaning of defined term |
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| Activity | means the Activity described in Item B of the Schedule. If more than one Activity is described in Item B, a reference to an Activity is a separate reference to each Activity described in Item B. Each Activity includes the provision of the Activity Material for that Activity; |
| Activity End Date | means the 'Activity End Date' specified in Item B of the Schedule for an Activity, being the date by which the Activity (other than provision of any Activity Reports due after the Activity End Date) is to be completed; |
| Activity Material | means, in respect of an Activity, any Material (including any Intellectual Property rights in that Material): <ol style="list-style-type: none"> created for the purpose of the Activity (other than any Material that is identified in Item B of the Schedule as not being Activity Material for the Activity); provided, or required to be provided, to the Department in respect of the Activity (including the Reports and any other Material that is required by Item B of the Schedule to be provided to the Department in respect of the Activity); or derived at any time from the Material referred to in paragraphs a or b of this definition, but excludes Commonwealth Material; |
| Activity Period | means the period between the Activity Start Date and the Activity End Date, during which an Activity (other than provision of any Activity Reports due after the Activity End Date) is to be completed; |
| Activity Start Date | means the 'Activity Start Date' specified in Item B of the Schedule for an Activity, being the date the Activity is to commence; |

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| Acquire | in relation to an Asset, includes to create, purchase, lease or hire the Asset (including under a hire-purchase or other arrangement) and 'Acquisition' has a corresponding meaning; |
| Agreement | means this agreement, which comprises: <ul style="list-style-type: none"> a. the Covering Letter; b. these Terms and Conditions; c. the Schedule, including any Supplementary Conditions specified in the Schedule; and d. any documents incorporated by reference into these Terms and Conditions or the Schedule, and which is a deed unless the Schedule specifies it is a contract; |
| Aim of the Activity | means the aim and objectives of an Activity as described in Item B of the Schedule for that Activity; |
| Asset | means, in respect of an Activity: <ul style="list-style-type: none"> a. an item of property, which: <ul style="list-style-type: none"> i. has been Acquired wholly or in part with the Grant funds provided for the Activity; and ii. at the time of its Acquisition, the value of the item is greater than the amount set out in Item H of the Schedule for the Activity, or, if no amount is set out in that Item H, \$10,000 (GST inclusive); b. unless the Parties agree in writing otherwise, an item of property that is in good working order and was created or acquired by Your Organisation under a previous agreement between the Parties for a project that was the same as, or substantially similar to, the Activity; or c. any other item of property that is specified in Item H of the Schedule or in a Supplementary Condition as being an 'Asset' for the purposes of the Activity, but excludes Intellectual Property rights and land, building or other real property; |
| Auditor-General | means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other |

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| | entity that may, from time to time, perform the functions of that office; |
| Australian Accounting Standards | refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth); |
| Australian Privacy Principle | has the meaning given in the <i>Privacy Act 1988</i> (Cth); |
| Budget | means, in respect of an Activity, the budget (if any) for expenditure of the Grant and Other Contributions for that Activity that is specified in Item D of the Schedule or is otherwise required by a Supplementary Condition or the Schedule to be provided for that Activity; |
| Commencement Date | means the date on which the Schedule was signed by the last Party to do so; |
| Committed | means, at a particular date, Grant funds that: <ol style="list-style-type: none"> Your Organisation is contractually and irrevocably obliged to pay to a third party in respect of any part of an Activity; and are identified in a written contractual arrangement between Your Organisation and that third party; |
| Commonwealth | means the Commonwealth of Australia and includes the Department; |
| Commonwealth Material | means any Material: <ol style="list-style-type: none"> provided by the Department to Your Organisation for the purposes of this Agreement; or copied or derived at any time from the Material referred to in paragraph a of this definition, including any Intellectual Property rights in that Material; |
| Completion Date | means 30 days after Your Organisation has done all that Your Organisation is required to do in respect of each Activity under: <ol style="list-style-type: none"> clause 2.1 [Conduct of the Activity]; clause 2.3 [Reports]; and clauses 3.6 [Unspent or misspent Grant funds] and 3.7 [Interest and debt] where either clause is invoked by the Department |

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| | within 60 days after the Activity End Date, to the satisfaction of the Department; |
| Confidential Information | means information that: <ol style="list-style-type: none"> is described in Item K of the Schedule; the Parties agree in writing after the Commencement Date is confidential information for the purposes of this Agreement; or is Secret and Sacred Material, excluding any information that the Department has a right to publicise and report on under clause 2.8 [Permission to publicise the Grant]; |
| Conflict | means any matter, circumstance, interest or activity involving or affecting Your Organisation or Your Organisation's Personnel, which may or may appear to impair Your Organisation's ability to perform an Activity diligently, fairly and independently; |
| Covering Letter | means the letter from the Department that offers Your Organisation the Grant as set out in the Schedule attached to the letter; |
| Department | means the Australian Government entity specified on the execution page of the Schedule or any other Australian Government entity that is, from time to time, responsible for administering this Agreement and includes the entity's officials and agents; |
| 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 the preceding acts and 'Disposal' means the method of so disposing; |
| Existing Material | means, in respect of an Activity, all Material in existence prior to the Activity Start Date for that Activity that is: <ol style="list-style-type: none"> incorporated in; supplied with, or as part of; or required to be supplied with, or as part of, the Activity Material for that Activity and also includes: |

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| | <ul style="list-style-type: none"> d. any Existing Material specified for the Activity in Item B of the Schedule; and e. any Intellectual Property rights in the above Material, <p>but excludes Commonwealth Material;</p> |
| Funding | in the Schedule has the same meaning as “Grant” has in this clause 11.4 [Definitions]; |
| Government Agency | means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity; |
| Grant or Grant funds | <p>means, in respect of an Activity:</p> <ul style="list-style-type: none"> a. the maximum amount of money payable by the Department to Your Organisation under this Agreement for the Activity as specified in Item C and Item F of the Schedule; b. any amount calculated in accordance with clause 5.1.5 in respect of the Activity; c. the amount of any money that Your Organisation received from the Department under a previous agreement between the Parties (‘previous amount’) that has not been repaid to the Department or spent or committed in accordance with that previous agreement or as agreed in writing by the Department (plus the amount of any interest that Your Organisation has earned on the previous amount and would otherwise have been required to repay to the Department under the previous agreement) as specified in Item C of the Schedule for the Activity or which the Department has agreed in writing Your Organisation is to use for the Activity under this Agreement; and d. any other amounts that are required under Item C of the Schedule to be treated as part of the Grant for the Activity. |
| Guidelines | means any Programme guidelines, manuals or other documentation referred to in Item A of the Schedule (if any) as they are amended from time to time by the Department; |
| Intellectual Property | <p>means:</p> <ul style="list-style-type: none"> a. all copyright (including rights in relation to |

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| | <p>phonograms, sound recordings and broadcasts);</p> <p>b. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts; and</p> <p>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</p> <p>but does not include:</p> <p>d. Moral Rights; or</p> <p>e. rights in relation to Confidential Information;</p> |
| Law | means all applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity; |
| Material | means any thing in relation to which Intellectual Property rights arise; |
| Milestone | means a milestone for an Activity as set out in Item F of the Schedule for the Activity; |
| Moral Rights | <p>includes the following rights of an author of copyright Material:</p> <p>a. the right of attribution of authorship;</p> <p>b. the right of integrity of authorship; and</p> <p>c. the right not to have authorship falsely attributed;</p> |
| Ombudsman | means the office established under the <i>Ombudsman Act 1976</i> (Cth) and includes any other person who may, from time to time, perform the functions of that office; |
| Open Access Licence | means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any creative commons attribution licence (see http://creativecommons.org.au/learn- |

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| | more/licences); |
| Other Contributions | means, in respect of an Activity, the financial or in-kind resources (with in-kind resources valued at market rates) other than the Grant, which are specified in Item D of the Schedule for the Activity and are contributed by Your Organisation or another party (including another Commonwealth entity) for the Activity; |
| Other Departmental Monies | means money provided by the Department to Your Organisation other than under this Agreement; |
| Party | means a party to this Agreement as specified on the execution page of the Schedule; |
| Performance Indicators | means, in respect of an Activity, the performance indicators (if any) set out in Item B of the Schedule for the Activity; |
| Personal Information | has the meaning given in the <i>Privacy Act 1988</i> (Cth); |
| Personnel | means: <ol style="list-style-type: none"> a. in relation to Your Organisation: <ol style="list-style-type: none"> i. each Subcontractor; ii. any Sub-subcontractor; iii. any officer, employee, partner, volunteer or agent of Your Organisation, a Subcontractor or a Sub-subcontractor; and iv. if Your Organisation is an individual that individual; and b. in relation to the Commonwealth: <ol style="list-style-type: none"> i. the natural persons who are officials, volunteers, agents or contractors of the Department; and ii. any entity that is contracted by the Department, other than the persons and entities referred to in paragraph a. of this definition; |
| Programme | means the programme or fund referred to in Item A of the Schedule under which the Department is able to provide the Grant to Your Organisation for each Activity; |
| Programme's Objectives | means the Programme's Objectives specified in Item A of the Schedule; |

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| Provision of this Agreement | means a requirement in this Agreement including a requirement in: <ul style="list-style-type: none"> a. a clause in the Terms and Conditions; and b. the Schedule, including a Supplementary Condition or a requirement to complete a Milestone in accordance with (and by the date specified for it in) the Schedule; |
| RCTI | has the meaning given in clause 3.9.1.c; |
| Reports | means the declaration and other reports specified in clause 2.3 or Item E of the Schedule; |
| Schedule | means the document entitled ' <i>Standard Funding Agreement Schedule</i> ' that has been signed by both of the Parties and includes any annexures or attachments to the Schedule and forms part of the Agreement; |
| Secret and Sacred Material | means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition as defined in the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth); |
| Specified Acts | means any of the following types of acts or omissions: <ul style="list-style-type: none"> a. using, reproducing, modifying, adapting, publishing, distributing, broadcasting, communicating or exploiting all or any part of the Activity Material or Existing Material, with or without attribution of authorship; b. supplementing the Activity Material or Existing Material with any other Material; c. using the Activity Material or Existing Material in a different context to that originally envisaged; d. releasing the Activity Material or the Existing Material to the public under an Open Access Licence; and e. any other acts or omissions specified in Item B of the Schedule in relation to the Activity, but does not include false attribution of authorship; |

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| Specified Personnel | means, in respect of an Activity, any natural person who is a member of Your Organisation Personnel and is specified in Item J of the Schedule for that Activity and includes any replacement Specified Personnel who are approved in accordance with clause 4.3 [Your Organisation's Personnel and Specified Personnel] for that Activity; |
| Subcontractor | means, in respect of an Activity, any contractor, person or organisation who is engaged by Your Organisation to undertake any part of the Activity and 'Subcontract' means the written agreement between Your Organisation and the Subcontractor; |
| Sub-subcontractor | means, in respect of an Activity, any contractor, person or organisation who is engaged by a Subcontractor (or another subcontractor of the Subcontractor) to undertake any part of the Activity and 'Sub-subcontract' means the written agreement under which that contractor, person or organisation is so engaged; |
| Supplementary Conditions | means, in relation to an Activity, those Supplementary Conditions set out, or referred to, in Annexure A of the Schedule in respect of the Activity; |
| Term | means the period set out in clause 1.3 [Term of the Agreement]; |
| Terms and Conditions | means all of the clauses in this document; |
| Undepreciated | means, in relation to an Asset, the value of the Asset that has not been depreciated in accordance with Australian Accounting Standards; and |
| Your Organisation | means the entity specified as 'Your Organisation' on the execution page of the Schedule and includes, where the context permits its Personnel and successors. |