

APPENDIX 4 – DEED

The Tenderer must complete, sign and scan the deed set out below and submit the deed as part of its Tender. This is a Minimum Content and Format Requirement.

THIS DEED POLL is made on the 23 day of October 2018

By

COTA Australia Ltd

ACN 118 911 541

ABN 35 118 911 541

Short form name **Tenderer**

Declaration

1. The Tenderer declares that this deed is for the benefit of the Commonwealth of Australia as represented by the Department of Health (**Department**).

Definitions

2. In this deed terms have the same meaning as in Request for Tender for the provision of services to coordinate and deliver the information hubs, community hubs and specialist support workers Trials of the aged care system navigator Measure (Health/18-19/04780) (**RFT**).

Offer and Change of Circumstance

3. The Tenderer offers to supply the Services described in this RFT on the conditions set out in this RFT for the price tendered. The Tenderer undertakes not to withdraw, vary or otherwise compromise this offer for a period of no less than six months from the Closing Time.
4. The Tenderer undertakes to promptly notify the Department of any change, after submission of its Tender, to the basis upon which it will have access to the necessary skills or resources, or corporate or financial backing, to supply the Services.

Tenderer's Conduct

5. The Tenderer confirms that this Tender:
 - a. does not contain any false or misleading claim or statement; and
 - b. has been compiled without the Tenderer:
 - i. engaged in misleading or deceptive conduct;
 - ii. improperly obtaining Confidential Information;
 - iii. engaging in any collusive bidding, anti-competitive or other unethical, improper or unlawful conduct;
 - iv. violating any applicable laws or Commonwealth policies regarding the offering of inducements;
 - v. communicating with or soliciting information from any Department employee (or contractor) or ex-employee (or ex-contractor) other than the Contact Officer;
 - vi. obtaining improper assistance from any Commonwealth employee or using Confidential Information improperly obtained;

- vii. approaching any officer or employee of the Department other than in the manner set out in the RFT;
 - viii. engaging in, or procuring others to engage in, any activity that would result in a breach of the *Lobbying Code of Conduct 2013* published by the Department of the Prime Minister and Cabinet and available at http://lobbyists.pmc.gov.au/conduct_code.cfm; or
 - ix. otherwise acting in an unethical or improper manner or contrary to any law.
6. The Tenderer warrants that it has not attempted and will not attempt, through its officers, employees or agents, to influence improperly any officer or employee of the Department in connection with the assessment of the Tender.
7. The Tenderer warrants that it has complied with all relevant laws and with Commonwealth policy, in preparing and lodging its Tender and in taking part in this RFT process.

Conflict of Interest

[Note to Tenderers: Strike through whichever option does not apply. Tenderers should refer to clause **Error! Reference source not found.** of the RFT for further information.]

8. The Tenderer represents and declares that, having made all reasonable enquiries, it does not have any known actual, potential or perceived conflicts of interest concerning itself or a related entity in respect of this RFT, its Tender or the provision of the Services referred to in the Statement of Requirement other than those specified below.
9. The Tenderer
- a. represents that, having made all reasonable enquiries, the following represents its only known actual, potential or perceived conflicts of interest in respect of this RFT, its Tender or the provision of the Services referred to in the Statement of Requirement:

Sub-Contractors: COTA QLD COTA SA COTA TAS COTA VIC	These organisations receive Service System Development funding under the Commonwealth Home Support Program. They are nevertheless well placed to deliver quality consumer-focused activities as a trusted organisation of Australians over 65 in their areas.
Sub-Contractors: Chung Wah Community and Aged Care Centre (Perth) Co. As. It. Italian Association of Assistance (NSW) Ethnic Links at UnitingSA (SA wide) Multicultural Communities Council of Illawarra (regional NSW) Umbrella Multicultural Community Care Service (Perth)	These Culturally and Linguistically Diverse focused organisations receive a mix of Home Support and Home Care funding and residential aged care funding. UnitingSA who is the parent organisation of the Ethnic Links service also receives Regional Assessment funding and has consequently demonstrated its ability to distinguish between service offerings. These organisations have in particular been endorsed by the Federation of Ethnic Communities Council of Australia as the appropriate organisations to be servicing their specific target populations in those areas.
Sub-Contractor: North East Health Wangaratta	North East Health Wangaratta receives Home Support and residential aged care funding.

Sub-Contractor: Dementia Australia (national)	This service receives some 'Dementia Advisory Service' funding under the Commonwealth Home Support Program. We note however that CHSP dementia advisory service only supports someone living with dementia <i>after</i> a RAS assessment and therefore those eligible for that service would not be the target audience for the System Navigator Services
Sub-Contractor: Institute For Urban Indigenous Health (Brisbane & in partnership with Loddon-Mallee Aboriginal Reference Group (an unincorporated entity)	This organisation is a Home Care Approved Provider and receives Commonwealth Home Support Program and Flexible Care for Aboriginal and Torres Strait Islander funding. Nevertheless, as a trusted provider of services to a hard-to-reach population of Aboriginal Australians, we submit they are best placed to pilot the navigator services in Brisbane and are the preferred lead partner to collaborate with delivery of this service in the new area working with Loddon-Mallee Aboriginal Reference Group.

- b. advises that its proposed mitigation approach to manage this conflict of interest is as follows:

COTA Australia recognises that many of its proposed sub - contractor partners have developed strong relationships with their communities and many are a trusted service provider for the target populations outlined in the tender. This approach means that sub - contractor partners are very well established and respected supports for older persons and are trusted by them. COTA Australia believes these partners would be the most knowledgeable and capable providers of Navigation services in their trial areas.

Some sub-contractors are an aged care provider as defined in the tender, however many of these organisations caught up by this definition do not deliver actual aged care services. We do not believe it was the intent of the tender that consumer-focused organisations who deliver PICAC, NACAP or Sector Development services to consumers, should not be able to deliver sub-contracted services to COTA Australia where they are the most-suitable provider of services to their target population in that geographical region.

Nevertheless, to manage the conflict of interest:

- COTA Australia has received written declarations from its proposed sub - contract partners with respect to any potential conflicts of interest as a receiver of Commonwealth aged care funding and they have provided reasons why their organisations are best suited to service the target population in their trial locations. Following a review of these returns, COTA Australia has satisfied itself that funding for the Navigator measures would not double up on any existing activities already funded to aged care providers by the Commonwealth.*
- COTA Australia has received commitments that funds used in the delivery of System Navigator trials will extend any existing activities into new locations, different target populations or additional services not currently offered. COTA will seek a formal agreement from sub-contractors in their engagement contract to ensure System Navigator funding is not already funded by the Commonwealth government, either directly or indirectly.*
- COTA Australia will ensure that suitable sub - contractor Contract terms are in place to ensure a separation of Navigator Measures and aged care provision of services.*

- To reinforce the contract, COTA Australia will cover these aspects as part of its training and education of workers and volunteers within the System Navigators trial.

Finally, should COTA Australia be selected as the preferred tenderer, it will discuss each individual sub-contractor affected by the definition of an aged care provider with the Department of Health. Should the Department indicate it is not satisfied with the mitigation strategies of an individual sub-contractor, the consortium will replace the sub-contractor with an alternative organisation.

Status of Tenderer

10. The Tenderer declares that it is not:
 - a. an organisation that has been approved to provide residential care, home and/or flexible care under the *Aged Care Act 1997* (Cth);
 - b. an organisation that is funded by the Commonwealth under the Commonwealth home support programme;
 - c. an organisation that is funded by the Commonwealth under the national Aboriginal and Torres Strait Islander flexible aged care programme; or
 - d. an assessment organisation that provides aged care assessment team or regional assessment service services to the Commonwealth.
11. The Tenderer declares that the activities proposed to be delivered in each Trial location as part of the Services are not already funded by the Commonwealth government, either directly or indirectly.

Further representations

12. The Tenderer makes the following further representations to the Department:
 - a. it is authorised to sell and/or support all products required in the performance of the Services relating to this Tender;
 - b. it has examined the AusTender Terms of Use which are obtainable on the [AusTender website](#);
 - c. it has examined this RFT, all documents referred to in this RFT and all other information made available to it and all applicable legislation and policies;
 - d. it has examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender;
 - e. it has satisfied itself as to the correctness and sufficiency of its Tender, including quoted prices which are deemed to cover the cost of all matters necessary for the due and proper performance and delivery of the Services described in the Statement of Requirement;
 - f. it has satisfied themselves as to the terms and conditions of the Draft Contract and its ability to comply with the Draft Contract (including by obtaining independent legal advice on the effect of its terms where appropriate), subject to its response at 32 (Draft Contract and Conflicts of Interest.);
 - g. it has obtained independent advice on the effect of all relevant legislation in relation to the Tenderer's participation in the RFT process;
 - h. it has made its own independent assessments of actual workload requirements under any resultant Contract and all prices will be presumed by the Department to have been based upon the Tenderer's own independent assessments;
 - i. it has relied entirely on its own enquiries and has not relied on any representation, warranty or other conduct by or on behalf of the Department, except as expressly provided in this RFT or in notices received by it; and
 - j. it has accepted and has fully complied with the provisions of this RFT.

Acknowledgements

13. The Tenderer acknowledges that:

- a. the Department may exercise any of its rights set out in this RFT, at any time;
- b. the statements, opinions, projections, forecasts or other information contained in this RFT may change;
- c. this RFT is a summary only of the Department's requirements and is not intended to be a comprehensive description of it;
- d. neither the lodgement of the Tender nor the acceptance of any Tender nor any agreement made subsequent to this RFT will imply any representation from or on behalf of the Department that there has been no material change since the date of this RFT or since the date as at which any information contained in this RFT is stated to be applicable;
- e. to the extent permitted by law, neither the Department nor its officers, employees or advisers will be liable to any Tenderer on the basis of any promissory estoppel, quantum meruit or on any other contractual or restitutionary ground or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a Tenderer's participation in the RFT process, including instances where:
 - i. a Tenderer is not engaged to undertake the provision of the Services;
 - ii. the Department decides not to enter into any resulting Contract with any Tenderer or at all;
 - iii. the Department exercises or fails to exercise any of its other rights under or in relation to this RFT (whether or not the Department has informed a Tenderer of its exercise of the rights);
 - iv. a Tender or any other material or communication relevant to this RFT is not received in time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised; or
 - v. the Department makes information available or provides information to a Tenderer relating to projected future, current or historical requirements
- f. the Department will not be liable or in any way responsible for any failure to inform a potential Tenderer of a change relating to this RFT or any other matter arising by the Department exercising any of its rights; and
- g. the Department will have received this Tender in reliance on this deed and that the Department may suffer loss if any of the representations, undertakings, consents or other statements in this Declaration or the Tenderer's Tender are misleading or deceptive.

Corporate capacity

14. The Tenderer confirms that:

- a. it has the capacity to respond to this RFT;
- b. there are no restrictions under any relevant law to prevent it from so responding;
- c. it is financially viable; and
- d. the Tenderer:
 - i. being a corporation – is not under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) and has not had an order made against it for the purpose of placing it under external administration; or

- ii. being an individual – is not bankrupt and has not entered into a scheme of arrangement with creditors.

Security, probity and financial checks

15. The Tenderer:
- a. consents to the Department performing (and will procure all necessary consents to enable the Department to perform) such security, probity and financial investigations and procedures as the Department may determine are necessary in relation to the Tenderer, any consortium member, their employees, officers, partners, associates, Subcontractors or related entities; and
 - b. agrees to provide at its cost, all reasonable assistance to the Department and its nominees in this regard.

Workplace Gender Equality Act 2012 (Cth)

16. Under Australian Government procurement the Tenderer is obliged to indicate whether or not it is covered by the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). The Tenderer is covered by the WGE Act if it is a 'relevant employer', defined as being a non-public sector employer (including higher education institutions, trade unions and not-for-profit organisations) of 100 or more employees in Australia. For more information about the coverage of the WGE Act, contact the Workplace Gender Equality Agency on (02) 9432 7000.

- ☐ ~~(a) Yes, the Tenderer is a relevant employer. The Tenderer has attached a current letter of compliance as part of this Tender which indicates my compliance with the Workplace Gender Equality Act 2012 (Cth).~~
- ☐ ~~(b) Yes, the Tenderer is a relevant employer. The Tenderer will be providing a current letter of compliance prior to entering into any resultant Contract.~~
- ☒ (c) No, the Tenderer is not a relevant employer.

Terrorism

17. The Tenderer declares neither it, nor any of its personnel or any Subcontractor proposed in its Tender, are listed as terrorists under section 15 of the *Charter of the United Nations Act 1945* (Cth).

Note: The list is available from the [Department of Foreign Affairs website](#).

Trade sanctions

18. The Tenderer declares neither it, nor any Subcontractor proposed in its Tender, are named in the consolidated list referred to in Regulation 40 the *Charter of United Nations (Dealing with Assets) Regulations 2008* (Cth).

Note: The list is available from the [Department of Foreign Affairs website](#).

Employee entitlements

19. The Tenderer represents that, having made all reasonable enquiries, there are currently no unsettled judicial decisions against the Tenderer (excluding decisions under appeal) relating to employee entitlements for which the Tenderer has not satisfied any resulting order.

Illegal Workers

20. The Tenderer declares that it does not engage Illegal Workers.

Note: see definition of "Illegal Workers" in the Glossary in Part 5 of this RFT.

Survival

21. This deed survives the termination or expiry of the RFT process.

Governing law

22. This deed is governed by and is to be construed in accordance with, the law in force in the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

Executed as a deed poll

Execution by a company incorporated in Australia

The following execution block should be used by a Tenderer that is a company incorporated in Australia.

Executed by COTA Australia Ltd in accordance
with Section 127 of the *Corporations Act 2001*


Signature of director

KATE ANDREWS
Name of director (print)


Signature of company secretary
(Please delete as applicable)

IAN YATES
Name of company secretary (print)