

ATTACHMENT A**SCHEDULE OF DOCUMENTS – FOI-2530**

Document	Pages	Description	Decision on access¹	Exemption/s
1	69	Funding Agreement - part 1	R	
2	79	Funding Agreement – part 2	RE	Section 47E(d) Section 47G
3	22	Deed of Variation No 1	RE	Section 47E(d) Section 47G
4	22	Deed of Variation No 2	RE	Section 47E(d) Section 47G
5	28	Deed of Variation No 3	RE	Section 47E(d) Section 47G
6	64	Operational Plan – part 1	E	Section 47
7	50	Operational Plan – part 2	E	Section 47

¹ R = Release in full; RE = Release subject to the deletion of exempt material; E – Exempt in full.



Australian Government

Department of Health and Ageing

FUNDING AGREEMENT

between

COMMONWEALTH OF AUSTRALIA

as represented by the Department of Health

ABN 83 605 426 759

And

OCHRE HEALTH (QLD SC) PTY LIMITED

ABN 99 158 015 804 / ACN 158 015 804

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THIS DOCUMENT HAS BEEN RELEASED
UNDER THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

Funding Agreement dated

25th May

2012

Parties

COMMONWEALTH OF AUSTRALIA as represented by the
Department of Health and Ageing ABN 83 605 426 759
(Commonwealth)

And

OCHRE HEALTH (QLD SC) PTY LIMITED having its
registered office at Level 5, Suite D, 140 William Street,
Surry Hills NSW 2010 ABN 99 158 015 804
(the Organisation)

Background

- A. The Commonwealth administers the GP Super Clinics Program (the **Program**) in accordance with the National Program Guide.
- B. The GP Super Clinics Program supports the establishment of primary health care clinics which deliver integrated, multidisciplinary services which meet the Program Objectives set out in Schedule 1 and are tailored to meet the needs and priorities of each local community in which a clinic is established and complement and enhance existing public and private health services in that community.
- C. The Organisation is committed to helping to achieve the Program Objectives through the conduct of the Project.
- D. The Organisation has been approved to receive funding from the Commonwealth to carry out the Project in support of the Program Objectives on the terms and conditions set out in this Agreement and the National Program Guide. Particularly, the Commonwealth is providing the Funds to the Organisation for the Organisation to:
 - (a) Purchase the Sippy Downs Hub Property and construct on the Property a multidisciplinary primary health care clinic which will operate so as to provide integrated health services and so as to achieve the Program Objectives;
 - (b) Purchase three existing units at the Maleny Hub Property and renovate and refurbish into one larger unit on the Property in order to establish a multidisciplinary primary health care clinic which will operate so as to provide integrated health services and so as to achieve the Program Objectives;
 - (c) Lease part of the Eumundi Spoke Property and refurbish part of the Property in order to establish a multidisciplinary primary health care clinic which will operate so as to provide integrated health services and so as to achieve the Program Objectives;

- (d) Lease the Montville Spoke existing premises in order to establish a multidisciplinary primary health care clinic which will operate so as to provide integrated health services and so as to achieve the Program Objectives.
- E. In consideration of the Commonwealth providing the Funds to the Organisation, the Organisation has agreed to perform the Project and Operations in accordance with the terms and conditions of this Agreement.

Part A. General Agreement provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

Accounting Standards has the same meaning as it has in sections 9 and 334 of the *Corporations Act 2001*, and refers to the accounting standards made by the Australian Accounting Standards Board;

Agreement means this document and includes any Schedules and Annexures;

Approval includes all relevant consents, authorisations, registrations, filings, agreements, notifications, certificates, permissions, licences, approvals, permits, authorities or exemptions issued by, from or with any Proper Authority;

Approved Auditor means:

- (a) a company auditor under the *Corporations Act 2001* or a member of the Institute of Chartered Accountants in Australia, CPA Australia, or the National Institute of Accountants;
- (b) acting in a professional capacity as an auditor; and
- (c) not a principal, officer or employee of the Organisation;

Asset means:

- (a) the items identified in Item 13 of Schedule 1 (if any); or
- (b) any item of tangible property purchased or leased either wholly or in part with the use of the Funds, that is not a fixture, with a value at the time of acquisition of \$20,000 or more, excluding GST,

but does not include the Property or the Works;

Audit means an audit carried out by the Approved Auditor in accordance with the Auditing Standards;

Auditor-General means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

Auditor's Report has the same meaning it has in the Auditing Standards;

Auditing Standards has the same meaning as it has in sections 9 and 336 of the *Corporations Act 2001*, and refers to the auditing standards made by the Australian Auditing and Assurance Standards Board;

Authorisation to Commence Operations means the written authorisation issued by the Department to the Organisation to Commence Operations at the Property in accordance with clause 25.1;

Bank means an "authorised deposit-taking institution" as that term is defined in the *Banking Act 1959*;

BCII Act means the *Building and Construction Industry Improvement Act 2005*;

Bi-Monthly Implementation Progress Sheet or Bi-Monthly IPS means an IPS required every second month to be compiled by the Organisation and due in accordance with the Deliverables and Milestones Schedule pursuant to clause 7.6;

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

Capital Works Funds means that component of the Funds that the Commonwealth will provide under this Agreement to the Organisation to support the Works, as set out in Item 7.2 of Schedule 1;

Cash Flow Projection means a detailed financial analysis indicating the anticipated inflow and outflow of cash over a three (3) year period of time as set out in clauses 30.2(c) and 30.3(c);

Certificate of Fitness for Occupancy and Use means a certificate issued by the relevant Proper Authority that provides such certificates confirming that the Works comply with all relevant Laws, Approvals and other requirements and are fit for occupancy and use;

Code means the *National Code of Practice for the Construction Industry 1997* as amended and published from time to time by the Commonwealth Department of Education, Employment and Workplace Relations (the Code can be downloaded from <http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>);

Code Monitoring Group has the same meaning as is given to that term in the Guidelines;

Commencement of the Works means the date by which the Organisation must begin the Works as set out in Item 5 of Schedule 1;

Committed means expected expenditure backed by an agreement;

Commonwealth means the Commonwealth of Australia represented by the Department of Health and Ageing ABN 83 605 426 759 or such other department or agency from time to time having responsibility for the management of this Agreement;

Commonwealth Material means any Material:

- (a) provided by the Commonwealth to the Organisation for the purposes of this Agreement; or
- (b) copied or derived at any time from the Material referred to in paragraph (a);

Completion Date means the date that is 40 Business Days (approximately two (2) months) after the Commonwealth has received all Deliverables required under this Agreement;

Confidential Information means information of, or provided by, the Commonwealth, that.

- (a) is by its nature confidential;
- (b) is designated by the Commonwealth as being confidential; or
- (c) the Organisation knows or ought to know is confidential,

but does not include information which:

- (a) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (b) is in the possession of the Organisation without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- (c) has been independently developed or acquired by the receiving Party;

Conflict of Interest means any circumstance in which the Organisation or any of the Organisation's officers, employees, agents or Subcontractors has an interest (whether financial or non-financial) or an affiliation that is affecting,

will affect, or could be perceived to affect, the Organisation's ability to perform the Project, or their role in the Project, or its obligations under this Agreement, fairly and independently;

Conflict of Interest Declaration means the statutory declaration at Attachment 1 to this Agreement;

Corporations Act means the *Corporations Act 2001*;

Date of this Agreement means the date this Agreement is executed by the Parties and, if executed on separate days, the date on which this Agreement is executed by the last Party to do so;

Date for Commencement of Operations means the date specified in Item 6.2 of Schedule 1 by which the Organisation must achieve the requirements for the Authorisation to Commence Operations and commence Operations at the Property;

Date for Practical Completion means the date specified in Item 6.1 of Schedule 1 by which the Organisation must achieve Practical Completion of the Works in accordance with clause 25.3;

Deed of Consent means a Deed between the Commonwealth, the Organisation and the Operator as contemplated by clause 31.1;

Deliverable means all deliverables required to be provided by the Organisation to the Commonwealth under this Agreement, including those set out in the Deliverables and Milestones Schedule;

Deliverables and Milestones Schedule means the table of that name at Annexure A to this Agreement (and, if applicable, includes any Spoke Site Deliverables and Milestones Schedule);

Department means the Commonwealth Department of Health and Ageing or such other Commonwealth Department as may be responsible from time to time for the administration of this Agreement;

Depreciation has the same meaning as it has in Australian Accounting Standard AASB 116 *Property, Plant and Equipment* (as amended) and **Depreciated** has a corresponding meaning;

Designated Use means the designated use specified in Item 4.2 of Schedule 1;

Designated Use Period means the period specified in Item 4.1 of Schedule 1;

Dispose or Disposing means selling, mortgaging or encumbering, leasing or sub-leasing, licensing or sub-licensing, assigning or otherwise transferring or giving up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts;

Final Operational Plan means the plan described in clause 30.3;

Financial Report means an end-of-financial-year report which includes information as required by clause 7.6(c)(iii)A;

FOI Commissioner means the office established under the *Australian Information Commissioner Act 2010* and includes any other person that may, from time to time, perform the functions of that office;

Funds means the amount payable by the Commonwealth under this Agreement and includes any interest earned on the Funds;

GP Super Clinic means the multidisciplinary primary health care clinic that will operate from the Property;

GST has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

Guidelines means the *Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry*, May 2012 (the Guidelines can be downloaded from <http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>);

Identified Third Party Contributor means an organisation or individual which contributes or is intended to contribute towards the establishment of the GP Super Clinic through the provision of property, capital, goods, services or personnel;

Implementation Progress Final Report means the Operational phase Final Report specified in the Deliverables and Milestones Schedule which must include a comprehensive report on whether the Program Objectives were achieved and if not, why not, a detailed report against the Program Objectives and a copy of the Assets register;

Implementation Progress Sheet or IPS means the Bi-Monthly IPSs and the Trimester IPSs which are updates on the Organisation's progress in relation to the Project in accordance with clause 7.6 and the Deliverables and Milestones Schedule;

Information Commissioner means the office established under the *Australian Information Commissioner Act 2010* and includes any other person that may, from time to time, perform the functions of that office;

Intellectual Property means all copyright (including Moral Rights and all rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Interest means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points;

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

Material includes without limitation documents, records, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

Midpoint of Construction means that overall progress against the construction program in the approved Project Plan has reached a point determined by the independent Project Manager and the Project Control Group to be half way;

Milestone means the end of a stage that marks the completion of a sub-project, or phase, of the Project Plan or of this Agreement, as set out in the Deliverables and Milestones Schedule;

Minister means the Minister of the Commonwealth from time to time responsible for the Health portfolio;

Moral Rights has the meaning given under the *Copyright Act 1968*;

National eAuthentication Framework means the framework as available at <http://www.finance.gov.au/e-government/security-and-authentication/authentication-framework.html>;

National e-health Transition Authority means the body established by the Australian State and Territory governments to develop better ways of electronically collecting and securely exchanging health information or whichever body is responsible for electronic information;

National Program Guide means the GP Super Clinics *National Program Guide 2010* and addenda published by the Department and as amended from time to time;

Non-capital Works Funds means that component of the Funds that the Commonwealth will provide under this Agreement to the Organisation to support business set-up costs, as set out in the National Program Guide and capped at an amount equivalent to 5% of the Funds;

OHS Accreditation Scheme means the OHS accreditation scheme established by the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* as amended;

Operational Contract means any contract or subcontract that the Organisation enters into with a third party to facilitate performing the GP Super Clinic's Operations and in which case the third party is required to enter into a Deed of Consent as set out in clause 31.1, and includes lease agreements;

Operations means the Designated Use activities of the GP Super Clinic at the Property for the Designated Use Period, as contemplated by the Operational Plan acceptable to the Commonwealth in accordance with clause 30.3 and adjusted from time to time to meet local health needs and priorities;

Operational Plan means either the Draft Operational Plan or the Final Operational Plan, which must document the start-up arrangements for the Operations as detailed in clauses 30.2 and 30.3;

Operator means a third party with whom the Organisation enters into an Operational Contract for the third party to perform the Operations of GP Super Clinic in which case the third party Operator is required to enter into a Deed of Consent as set out in clause 31.1;

Party means a party to this Agreement and, where applicable, also includes the Operator;

Payment Certificate means the statutory declaration required by clause 6.1(a)(ii);

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Practical Completion occurs when the Works have been completed and the requirements of clause 25.3 have been met;

Privacy Act means the *Privacy Act 1988*;

Privacy Commissioner means the office established under the *Australian Information Commissioner Act 2010* and includes any other person that may, from time to time, perform the functions of that office;

Privacy Impact Assessments means an assessment of the arrangements for transmitting patient data in accordance with the Office of Privacy Commissioner's Privacy Impact Assessment Guide as amended and published at <http://www.privacy.gov.au>;

Procurement Report means the report described in clause 23.8(d);

Program means the program referred to in Recitals A and B of this Agreement, and includes the Project conducted under that Program pursuant to this Agreement;

Program Evaluation means any assessment of the Program undertaken in accordance with clause 35 to determine the Program's performance against its aims and the Program Objectives;

Program Objectives means the program objectives described in Item 1.2 of Schedule 1 and as set out in the National Program Guide;

Project means the Project described in Item 1 of Schedule 1;

Project Control Group means the group established under clause 24.1(a);

Project Documents means all plans, drawings and other information relating to the Works that are brought into existence by or on behalf of the Organisation under or in connection with this Agreement or otherwise relating to the Works, including the Schematic Design and design iterations (consisting of drawings and other documents illustrating the scale and relationships of the project components; a site plan, floor plan and building plans, sections and elevations) that form part of Project Plan and Budget, including documents identified in the Deliverables and Milestones Schedule and includes any information or documents specified in clause 23.4(b);

Project Manager means an independent, suitably qualified project manager who is not an employee or officer of the Organisation, engaged by the Organisation to supervise the Works, including but not limited to, particular tasks such as labour and material cost control and long-term scheduling of the Works;

Project Material means all Material including Reports:

- (a) brought into existence for the purpose of performing the Project, including all Project Documents;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from the Material referred to in paragraphs (a) or (b);

Project Plan and Budget means Preliminary Project Plan and Budget and Construction Ready Project Plan and Budget detailed in clauses 23.2 and 23.3 respectively as revised and approved by the Commonwealth from time to time;

Proper Authority includes any ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council, corporation or other legal entity with legislative authority which has

jurisdiction or authority over or in connection with this Agreement, the Works, the Property or the Designated Use;

Property means the property or properties on which the Project is to be undertaken that is detailed in Item 2.1 of Schedule 1, and includes any associated rights of access, licences, easements, rights of way to, rights to use services and other interests applying in respect of the use and enjoyment of that property, including the use of common areas, utilities, services and car parking. The property may consist of more than one site or premises, such one or more of freehold land or leasehold of the whole or part of any land or a building. A reference in the Agreement to the Property may include a reference to the whole or one or more parts of such Property as the context requires;

Quantity Surveyor means an independent, professionally qualified person registered with the Australian Institute of Quantity Surveyors, who is not an employee or officer of the Organisation, engaged by the Organisation to advise on the cost control and management of the Project including preparation of bills of quantities and other measurement documents, cost planning, cost control, value management, the procurement of contractors, subcontractors and suppliers and the acceptability or otherwise of their quotations and prices, valuation of variations and monetary claims and the assessment and certification of progress and final claims;

Recurrent Funds means that component of the Funds (if any) that the Commonwealth will provide under this Agreement to the Organisation to cover additional personnel costs incurred upon the commencement of Operations and within four years of the date of this Agreement, associated with the implementation of integrated, multidisciplinary, team based approaches to the delivery of health services in the GP Super Clinic once it is constructed, as detailed in the National Program Guide and capped at 12.5% of the Funds and as set out in Item 7.3 of Schedule 1;

Related Body Corporate means a body corporate which is the:

- (a) holding company;
- (b) subsidiary; or
- (c) subsidiary of a holding company,

of the Organisation, as those terms are used in the *Corporations Act 2001*;

Relocation Incentives means that component of the Funds (if any) that the Commonwealth will provide under this Agreement to the Organisation to support relocation costs for specified health practitioners as set out in the National Program Guide and as set out in Item 7.4 of Schedule 1;

Reports means the reports that the Organisation is required to produce and provide to the Commonwealth in accordance with clause 7.5 and the Deliverables and Milestones Schedule;

Risk Management Plan means a document which is guided by *Risk Management Principles and Guidelines AS/NZS ISO 31000:2009*, that captures the Organisation's risks arising from and/or related to establishing the GP Super Clinic including (but not limited to) meeting the requirements of this Agreement, acquisition of land, procurement of a builder and other professional services, information management/communications, management of sub-contracts and business start-up arrangements;

Schematic Design means the documents that establish the conceptual design of the Works, illustrating the scale and relationship of the Works components. The Schematic Design documents must include a conceptual site plan, floor plan and preliminary building plans, sections and elevations;

Specified Personnel Position means a position identified in Item 9 of Schedule 1;

Subcontract means any contract the Organisation enters into with a third party under which that third party is paid from the Funds by the Organisation to undertake activities relating to the Project;

Subcontractor means any third party with whom the Organisation enters into a contract under which that third party is paid from the Funds by the Organisation to undertake activities relating to the Project;

Superintendent means an independent, suitably qualified person who is not an employee or officer of the Organisation:

- (a) engaged by the Organisation to superintend the contracts between the Organisation and its building or construction contractor and subcontractors and suppliers to the building or construction contractor; and
- (b) who, when required by any relevant State, Territory or Commonwealth Law, must possess and maintain registration or accreditation under that Law;

Tenant means a party who leases the Property or a part of the Property to provide health care services within the scope of the National Program Guide or ancillary services that support the Program Objectives as part of the Designated Use but does not include an Operator;

Tender Documents means those documents relating to the selection of a building and construction Subcontractor for the Works in accordance with clause 23.6;

Tender Plan means a document that sets out the timeframe, scope, terms and conditions (including proposed contract) and method for selecting a builder for the Works;

Tenure Agreement means any document pursuant to which the Organisation has possession of, occupies or otherwise uses the Property or part of the Property for the purpose of the Project and the Designated Use, including a lease, agreement for a lease, licence or any other right of occupation;

Term of this Agreement has the meaning given in clause 2;

Threat and Risk Assessment means an assessment of the information management/ information technology system security conducted by an Infosec Assessor licensed under the Infosec-Registered Assessor Program, details of which are available at <http://www.saltbushgroup.com/irap-home.php>;

Trimester Implementation Progress Sheet or Trimester IPS means the IPSs as described in clause 7.6(c)(ii);

Trust means the trust as described in Item 3.1 of Schedule 1;

Trustee means the trustee as described in Item 3.2 of Schedule 1;

Value for Money means an outcome that represents a defensible, efficient, effective and ethical use of resources consistent with section 44 of the *Financial Management and Accountability Act 1997(Cth)* after having undertaken a Value for Money Assessment;

Value for Money Assessment means a comparative analysis of the relevant costs and benefits of a particular proposal to purchase or supply goods, services or property to obtain the best outcome for a price and requires the Organisation or a person authorised by the Commonwealth to make the assessment to;

- (a) consider undertaking competitive tendering processes when purchasing goods or services;
- (b) consider non-cost factors about the proposal such as its fitness for purpose, quality, and timeliness; the service and support it can offer, and the risks it may pose to use of the Funds and conduct of the Project;
- (c) consider cost related factors of the proposal including any transactions costs associated with the proposal, and any whole-of-life costs including any acquisition, supply, use, holding, maintenance and disposal costs; and

- (d) make decisions in an accountable and transparent manner by documenting decisions made and the justifications for making such a decision;

Works means that part of the Project which relates to the design, construction and fit-out (construction and fit out may include site preparation, modification, expansion, refurbishment, furnishing and equipping as applicable), and related activities at the Property, as contemplated by the Project Plan and Budget acceptable to the Commonwealth in accordance with clause 23.1(c)(i); and

Works Final Report means the Report described in clause 7.6(c)(ii)A.3).

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) all clauses in this Agreement apply to the Organisation;
- (b) where an Operator has been approved in accordance with clause 30.1(a), to the extent applicable, the clauses in Parts A and C apply also to the Operator;
- (c) headings are for convenience only and do not affect interpretation;
- (d) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (f) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to \$ or dollar is to Australian currency; and
- (m) no provision of this Agreement is to be interpreted to the disadvantage of a Party because that Party (or its representative) drafted that provision.

2. Term of the Agreement

This Agreement commences on the Date of this Agreement and, unless terminated earlier, expires one month after the Completion Date.

3. Conduct of the Project

3.1 Approvals

- (a) The Organisation and, where applicable, the Operator must obtain or ensure that its Subcontractors obtain all Approvals for:
 - (i) the construction of the Works;
 - (ii) the use of the Works for their intended purpose;
 - (iii) the Operations of the GP Super Clinic throughout the Designated Use Period; and
 - (iv) without limiting paragraph (ii), the use of the Works for the Designated Use during the Designated Use Period,in accordance with this Agreement and must deliver a copy of each Approval to the Commonwealth promptly on request.
- (b) If the Works, or the GP Super Clinic's Operations must be varied to obtain any Approval, the Organisation must notify the Commonwealth in writing of those variations and, unless the Commonwealth otherwise consents in writing, must ensure that no variation will adversely affect the Project, the Works, the performance of the Designated Use throughout the Designated Use Period, or the achievement of the Program Objectives.

3.2 Obligation to perform the Project

In consideration of the provision of the Funds, the Organisation must:

- (a) perform the Project in accordance with the terms and conditions set out in this Agreement;
- (b) provide each of the Deliverables identified in the Deliverables and Milestones Schedule on or before the relevant date for provision of those Deliverables specified in that Schedule; and
- (c) ensure that all work undertaken under this Agreement is consistent with and in furtherance of the Program Objectives.

3.3 Trust representations and warranties

- (a) If the Organisation carries out any or all of the Project in its capacity as a trustee, the Organisation does so as Trustee of the Trust and, except as to matters the Organisation has disclosed to the Commonwealth and that the Commonwealth has accepted in writing, the Organisation makes the representations and warranties as set out in this clause 3.3;
- (b) **Right of Indemnity** - The Organisation represents and warrants that:
 - (i) it has the right to be indemnified out of, and has a lien over, the assets of the Trust for all liabilities incurred by it under the Funding Agreement;
 - (ii) this right has not been limited in any way, and the Organisation has no liability which may be set off against that right of indemnity; and
 - (iii) the assets of the Trust are sufficient to satisfy this right of indemnity and all other obligations and liabilities in respect of which the Organisation has a right to be indemnified out of those assets;
- (c) **Commonwealth's recourse** - The Organisation represents and warrants that the Commonwealth has the benefit of the Organisation's rights of indemnity against, and lien over, the assets of the Trust, and has recourse to the assets of the Trust to satisfy the Organisation's liabilities arising in connection with the Agreement and carrying out the Project;
- (d) **No conflict** - The Organisation represents and warrants that neither this Agreement nor any other agreement or arrangement to which the Organisation is a party conflicts with the operation or terms of the Trust;

- (e) **Power and authority** - The Organisation represents and warrants that:
- (i) it has full and valid power and authority under the Trust; and
 - (ii) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied,
- to
- (iii) enter into the Agreement and all other agreements or arrangements to which the Organisation is a party; and
 - (iv) carry out the transactions contemplated by those documents;
- (f) **Proper administration and benefit** - The Organisation represents and warrants that it has entered into:
- (i) the Agreement and all other agreements or arrangements to which the Organisation is a party; and
 - (ii) the transactions contemplated by those agreements and arrangements,
- for the proper administration of the Trust and for the benefit of all of the Trust's beneficiaries;
- (g) **No termination** - The Organisation represents and warrants that the Trust has not been terminated and no beneficiary is presently entitled to any of the Trust's assets;
- (h) **Sole Trustee** - The Organisation represents and warrants that it is the sole trustee of the Trust and no meeting has been called to remove it as the Trustee;
- (i) **No resettlement** - The Organisation represents and warrants that no property of the Trust has been resettled or set aside or transferred to any other trust; and
- (j) **Compliance with the law** - The Organisation represents and warrants that the constituent documents of the Trust, including the Trust's deed of trust, (**Trust Documents**) comply with all applicable laws.

3.4 Trust undertakings

If the Organisation carries out any or all of the Project in its capacity as a trustee, the Organisation does so as Trustee of the Trust and, unless the Commonwealth otherwise consents, must throughout the Term of this Agreement until the expiry of the Designated Use Period:

- (a) **Resignation** - not resign or be removed as Trustee of the Trust or appoint or allow a new or additional trustee of the Trust to be appointed;

- (b) **Records** - maintain complete and correct records in relation to the Trust;
- (c) **Vesting and distribution** - not:
- (i) vest, distribute or advance any property of the Trust (other than income); or
 - (ii) distribute income of the Trust except, in relation to the guarantor only, where to do so would have, or be likely to have, a material adverse effect on the performance of the Organisation's obligations under the Agreement and the distribution would not result in a default by the Organisation of its obligations under the Agreement;
- (d) **Resettle, set aside or transfer** - not resettle, set aside or transfer property of the Trust;
- (e) **Amendment** - not amend or revoke any of the terms of the Trust;
- (f) **Acquisitions** - not acquire property intended to be subject to the terms of the Trust other than in its name;
- (g) **Use or possession of property** - not permit a beneficiary of the Trust to use or possess the property of the Trust, other than in his, her or its capacity as an officeholder of the Trustee or employee of the Trust;
- (h) **Breaches of Trust** - not do anything, or permit or omit anything, which breaches the Trust or which would permit it to be removed as Trustee of the Trust;
- (i) **No impairment of Agreement obligations** - not do anything or permit anything to be done in relation to the Trust which could restrict or impair the Organisation's ability to observe its obligations under the Agreement or carry out the Project;
- (j) **Issue units** - not issue any further units in the Trust (if the Trust is a unit trust);
- (k) **Vesting date** - not exercise a power, or allow a power to be exercised, to change the vesting date of the Trust or provide for the Trust to be terminated early (and must notify the Commonwealth of any event which might cause the capital of the Trust to vest or to be distributed to a beneficiary, as soon as it becomes aware of the event);
- (l) **Right of subrogation and indemnity** - ensure that:
- (i) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Agreement

and any other agreement or arrangement entered into in connection with carrying out the Project;

- (ii) there is no restriction or limitation on, or derogation from, its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and
- (iii) its lien over any property of the Trust at all times has priority over the rights of the beneficiaries of the Trust;
- (m) **Security interest** - not create or allow to exist any security interest over its right of indemnity out of the assets of the Trust;
- (n) **Delegation** - not delegate any powers conferred upon it by law or under the Trust (other than for management of the Trust assets or the granting of a power of attorney for that purpose or as required by the Agreement);
- (o) **Segregation** - keep the assets of the Trust separate from other property and not do anything which results in the assets of the Trust being mixed with other property; and
- (p) **Notices generally** - promptly give the Commonwealth copies of all material documents (including Trust Documents) and notices the Organisation receives from any beneficiary of the Trust or which the Organisation gives to a beneficiary or manager of the Trust.

3.5 Trustee Liability

If the Organisation carries out any or all of the Project in its capacity as a trustee, the Organisation acknowledges and agrees that, in respect of any liability to the Commonwealth arising under this Agreement, including the indemnity under clause 15.1, the Organisation is liable in its own capacity and as Trustee of the Trust.

3.6 Specified Personnel Positions

- (a) The Organisation must:
 - (i) appoint a suitably qualified person to each Specified Personnel Position in accordance with the Subcontracting provisions specified in clause 23.8;
 - A. within 10 Business Days after appointment, notify the Commonwealth of the identity and qualifications of each person appointed to a Specified Personnel Position;

- B. where requested to do so by the Commonwealth, promptly (and in all cases in the period (if any) required by the Commonwealth) replace a person occupying a Specified Personnel Position in circumstances where the Commonwealth considers it necessary to do so in order for the Organisation to properly comply with its obligations under this Agreement;
 - C. where a person ceases to perform a Specified Personnel Position for any reason, promptly notify the Commonwealth of the date of that cessation and ensure that the Specified Personnel Position is not left vacant for a period of more than 15 Business Days; and
 - D. promptly after appointment, notify the Commonwealth of the identity and qualifications of any person appointed to fill a vacant Specified Personnel Position.
- (b) The Organisation, its board members, employees or agents must not act in a Specified Personnel Position.
 - (c) The Organisation, its board members, employees or agents must not act as the Project Manager, Superintendent or Quantity Surveyor.

3.7 Management of Conflicts

- (a) If during the term of this Agreement, a Conflict of Interest arises, or appears likely to arise the Organisation must:
 - (i) notify the Commonwealth in writing of the Conflict of Interest within 10 Business Days of becoming aware of a Conflict of Interest or the likelihood of a Conflict of Interest and set out the steps the Organisation proposes to take to resolve or otherwise deal with the Conflict of Interest;
 - (ii) immediately procure a Conflict of Interest Declaration:
 - A. from the Organisation or any of its officers, employees, agents or Subcontractors in respect of whom the Conflict of Interest arises (**Declarer**); and
 - B. that fully discloses all relevant information relating to the Declarer's Conflict of Interest;

- (iii) provide a signed copy of the Declarer's Conflict of Interest Declaration to the Commonwealth together with the notification referred to in clause 3.7(a)(i); and
- (iv) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with that Conflict of Interest.

3.8 Compliance with all special conditions

The Organisation must comply with each special condition set out in Item 14 of Schedule 1.

4. The Property

4.1 Performing the Project

The Organisation must perform the Project on the Property identified in Item 2.1 of Schedule 1.

4.2 The Property

The Organisation must provide to the Commonwealth the information set out as currently known within 20 Business Days of the Date of this Agreement, as soon as practicable when the information subsequently becomes known, and otherwise from time to time upon request:

- (a) details of who owns the Property and who will own the Property on the date that the Organisation is required to have tenure over the Property in accordance with clause 4.3(a);
- (b) where ownership differs or will differ as between ownership of the building of which the Property forms part and ownership of the Property, details of who owns the Property (if possible) and who will own the Property on the date that the Organisation is required to have tenure over the Property in accordance with clause 4.3(a);
- (c) title searches including any registered plans sufficient to identify the registered proprietors of the Property and any other interests in the Property;
- (d) details of:
 - (i) the nature of the Organisation's tenure over the Property; or
 - (ii) if the Organisation does not have tenure over the Property at that time, the nature of the tenure that the Organisation will have in the Property on the date that the Organisation is required to have tenure for the Property in accordance with clause 4.3(a),

that are certified as being true and correct by the Organisation's legal adviser.

4.3 Tenure

- (a) On or before the date specified in the Deliverables and Milestones Schedule, the Organisation must have tenure, and must substantiate to the reasonable satisfaction of the Commonwealth that it has tenure over the Property by way of fee simple, lease or otherwise, that is:
 - (i) acceptable to the Commonwealth;
 - (ii) enables the Organisation to undertake the Project and comply with its obligations under this Agreement, including without limitation under clause 32; and
 - (iii) entitles the Commonwealth to give effect to its rights under clause 12.1;
- (b) Notwithstanding any other clause in this Agreement, the Organisation acknowledges and agrees that it is not entitled to receive, and the Commonwealth is not obliged to pay, any part of the Funds, and, if it has been paid Funds, no Funds are to be expended by the Organisation, unless and until:
 - (i) the Organisation has complied with clause 4.3(a); or
 - (ii) the expenditure of Funds for a specified purpose is authorised in writing by the Commonwealth in accordance with clause 4.3(d);
- (c) If the Organisation has not complied with clause 4.3(a) within the timeframes specified in the Deliverables and Milestones Schedule, the Commonwealth may in its absolute discretion terminate this Agreement for default in accordance with clause 13.1;
- (d) The Organisation may expend Funds prior to complying with clause 4.3(a), where, and only where, the Commonwealth gives its prior approval in writing for such expenditure. Such approval may be given or withheld in the Commonwealth's absolute discretion and may be subject to conditions, including as to the amount and type of expenditure. The Organisation must comply with any conditions so specified;
- (e) Where the Organisation obtains leasehold tenure to the Property, or to a part of the Property, and has contributed Funds toward the Works, the Organisation must not enter into arrangements that require the Organisation to pay to the registered proprietor of the land on which the Property, or part of the Property, is located more

than a nominal rental amount at any point during the Term of the Agreement or during the Designated Use Period;

- (f) Where the Organisation obtains leasehold tenure to the Property, or to a part of the Property:
- (i) the Organisation must ensure that the Tenure Agreement contains covenants which:
 - A. require the lessor not to terminate the Tenure Agreement or enter into possession of the whole or any part of the Property unless the lessor has given the Commonwealth not less than 40 Business Days prior notice of its intention to do so;
 - B. prohibit the lessor from disposing of the Property, or any part of the Property, without first:
 - 1) obtaining the Commonwealth's consent in writing (such consent may be given subject to conditions but which will not be unreasonably withheld where the requirements for clause 4.3(f)(i)B.2) have been met); and
 - 2) requiring the purchaser, transferee, lessee, licensee, mortgagee, charge, grantee or other disponee to enter into a deed of covenant with the Commonwealth under which the purchaser, transferee, lessee, licensee, mortgagee, charge, grantee or other disponee covenants in favour of the Commonwealth that the Property will be used for the Designated Use until the expiry of the Designated Use Period; and
 - (ii) the Organisation must provide any mortgages or general security agreements required under clause 5 in registrable form;
 - (iii) the Organisation must register in the appropriate jurisdiction any and all leases that are required in order to satisfy the requirements of clause 4.3(a), and must provide evidence of such registration to the

Commonwealth within ten (10) Business Days of registration; and

- (iv) the Organisation acknowledges that the Commonwealth may require that the lessor enter into an agreement **(Deed of Understanding)** with the Commonwealth, which is satisfactory to the Commonwealth and under which the lessor recognises the Commonwealth's rights under this Agreement in and to the Property.

4.4 Property Acquisition

- (a) If the Project includes the acquisition by the Organisation (by purchase or other means) of land or premises that will be considered as the Property (or part of the Property) using Funds or other funds, or received as a contribution by a Third Party (**Proposed Acquisition**), the Organisation must comply with this clause.
- (b) Prior to acquiring the Proposed Acquisition, the Organisation must provide the Commonwealth with a report that deals with the following matters:
 - (i) the Organisation's opinion as to whether the Proposed Acquisition is suitable for the construction of the Works;
 - (ii) whether the terms on which the Proposed Acquisition is to be acquired will ensure that the Organisation can use the Proposed Acquisition for the Designated Use;
 - (iii) the Organisation's opinion as to whether the Proposed Acquisition represents Value for Money; and
 - (iv) the Organisation's opinion as to whether the Proposed Acquisition will enable the Organisation to meet the Program Objectives, and if so, how; and

also provide the following information (unless the Commonwealth agrees otherwise):

- (v) reports and information about the Proposed Acquisition as the Commonwealth may request;
- (vi) site inspection or survey reports;
- (vii) searches of the Proposed Acquisition including land titles office searches, contaminated waste and zoning searches;
- (viii) present and future town planning issues (as far as is known at the time the Organisation is contemplating the Proposed Acquisition) such as issues regarding the

permitted use of the Proposed Acquisition (to be clear, the permitted use of the land), roads, sewers or easements for example;

- (ix) a valuation of the Proposed Acquisition prepared by a registered valuer;
 - (x) where the Proposed Acquisition includes an existing building, inspection reports about the condition of the Proposed Acquisition;
 - (xi) pest inspection reports;
 - (xii) the location of the Proposed Acquisition;
 - (xiii) the cost of acquiring the Proposed Acquisition; and
 - (xiv) proposed tenure arrangements for the Proposed Acquisition.
- (c) The Commonwealth will acknowledge receipt of the report and information referred to in clause 4.4(b), to the Organisation.
- (d) The Organisation may only acquire the Proposed Acquisition after receiving:
- (xv) acknowledgement from the Commonwealth that the Commonwealth has received the report and information referred to in clause 4.4(b); and
 - (xvi) notice that the Commonwealth agrees to the Organisation acquiring the Proposed Acquisition and, where appropriate, requires this Agreement to be varied to recognise the Proposed Acquisition as being the, or part of the, Property.
- (e) If the Organisation proposes to purchase a Proposed Acquisition using Funds, the Commonwealth may notify the Organisation of the conditions that it must comply with and processes it must undertake to apply the Funds to the acquisition of the Proposed Acquisition, for example to obtain and provide certain documents within a specified number of Business Days on, before or after the date a payment of Funds referred to in the Deliverables and Milestones Schedule is made to the Organisation, and the Commonwealth will specify the conditions, processes or number of Business Days in the notice.
- (f) Nothing in this clause will relieve the Organisation of responsibility for any defect, fault, omission or other liability in respect of the

Proposed Acquisition or otherwise affect the Organisation's obligations under this Agreement.

- (g) To avoid doubt, the selection of the Proposed Acquisition, the Proposed Acquisition's suitability for the Designated Use, whether or not the purchase of the Proposed Acquisition represents Value for Money, and whether or not the Proposed Acquisition will enable the Organisation to meet the Program Objectives are matters that must be determined by the Organisation. The Organisation agrees and acknowledges that the Commonwealth is relying on the Organisation's expertise to decide such matters.
- (h) The Organisation warrants and undertakes to the Commonwealth that:
 - (i) where it purchases or leases a Proposed Acquisition, the transfer of the Proposed Acquisition to the Organisation will be legally effective;
 - (ii) all documents which the Organisation has provided, or will provide, to the Commonwealth under this clause 4.4 are accurate; and
 - (iii) it will vary this Agreement as required by the Commonwealth to identify the Proposed Acquisition as the, or part of the, Property on which the Project and Operations will be undertaken.

4.5 Disposal of the Property

During the Term of this Agreement the Organisation must not Dispose of the Property, any interest in the Property, or any part of the Property, without first:

- (a) obtaining the Commonwealth's consent in writing (such consent may be withheld at the Commonwealth's sole and unfettered discretion); and
- (b) requiring the purchaser, transferee, lessee, licensee, mortgagee, charge, grantee or other disponee to enter into a deed of covenant with the Commonwealth under which the purchaser, transferee, lessee, licensee, mortgagee, charge, grantee or other disponee covenants in favour of the Commonwealth to use the Property and perform the Designated Use until the expiry of the Designated Use Period.

5. Securities in relation to the Property

5.1 Property securities

- (a) Without in any way limiting or affecting the Organisation's obligations or the Commonwealth's rights under this Agreement or otherwise at law or in equity, the Organisation irrevocably:
- (i) agrees to grant to the Commonwealth:
 - A. a first registered mortgage over the Property except where the Commonwealth has approved the Organisation obtaining finance in accordance with clause 5.1(b); and
 - B. a first registered general security agreement over its assets and undertaking in favour of the Commonwealth as security for the Organisation's obligations under this Agreement, on terms acceptable to the Commonwealth;
 - (ii) charges its rights, title and interest in and to the Property and the Works; and
 - (iii) agrees to sign all consents as required by the Commonwealth to the lodgement of caveats against the title of the Property in the form required by the Commonwealth from time to time to prevent the lapsing of any caveat.
- (b) The Organisation must not obtain finance, or further finance (including increasing the amount of borrowings secured under an existing loan approved by the Commonwealth), from a lender unless it has requested and obtained the Commonwealth's written approval.
- (c) If the Organisation obtains the Commonwealth's written approval to obtain finance from a lender in accordance with clause 5.1(b), and the Agreement does not already provide for the finance to be obtained, the Parties agree to vary this Agreement and enter into any other agreement (including with a lender) so that:
- (i) the Commonwealth agrees, subject to paragraph (ii) below, to surrender its priority as a first mortgagee over only that part of the Property that is to be mortgaged in favour of the lender, and become a second ranking mortgagee of that part of the Property;

- (ii) the Organisation agrees to grant to the lender a first ranking mortgage over only that part of the Property that is to be mortgaged in favour of the lender;
 - (iii) the loan money advanced by the lender to the Organisation is recognised as taking priority over any moneys payable to the Commonwealth to the extent provided for above under this Agreement; and
 - (iv) the priority of the lender under the first ranking mortgage will be limited in amount and by condition as detailed in clause 5.1(d).
- (d) Where the Organisation obtains the Commonwealth's written approval to obtain finance from a lender in accordance with clause 5.1(b):
- (i) the Organisation must obtain the finance on terms satisfactory to the Commonwealth;
 - (ii) the details of the finance, including the amount, any repayments of principal or interest, and the details of the lender, must be set out in the Project Budget approved by the Commonwealth under clause 23.1(c)(i) and include the requirements set out in clause 23.2(a)(iv); and
 - (iii) the Organisation must enter into priority agreement (**Deed of Priority**) with the Commonwealth and the lender, which is satisfactory to the Commonwealth and under which the lender recognises the Commonwealth's rights under this Agreement and recognises the loan money advanced by the lender to the Organisation has priority over any moneys payable to the Commonwealth under this Agreement.
- (e) The Deed of Priority must contain provisions requiring:
- (i) the lender not to Dispose of the Property without first obtaining the Commonwealth's consent in writing;
 - (ii) requiring each party not to Dispose of its interest in the Property without first causing the party to whom the interest is being disposed (**Assignee**) to enter into a deed with each other party to the Deed of Priority by which the Assignee undertakes to be bound by the provisions of the Deed of Priority insofar as they relate to the party Disposing the interest to the Assignee; and

- (iii) the lender not to provide any additional finance to the Organisation without the prior approval in writing of the Commonwealth.

5.2 Securities where there is an Operator

- (a) Where applicable, once the Operator has signed the Deed of Consent required by clause 31.1(a)(iii), it must grant to the Commonwealth a registered general security agreement over its assets and undertaking in favour of the Commonwealth as security for performance of the Operator's obligations in relation to the Operations under this Agreement, on terms acceptable to the Commonwealth and in accordance with the Deed of Consent and any Operational Contract.
- (b) If the Commonwealth requests that the Operator grant a registered general security agreement as described in clause 5.2(a), the Operator must grant the general security agreement on the terms required by the Commonwealth.

5.3 No encumbrances

The Organisation and the Operator, where applicable, must not permit, create or grant, or enter into any agreement to permit create or grant, any restrictive covenants, restriction on user, easements, encumbrances, interests, mortgages, caveats, leases or rights affecting the Property or the Organisation's or Operator's interest in the Property after the Date of this Agreement, without first obtaining the written consent of the Commonwealth which will not be unreasonably withheld.

6. The Funding

6.1 Payment of the Funds

- (a) Subject to Parliamentary appropriation and to the provisions of this Agreement, the Commonwealth agrees to pay to the Organisation the amount of Funds specified in column 4 of the Deliverables and Milestones Schedule, once the Organisation has:
 - (i) provided, to the Commonwealth's satisfaction, all Deliverables set out in column 2 of the Deliverables and Milestones Schedule for that stage, and as set out in Items 7.3 and 7.4 of Schedule 1, if applicable; and
 - (ii) certified to the Commonwealth in the form of the Payment Certificate specified at Attachment 2 that:
 - A. all work the Organisation paid for using the Funds was properly required for the Project; and

- B. the amounts of each payment made using the Funds represent the reasonable value of the work carried out or to be carried out (the value of work to be considered in light of the relevant industry); and
- C. no Conflicts of Interest arose in making payments for work using the Funds that the Organisation did not, or has not, declared to the Commonwealth; and
- D. no Conflicts of Interest arose in entering into any Subcontracts.
- (b) Instalments of Funds will be paid by the Commonwealth 28 calendar days after acceptance by the Commonwealth of all Deliverables for that stage and following receipt by the Commonwealth of a correctly rendered Tax invoice or at such other times as may be agreed between the Parties from time to time.
- (c) Notwithstanding any other clause of this Agreement:
- (i) the Commonwealth may, at its absolute discretion defer, reduce or not make a payment of Funds;
 - (ii) the Organisation is not entitled to receive, and the Commonwealth is not obliged to pay, any amount under this Agreement; and
 - (iii) if the Organisation has received any Funds, the Organisation is not entitled to spend those Funds, if at any time:
 - (iv) the Commonwealth has insufficient Program funding available at the time the payment is due to the Organisation;
 - (v) the Commonwealth has become entitled to terminate this Agreement under clause 13.1;
 - (vi) the Commonwealth forms the opinion on reasonable grounds that the full payment is not properly required by the Organisation to carry out the Project;
 - (vii) the Organisation has not complied, to the reasonable satisfaction of the Commonwealth with all its obligations under clauses 3, 4.3(a), 5.1 or 16 of this Agreement; or

- (viii) the Organisation has not complied with any provision of this Agreement which provides that the Organisation will not be entitled to spend or receive any Funds until that obligation has been complied with.

6.2 Use of the Funds

- (a) Funds provided under this Agreement must only be used for the purposes of carrying out the Project, the Operations and performing this Agreement.
- (b) Funds must only be applied in accordance with the Project Budget approved by the Commonwealth in accordance with clause 23.1(c)(i).
- (c) Expenditure on activities identified as falling within the Capital, Non-Capital, Recurrent Funds and Relocation Incentive Payments categories as described in the National Program Guide must be so identified in the Project Budget submitted for approval by the Commonwealth in accordance with clause 23.1 and be used only for the purposes for which those Funds are provided as generally described in the National Program Guide.
- (d) Where the Project Budget approved by the Commonwealth pursuant to clause 23.1(c)(i) allocates part of the Funds for expenditure on activities falling within the Recurrent Funds and Relocation Incentive Payments categories as described in the National Program Guide, the parties agree that the payment arrangements set out in Items 7.3 and 7.4 of Schedule 1 apply and that those arrangements will be consistent with those applied by the Commonwealth in its administration of the GP Super Clinics Program.
- (e) Funds provided under this Agreement may not be applied towards administrative and other general costs of the Organisation that are not directly associated with the performance of the Project.
- (f) Funds provided under this Agreement may be applied towards the Organisation's administrative and other general costs of administering this Agreement and conducting the Project only where such costs are expressly included in the Project Budget approved by the Commonwealth in accordance with clause 23.1(c)(i).

6.3 Management of Funds

The Organisation must:

- (a) maintain a bank account(s) in the name of the Organisation, with a Bank acceptable to the Commonwealth, which is controlled solely by the Organisation to hold all Funds under this Agreement;

- (b) if the Organisation carries out any or all of the Project in its capacity as a trustee, it must hold the bank account referred to in clause 6.3(a) above in the Organisation's own name and as Trustee for the Trust;
- (c) ensure that the bank account(s) does not, at any time during the Term of this Agreement, contain any monies other than the Funds and interest earned on the Funds;
- (d) immediately deposit all Funds received into the bank account(s);
- (e) notify the Commonwealth of the identifying details of the bank account(s) and notify the Commonwealth of any changes to those details; and
- (f) ensure that all interest earned on the Funds is applied for the purposes of the Project or Operations.

6.4 Amounts of Funds

The funding to be contributed by the Commonwealth pursuant to this Agreement will not exceed the amount of Funds specified in Item 7 of Schedule 1. The Commonwealth accepts no liability for any debts incurred by the Organisation, or any of its board members, employees, agents contractors or Subcontractors, or for any budget overruns.

6.5 Sufficiency of amounts

- (a) The Organisation warrants that the Funds, together with all other contributions made or received by the Organisation in relation to the Project, will be sufficient to ensure the due and proper completion of the Works and the Organisation's other obligations under this Agreement.
- (b) The Organisation must submit, prior to acquiring land under clause 4.4 and prior to awarding the construction contract, a declaration signed by a majority of the directors of the Organisation that the Organisation has or has unconditional access to, funds sufficient to complete the Project in accordance with the costs contained in the Project Budget and approved by the Commonwealth pursuant to clause 23.1(c)(i).

6.6 Repayment Amount

Without limiting the Commonwealth's rights under this Agreement or otherwise at Law or in equity, if within the Designated Use Period the Commonwealth is satisfied on reasonable grounds that the Organisation has failed to comply with its obligations under clause 32.1 then:

- (a) the Commonwealth may by written notice to the Organisation require the Organisation to pay to the Commonwealth, as liquidated damages and not as a penalty, the relevant amount calculated in accordance with Item 15 of Schedule 1; and
- (b) the Organisation must pay to the Commonwealth the amount set out in the notice, within 20 Business Days of the date of the Commonwealth's notice. If the Organisation fails to make payment within 20 Business Days, the Commonwealth may recover the amount specified in its notice as a debt due from the Organisation.

6.7 Organisation's acknowledgement

The Organisation acknowledges and agrees that:

- (a) the amounts payable by the Organisation under clause 6.6 represent a genuine and reasonable pre-estimate of the loss to the Commonwealth; and
- (b) the Organisation releases the Commonwealth from all claims arising out of or in connection with the Commonwealth's rights under clause 6.6.

7. Records and Reports

7.1 Records and accounts

The Organisation must:

- (a) keep comprehensive and accurate accounts and records of its use of the Funds, that can be separately identified from other accounts and records of the Organisation; and
- (b) retain the records referred to in this clause for a period of seven years or such longer period as may be required by Law.

7.2 Organisation must keep records

The Organisation must keep comprehensive written records of the conduct of the Project and the Operations including, without limitation, progress against the Milestones and the extent to which the Project and Operations are achieving the Program Objectives.

7.3 Provision of records to the Commonwealth

The Organisation must:

- (a) produce reports, information and other Material produced under or in connection with this Agreement and otherwise as reasonably required by the Commonwealth; and

- (b) provide all reports, information and other material to the Commonwealth in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.

7.4 Financial records

The Organisation must keep financial records relating to the Project so as to enable:

- (a) all revenue and expenditure related to the Project to be identified in the Organisation's accounts;
- (b) the preparation of the Financial Reports in line with clause 7.6(c)(iii)A; and
- (c) the Audit of these records.

7.5 Reports

- (a) The Organisation must provide all Reports:
 - (i) at the times; and
 - (ii) in the format specified by the Commonwealth (if any) and including the content,specified in the Deliverables and Milestones Schedule.

7.6 Implementation Progress Sheets (IPSS)

- (a) Without limiting the Organisation's other obligations under this Agreement or the Deed of Consent (where applicable), the Organisation must provide to the Commonwealth the Bi-Monthly and Trimester IPSS on the Organisation's progress in relation to the Project, risks to the achievement of the Project, the Organisation's management of the Funds, the delivery of services during the Works (where applicable), the Operations and such other matters as the Commonwealth may from time to time request.
- (b) The Organisation must provide the IPSS as specified in the Deliverables and Milestones Schedule to the Commonwealth:
 - (i) in the format specified by the Commonwealth; and
 - (ii) on the dates specified in the Deliverables and Milestones Schedule.
- (c) The Commonwealth will specify by notice in writing to the Organisation the content of the IPSS, which will generally include:

(i) in respect of the Bi-Monthly IPSs (as set out in the Calender at Attachment 3 to this Agreement), the following information:

A. for the **"Implementation Progress Sheet 1: The Project" (IPS 1)** information relating to the achievement of the Project during the reporting period, including:

- 1) the minutes of any Project Control Group meeting pursuant to clause 24.1(f) held in the relevant period;
- 2) any proposed variations to the Project Plan and Budget approved by the Commonwealth pursuant to clause 23.1(c)(i); and
- 3) an updated Risk Management Plan.

B. for the **"Implementation Progress Sheet 2: The Funds" (IPS 2)** information relating to the management and use of the Funds during the reporting period, which must be verified by a majority of directors of the Organisation, including:

- 1) a statement declaring whether the Funds have been used for the purpose they were provided in accordance with the format specified in paragraph 5 of the Payment Certificate at Attachment 2;
- 2) a statement of the current cash at bank;
- 3) a detailed statement of income and expenditure in relation to the Funds received and receivable by the Organisation under this Agreement, which must include a clear statement detailing names of payees to whom Funds were paid, the amount of each payment and that part of the Project Budget approved by the Commonwealth pursuant to

clause 23.1(c)(i) to which the payments relate; and

- 4) a statement declaring whether all material terms and conditions of the Agreement were complied with in accordance with the format specified in paragraph 6 of Attachment 2;

C. for the **“Implementation Progress Sheet 3: Presentation Data – Services” (IPS 3)**, which is required only where:

- 1) Operations have commenced; or
- 2) the Organisation has, with the approval of the Commonwealth, commenced the delivery of services prior to commencing Operations (**Early Services**), which Early Services will transition to be part of the Operations provided by the GP Super Clinic once Practical Completion is achieved and the Operations commence,

information including:

- 3) the number of GP attendances provided; number of nurse delivered services provided; and number of services delivered by allied health professionals; and
- 4) any other details relating to the delivery of services as part of Operations or Early Services;

(ii) in respect of the Trimester IPSs (four-monthly) (as set out in the Calendar at Attachment 3 to this Agreement) the following information:

A. for the **“Implementation Progress Sheet 4: Construction” (IPS 4)** information relating to the progress of the Works during the reporting period, including:

- 1) site photographs; and

- 2) an updated Gantt Chart or similar chart showing progress against the Construction Program approved by the Commonwealth as part of the Project Plan pursuant to clause 23.1; and
- 3) where during the relevant reporting period Practical Completion has been achieved in accordance with clause 25.3, a Works Final Report which must include a comprehensive Report on how the Program Objectives and outcomes of the Project have been supported by the completion of the Works.
- (iii) for the “**Implementation Progress Sheet 5: End of Financial Year**” (IPS 5), which is required only where a financial year has ended during the reporting period, information relating to the management and use of Funds including:
- A. an end-of-financial-year report which must:
- 1) at a minimum include:
- a) a statement identifying any Funds paid by the Commonwealth to the Organisation under this Agreement that were not spent or Committed by the end of the relevant financial year;
- b) a detailed statement of revenue and expenditure in relation to the Funds received and receivable by the Organisation under this Agreement which can be acquitted against the Project Budget approved pursuant to clause 23.1(c)(i), which must include a definitive statement as to whether the financial accounts in relation to the Funds are complete and accurate, and

a statement of current cash at bank;

c) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds; and

d) a copy of the Organisation's annual financial report;

and

2) be prepared in accordance with the Accounting Standards for the relevant financial year and audited by an Approved Auditor.

(iv) for the **"Implementation Progress Sheet 6: Operations" (IPS 6)**, required only once Operations have commenced, information during the reporting period relating to how the Organisation plans, delivers and reviews services to meet the Program Objectives.

7.7 Additional Reports

(a) In addition to paragraph 7.5(a), the Commonwealth may at any time, and from time to time, during the Term of this Agreement or during the terms of the Deed of Consent (where applicable), require the Organisation to provide reports and other information (**Additional Reports**).

(b) Where the Commonwealth requires an Additional Report, it must issue a direction in writing to the Organisation or Operator (where applicable) requiring the Organisation to provide an Additional Report and specifying the Commonwealth's requirements in relation to the:

(i) format;

(ii) content;

(iii) information and substantiating documentation to be included; and

(iv) auditing or certification required (if any),

for that Additional Report.

- (c) The Organisation or Operator must comply with a direction of the Commonwealth issued under clause 7.7(b) by providing the requested Additional Report to the Commonwealth within 5 Business Days of receiving the Commonwealth's direction or within such longer period as the Commonwealth may allow.

7.8 Retention of records and information

The Organisation must retain its financial records and other information referred to in this clause 7 for a period of seven years after its creation or such longer period as may be required by Law.

8. Liaison

8.1 Commonwealth's Project Contact

The Organisation must liaise with and report to the Commonwealth's Project Contact, as nominated in Item 8 of Schedule 1 in relation to the Project or Operations, and as reasonably required by the Commonwealth's Project Contact for the purposes of this Agreement or the Deed of Consent, where applicable.

8.2 Provision of information

Upon request, the Organisation must within the timeframe stipulated in the request, or promptly if no timeframe is stipulated in the request, provide all information in relation to the Project, the Operations, the Organisation or, where applicable, the Operator as requested by the Commonwealth Project Contact for the purposes of this Agreement or the Deed of Consent, where applicable, including for monitoring and evaluation purposes.

9. Access to premises, records and documents

9.1 Access to records and Materials

- (a) The Organisation acknowledges and agrees that the Commonwealth and any persons nominated by the Commonwealth may, at reasonable times and on giving reasonable notice to the Organisation:
 - (i) access and inspect the Organisation's premises to the extent relevant to:
 - A. the performance of this Agreement, or the Deed of Consent (if applicable), the Works or the Operations;
 - B. the Organisation's compliance with its obligations under the Agreement, the Deed of

Consent (if applicable) or any Operational Contract; or

- C. any other matters reasonably determined by the Commonwealth to be relevant to the performance of the Organisation's obligations under the Agreement, the Deed of Consent (if applicable) or any Operational Contract;
- (ii) access and inspect the Property or any part of the land on which the Property is situated, or buildings, facilities or improvements within or associated with the Property, the Works (subject to the Organisation's reasonable requirements for safety and security) and, to the extent possible, the Operations;
- (iii) access and inspect any Assets, wherever they may be located;
- (iv) require the Organisation (and its employees, agents, Subcontractors and Tenants) to provide records and information in a data format and storage medium accessible by the Commonwealth;
- (v) inspect and copy documentation, books and records, however stored, in the custody or under control of the Organisation (or their employees, agents, Subcontractors and Tenants) relevant to:
- A. any or all, of the following: this Agreement, the Deed of Consent, any Operational Contract, the Project, the Works or the Operations; or
- B. any transaction, dealing, arrangement or understanding between, or involving, the Organisation and an Operational Contractor either directly or indirectly;
- (vi) require assistance in respect of any inquiry into or concerning the Works, the Project, the Operations, the Agreement, the Deed of Consent (if applicable), an Operational Contract or a Tenant Lease. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.

- (b) The Organisation must promptly comply with all requirements of the Commonwealth under this clause 9.1.

9.2 Access to hardware and software

The Organisation must provide the Commonwealth or its nominees with access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under clause 9.1 and provide the Commonwealth with any reasonable assistance requested by it to use that hardware and software.

9.3 Costs

- (a) Subject to clause 9.3(b), each Party must bear its own costs of any reviews and/or audits conducted pursuant to this clause 9.
- (b) If an audit or review conducted pursuant to this clause 9 identifies a breach by the Organisation of this Agreement, the Commonwealth may recover its costs of conducting that review or audit as a debt due from the Organisation.

9.4 Auditor-General, Privacy, FOI and Information Commissioners

- (a) The Commonwealth's rights under clauses 9.1 and 9.2 apply equally to the Auditor-General, the Privacy Commissioner, the FOI Commissioner and the Information Commissioner and their delegates, for the purpose of performing the Auditor-General's, Privacy Commissioner's, FOI Commissioner's or Information Commissioner's respective functions or activities.
- (b) The Organisation must do all things necessary to comply with the Auditor-General's, Privacy Commissioner's, FOI Commissioner's or Information Commissioner's or their delegates' requirements, provided such requirements are legally enforceable and within the power of the Auditor-General, Privacy Commissioner, FOI Commissioner or Information Commissioner.

9.5 Access to Documents

- (a) For the purposes of this clause 9.5, "document" and "Commonwealth contract" have the same meaning as in the *Freedom of Information Act 1982*.
- (b) This clause 9.5 applies only if this is a contract which complies with the description of "Commonwealth contract".
- (c) Where the Commonwealth has received a request for access to a document that is created by, or in the possession of, the Organisation, or any subcontractor (including a Subcontractor or Tenant) and which relates to the performance of this Agreement or the Deed of Consent (if applicable) and not to the entry into either

of them, the Commonwealth may at any time by written notice require the Organisation to provide the document to the Commonwealth and the Organisation must, at no additional cost to the Commonwealth, promptly comply with the notice.

9.6 Application of this clause

This clause 9 applies for the duration of this Agreement and for a period of seven years from the termination or expiry of this Agreement.

9.7 Subcontracts

The Organisation must ensure that any Subcontract, Operational Contract, agreement, or lease of the Property (or a part of the Property) entered into for the purposes of this Agreement contains a clause:

- (a) granting access rights on terms equivalent to clauses 9.1 to 9.6 (inclusive); and
- (b) that will otherwise enable the Organisation to comply with its obligations under clauses 9.1 to 9.5 (inclusive).

10. Project Material and Intellectual Property

10.1 Ownership rights in Project Material

All rights in relation to Intellectual Property comprised in the Project Material will vest, upon creation, in the Organisation.

10.2 Licensing of rights in Reports

The Organisation grants, and must ensure all third parties holding rights in relation to Intellectual Property comprised in Reports grant, to the Commonwealth a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, copy, modify, adapt and exploit the Reports for Commonwealth purposes.

10.3 Licensing of rights in other Project Material

The Organisation grants, and must ensure all third parties holding rights in relation to Intellectual Property comprised in Project Material (other than Reports) grant, to the Commonwealth a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub-licence) to use that Project Material for the purposes of the Project and the Program or for other purposes connected with the operation of this Agreement.

10.4 Project Material

On termination or expiry of this Agreement, or earlier if requested by the Commonwealth, the Organisation must deliver a copy of all Project Material

then in existence to the Commonwealth in an agreed format, or as otherwise directed by the Commonwealth.

10.5 Intellectual Property warranty

- (a) The Organisation warrants that anything done by the Organisation in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property rights of any person.
- (b) The Organisation further warrants that the Commonwealth will not, at any time, be infringing the Intellectual Property rights of any person when it undertakes an activity allowed for under this Agreement or uses Project Material in a manner consistent with the licences granted, or to be granted, to the Commonwealth under this clause 10.

10.6 Commonwealth Material

Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth. The Commonwealth grants the Organisation a royalty-free, world-wide, non-exclusive licence to use, copy and modify the Commonwealth Material for the purposes of the Project. The Organisation must ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions specified by the Commonwealth from time to time.

10.7 Moral Rights

- (a) The Organisation must, unless otherwise agreed by the Commonwealth in writing, ensure that each person who:
 - (i) has been involved in the performance of work under this Agreement; or
 - (ii) is or will be, an owner or licensor of any Intellectual Property that is to be licensed to the Commonwealth in accordance with this Agreement,

provides a written consent to the Commonwealth conducting any act that the Commonwealth is licensed to conduct under this Agreement which would otherwise infringe the Moral Rights held by that person (**Consent**).

- (b) The Consent referred to in clause 10.7(a) shall be perpetual, irrevocable, and unconditional in nature.

11. Acknowledgement of Commonwealth support

The Organisation must acknowledge the financial and other support it has received from the Commonwealth:

- (a) in all publications, promotional and advertising materials, public announcements, signs or plaques displayed at the Property, and activities by it or on its behalf in relation to the Project, the Operations, or any products, processes or inventions developed as a result of the Project;
- (b) by inviting representatives of the Commonwealth (including the Minister) to any formal public opening of the GP Super Clinic operating from the Property and to any subsequent formal functions held at the GP Super Clinic;
- (c) in respect of publications, promotional and advertising materials, public announcements, signs, plaques, website use or as otherwise directed by the Commonwealth, acknowledgement must be in a form, and include content, approved by the Commonwealth prior to its use;

and otherwise at the times and in the manner as the Commonwealth directs from time to time.

12. Step in rights

12.1 Rights to step in

Without prejudice to any other right or remedy that the Commonwealth may have under this Agreement, under any Law or otherwise, if, in the Commonwealth's opinion, the Organisation has breached, or is in breach of, any obligation under this Agreement, the Commonwealth may (itself or through a nominee of the Commonwealth):

- (a) step-in and take control or management of part or the whole of the Project or Operations (including by performing any or all of the Organisation's obligations under this Agreement which relate to the Project or Operations); or
- (b) make any other arrangements considered necessary by the Commonwealth to complete all or part of the Project or perform the Operations or to otherwise ensure the completion of all the Organisation's obligations under this Agreement which relate to the Project and/or Operations.

12.2 Organisation's obligations on step in

- (a) The Organisation must do everything necessary to give effect to the Commonwealth's rights under clause 12.1, in accordance with the directions of the Commonwealth including, but not limited to:
- (i) novating or assigning to the Commonwealth, or its nominee, any contracts with third parties relating to the Project or the Operations (including, but not limited to Subcontracts and Operational Contracts);
 - (ii) novating this Agreement to a party nominated by the Commonwealth;
 - (iii) authorising the Commonwealth, or its nominee, to deal with all Funds held by the Organisation, including authorising the Commonwealth or its nominee to act as a signatory to the Organisation's bank account in which Funds are to be held in accordance with clause 6.3(a);
 - (iv) assigning to the Commonwealth, or to a party nominated by the Commonwealth, any leases or licences relating to the Project or Operations that are, in the Commonwealth's opinion, required for the due and proper completion of the Project;
 - (v) providing to the Commonwealth, or to a party nominated by the Commonwealth, unfettered access to the Property and any land, buildings or improvements on which, or in which, the Property is located for the purposes of exercising rights under clause 12.1;
 - (vi) without limiting paragraph (v), granting an irrevocable non-exclusive licence to the Commonwealth, or to a party nominated by the Commonwealth, to:
 - A. pass or repass over common areas in the Property, and that right shall extend to patients and invitees of the GP Super Clinic;
 - B. have full and free access to all utilities and other services in the Property (or in the building, facility or improvement within which the Property is located) as may be required for the Designated Use; and
 - C. have full and free access to car parking on the Property (or on or adjacent to the land in which the Property is located) as may be required from time to time;

and

- (vii) at the Commonwealth's discretion, repaying to the Commonwealth, or paying to the Commonwealth's nominee, all Uncommitted Funds or such part of the Uncommitted Funds identified by the Commonwealth, within the timeframes specified by the Commonwealth or, if no timeframes are specified, promptly.
- (b) For the purposes of this clause 12 **Uncommitted Funds** means all Funds that are, at the time of the Commonwealth's request, unspent or uncommitted, or cannot be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Agreement.
- (c) Without limiting or affecting the Commonwealth's rights under this Agreement, the Commonwealth may recover all its costs associated with exercising its rights under this clause 12 (including cost associated with recovering any amount of Uncommitted Funds from the Organisation) as a debt due from the Organisation.
- (d) The Commonwealth will have no liability whatsoever to the Organisation (or to any third party) arising out of or in connection with the exercise of the Commonwealth's rights under this clause 12.
- (e) The Organisation releases the Commonwealth from, and indemnifies and will continue to indemnify, the Commonwealth against all:
 - (i) loss, damage, costs and expenses suffered or incurred by the Commonwealth, including as the result of claim made in relation to:
 - A. loss of or damage to third party property; or
 - B. the injury, illness or death of a third party;
 - (ii) loss of or damage to Commonwealth property; or
 - (iii) loss, damage, costs and expenses suffered or incurred by the Commonwealth in dealing with any claim against the Commonwealth, 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 out of or in connection with the exercise of the Commonwealth's rights under this clause 12.

- (f) The Organisation's liability to indemnify the Commonwealth under clause 12.2(e) will be reduced proportionately to the extent that any negligent or unlawful act or omission or wilful misconduct on the Commonwealth's part contributed to the relevant loss, damage, expense, or liability.

12.3 Step In Rights confined to the Project and the Operations

Notwithstanding anything else in this Agreement, the Parties agree and acknowledge that:

- (a) the Commonwealth's step-in rights under this clause 12 may be exercised by the Commonwealth, or its nominee, only in respect of the Project and/or the Operations and access to the Property, and the other rights and interests in relation to the Property specified in clause 12.2 (a) (vi), as necessary to conduct the Project or Operations; and
- (b) that the Commonwealth must use its best endeavours to ensure it does not interfere or cause interference to any other activity not part of the Project or the Operations undertaken on the Property in the course of exercising such rights.

13. Suspension and termination

13.1 Termination for default

If:

- (a) the Organisation fails to provide evidence to the Commonwealth of the Organisation having tenure over the Property that is satisfactory and the Commonwealth within the timeframes specified in clause 4.3(a);
- (b) the Organisation fails to comply with any timeframe under this Agreement which is stated to be of the essence;
- (c) the Organisation does not commence the Works within the timeframe specified in clause 23.10(c) of this Agreement;
- (d) the Organisation fails to remedy its failure to comply with any term or condition of this Agreement (which is not referred to in paragraphs (a) to (c) above) within 10 Business Days (or such longer period as the Commonwealth may at its absolute discretion allow) of receiving notice from the Commonwealth requiring the Organisation to do so;
- (e) the Commonwealth is satisfied on reasonable grounds that any statement, representation or warranty made by the Organisation is

incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;

- (f) the Commonwealth is satisfied on reasonable grounds that a Report given by the Organisation is significantly misleading or substantially incomplete or inaccurate;
- (g) the Organisation:
 - (i) becomes or is likely to become insolvent;
 - (ii) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of debenture holders or creditors; or
 - (iii) suffers any execution against its assets which has or will have an adverse effect on its ability to perform the Agreement;
- (h) the Organisation breaches any condition of any other funding agreement between the Organisation and the Commonwealth;
- (i) the Organisation, by notice in writing given to the Commonwealth, withdraws from this Agreement; or
- (j) the Commonwealth considers it appropriate for any other reason,

the Commonwealth may by written notice to the Organisation, immediately require the Organisation to suspend dealings with the Funds, in whole or in part, in relation to the Project and/or Operations or terminate this Agreement in its entirety (or both as the case may be).

13.2 Liability of the Commonwealth

- (a) If this Agreement is terminated or Funds for the Project are suspended in accordance with clause 13.1(j), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Organisation, which are directly attributable to the termination or suspension.
- (b) Without limiting any other right the Commonwealth may have under this Agreement or at Law or equity, including rights to recover the Funds, the Commonwealth will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement at the date of termination or remaining unpaid in relation to the Project on discontinuance of the Project.

- (c) Except as provided in this clause, the Commonwealth will not be liable to the Organisation for termination of this Agreement in accordance with clause 13.1(j).

13.3 Dealing with Funds on termination

- (a) At all times after the termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Organisation must only deal with the Funds in accordance with the directions of the Commonwealth and must cease all other dealings with the Funds. The directions of the Commonwealth may be given at any time and from time to time after the termination or during any period of suspension. If the Commonwealth does not provide any directions the Organisation must not deal with the Funds.
- (b) The Commonwealth may end the suspension of dealings with the Funds by written notice to the Organisation, subject to such preconditions (including variations to this Agreement) which the Commonwealth may require.
- (c) The Commonwealth will not be obliged to pay any part of the Funds to the Organisation after the termination of this Agreement or during any period of suspension of dealings with the Funds.

13.4 Deemed termination for convenience

If a purported termination for cause by the Commonwealth under any of subclause 13.1(d) to 13.1(i) (inclusive) is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth will be deemed to be a termination for convenience under clause 13.1(j), which termination has effect from the date of the notice of termination referred to in clause 13.1, and the Organisation's sole rights in such circumstances will be those set out in clause 13.2(a).

14. Repayment of Funds

14.1 Repayment of Funds

If:

- (a) on Practical Completion or on expiry or any earlier termination of this Agreement, any or all of the Funds:
 - (i) have not been spent or Committed in accordance with this Agreement; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Organisation and the Project Budget approved by the Commonwealth pursuant to clause 23.1(c)(i), be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Agreement; or

- (b) at any time the Commonwealth forms the reasonable opinion that any Funds have been used, spent or Committed by the Organisation other than in accordance with this Agreement,

the Commonwealth may by written notice to the Organisation:

- (c) require the Organisation to repay that part of the Funds, and the Organisation must repay to the Commonwealth the amount set out in the notice, within 20 Business Days of receipt of the notice;
- (d) deduct an equivalent amount from the Funds payable to the Organisation pursuant to this Agreement or from any other amounts payable to the Organisation under any other agreement with the Commonwealth; or
- (e) require the Organisation to use all or part of those Funds as the Commonwealth sees fit.

14.2 Failure to repay Funds

- (a) If the Organisation fails to repay the Funds in accordance with a notice issued under clause 14.1(c) or fails to use Funds as directed under clause 14.1(e):
 - (i) the Organisation must pay the Commonwealth Interest on the amount set out in the notice from the date it was due, for the period it remains unpaid; and
 - (ii) the amount set out in the notice, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Organisation.
- (b) The Organisation acknowledges that Interest payable under clause 14.2(a) represents a reasonable pre-estimate solely in respect of the loss incurred by the Commonwealth as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.

15. Indemnities

15.1 Organisation agrees to indemnify the Commonwealth

The Organisation releases the Commonwealth from and indemnifies and continues to indemnify the Commonwealth against any:

- (a) loss, damage, costs and expenses suffered or incurred by the Commonwealth, including as the result of claim made in relation to:
 - (i) loss of or damage to third party property; or

- (ii) the injury, illness or death of a third party;
- (b) loss of or damage to Commonwealth property; or
- (c) loss, damage, costs and expenses suffered or incurred by the Commonwealth in dealing with any claim against the Commonwealth, 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 act or omission by the Organisation, or any of its employees, agents, or Subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (e) any breach by the Organisation or any of its employees, agents, or Subcontractors of obligations or warranties under this Agreement;
- (f) any use or disclosure by the Organisation, its officers, employees, agents or Subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (g) the use by the Commonwealth of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

15.2 Proportional reduction of liability

The Organisation's liability to indemnify the Commonwealth under clause 15.1 will be reduced proportionately to the extent that any fault on the Commonwealth's part contributed to the relevant loss, damage, expense, or liability.

15.3 Commonwealth's right to be indemnified is additional to other rights

The Commonwealth's right to be indemnified under clause 15.1 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

15.4 Definition of fault

In this clause 15, **fault** means any negligent or unlawful act or omission or wilful misconduct.

16. Insurance

16.1 Obligation to obtain and maintain insurance

- (a) Prior to commencing the Works:
 - (i) the Organisation must obtain (and ensure its Subcontractors maintain) the insurances specified in Item 11 of Schedule 1 (which must be obtained on the terms specified in Item 11.1 of Schedule 1); and
 - (ii) all other appropriate types and amounts of insurance to cover the Organisation's (or its Subcontractors' (as the case may be)) activities under or in connection with this Agreement. Unless specified otherwise in Item 11 of Schedule 1, the Organisation must maintain these insurances until Practical Completion of the Works.
- (b) In accordance with clause 25.2(a)(iii), prior to the commencement of the Operations, the Organisation must obtain (and ensure its subcontractors and Tenants maintain) the insurances specified in Item 11.2 of Schedule 1 (which must be obtained on the terms specified in Item 11.2 of Schedule 1) and all other appropriate types and amounts of insurance to cover the Organisation's (or its subcontractors' and Tenants' (as the case may be)) activities under or in connection with this Agreement. Unless specified otherwise in Item 11 of Schedule 1, the Organisation must maintain these insurances throughout the Designated Use Period.

16.2 Proceeds of insurance

If during the term of this Agreement:

- (a) the Works or the Property (or both as the case may be) are lost, damaged or destroyed by a risk against which the Organisation is required under this Agreement to be insured; and
- (b) the payment of insurance moneys under the relevant insurance policy has not been refused in whole as a direct consequence of any act or omission of the Commonwealth in breach of this Agreement,

then the Organisation must:

- (c) claim and obtain payment of any insurance moneys to which it is entitled under the relevant insurance policy in respect of the relevant loss, damage or destruction;

- (d) apply all relevant insurance proceeds in:
 - (i) if required by the Commonwealth, reinstating the Works or the Property (or both as the case may be); or
 - (ii) otherwise, paying the Commonwealth:
 - A. an amount calculated in accordance with Item 15 of Schedule 1; or
 - B. where the insurance proceeds are less than the amount calculated in accordance with Item 15 of Schedule 1, the total insurance proceeds.

16.3 Copies of insurance

- (a) On an annual basis and as soon as practicable after renewal of the relevant insurance:
 - (i) The Organisation must provide the Commonwealth with the certificates of currency relating to the insurances required to be held during construction of the Works, as set out in Item 11.1 of Schedule 1;
 - (ii) The Organisation must provide the Commonwealth with the certificates of currency relating to the insurances required to be held during the Designated Use Period, as set out in Item 11.2 of Schedule 1; and
 - (iii) The Organisation must provide the Commonwealth with a certification that the Organisation has verified the currency of the insurances held by each health professional working at the Property as required under Item 11.2 of Schedule 1.
- (b) The Organisation must provide the Commonwealth on request certificates of currency relating to any other relevant insurance policies.

17. Confidential Information

17.1 Organisation not to disclose

- (a) The Organisation must not disclose to any person other than the Commonwealth any Confidential Information without prior approval in writing from the Commonwealth save that the Organisation may disclose Confidential Information to an Operator who has been approved in accordance with clause 30.1.

- (b) The Commonwealth may at any time by notice in writing to the Organisation, require the Organisation to give, and to arrange for its officers, employees, agents and Subcontractors undertaking activities under or in connection with the performance of this Agreement to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Confidential Information. The Organisation must promptly comply with all such requirements of the Commonwealth.

17.2 Commonwealth disclosure

The Organisation acknowledges and agrees that the Commonwealth may disclose all information relevant to this Agreement that is confidential to the Organisation to any person:

- (a) to the extent required by Law or by a lawful requirement of any Proper Authority;
- (b) if required in connection with legal proceedings;
- (c) for public accountability reasons, including disclosure on request to other government agencies, and a request for information by Parliament or a Parliamentary Committee or a Commonwealth Minister; or
- (d) for any other requirement of the Commonwealth relevant to the administration of this Agreement.

18. Personal Information

18.1 When does this clause apply?

This clause 18 applies only if the Organisation deals with Personal Information during the Works and for the period of the Designated Use.

18.2 Other definitions relating to Personal Information

In this clause 18, the terms **agency** and **Information Privacy Principles** (or **IPPs**) have the same meaning as they have in section 6 of the Privacy Act, and **Subcontract** and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

18.3 Organisation's obligations about Personal Information

The Organisation agrees that:

- (a) if it obtains Personal Information while conducting the Project (including the Operations) or otherwise performing its obligations under this Agreement it will use or disclose that Personal Information only for the purposes of this Agreement;

- (b) it will comply with the Information Privacy Principles as if the Organisation were an agency under the Privacy Act; and
- (c) it will otherwise comply with the Privacy Act.

18.4 Subcontractors, Operators and Tenants

The Organisation must ensure that any Subcontract, Operational Contract or Tenant Lease entered into in relation to this Agreement places the same obligations about Personal Information on the Subcontractor, an Operator under an Operational Contract, or a Tenant as this clause 18 places on the Organisation, and must ensure that the Operator includes in any Subcontract, Operational Contract or Tenant Lease a clause equivalent to this clause.

18.5 Privacy Impact Assessments

The Organisation must ensure that a Privacy Impact Assessment is conducted by independent external assessors in accordance with the Office of Privacy Commissioner's Privacy Impact Assessment Guide.

18.6 System Security Assessment

The Organisation must, following implementation of the information management/technology systems, ensure that a System Security Assessment is conducted by independent external assessors to assess the implementation of controls to mitigate the risk identified within a security Threat and Risk Assessment.

18.7 Authentication Arrangements

The Organisation must ensure that authentication arrangements implemented in the Property is guided by the National eAuthentication Framework.

18.8 National E-Health Transition Authority

The Organisation must adhere to the National E-Health Transition Authority specifications and Standards Australia Health Informatics Standards within 24 months of publication.

18.9 Personally Controlled Electronic Health Record

In the event that a Personally Controlled Electronic Health Record becomes operational, the Organisation must ensure the use of a Personally Controlled Electronic Health Record for consumers who have given consent to do so, within 24 months of the Personally Controlled Electronic Health Record becoming operational.

19. Compliance with Laws and policies

19.1 Obligations

The Organisation must, in carrying out this Agreement, comply with:

- (a) the provisions of any relevant Laws statutes, regulations, by-laws, and requirements of any Proper Authority; and
- (b) any policies notified to the Organisation in writing by the Commonwealth.

19.2 Application of clause 29

If the Funding provided under this Agreement is:

- (a) \$5 million or more; and
- (b) represents at least 50% of the total construction value of the Works,

then the Organisation must comply with clause 29. In all other cases, the Organisation must use reasonable endeavours to comply with clause 29.

20. Disputes

20.1 Dispute resolution

- (a) Subject to clause 20.2, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement or the Deed of Consent, which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.
- (b) The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
 - (i) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - (ii) the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution; and
 - (iii) if within 30 Business Days from the date of the notice issued under paragraph 20.1(b)(i):
 - A. there is no resolution of the dispute;

- B. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- C. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,

then, either Party may commence legal proceedings.

20.2 When clause 20.1 does not apply

Clause 20.1 does not apply where:

- (a) a Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by the Commonwealth under, or purportedly under, clauses 6, 9, 13 or 14; or
- (c) a Proper Authority is investigating a breach or suspected breach of the Law by the Organisation.

20.3 Obligations continue

- (a) Subject to clause 20.3(b), despite the existence of a dispute, both Parties must continue to perform their respective obligations under this Agreement or, where applicable, the Deed of Consent.
- (b) If directed in writing by the Commonwealth to do so, the Organisation must cease performing the obligations of the Organisation under this Agreement or, where applicable, the Deed of Consent which are specified in the Commonwealth's notice until the Commonwealth issues a notice to the Organisation to resume performance of those obligations or this Agreement or the Deed of Consent is terminated.

21. Taxes, duties and government charges

21.1 Definitions

In this clause, **Adjustment Event**, **Adjustment Note**, **Input Tax Credits**, **Recipient Created Tax Invoice**, **Registered**, **Tax Invoice** and **Taxable Supply** have the meaning given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999 (the GST Act)*.

21.2 Responsibility for Taxes

Subject to this clause, all taxes, duties and government charges (**Taxes**) imposed or levied in Australia or overseas in connection with this Agreement or the payment of the Funding must be paid by the Organisation, or as the Organisation might arrange.

21.3 Funding includes GST

The Organisation acknowledges and agrees that the Funds payable under this Agreement include an amount in respect of GST on any Taxable Supplies under this Agreement.

21.4 Input Tax Credits

The Organisation is responsible for claiming all Input Tax Credits to which it is entitled related to this Agreement.

21.5 Tax Invoice

If any Taxable Supplies are made under this Agreement, the Organisation must provide the Commonwealth with a Tax Invoice within 20 Business Days of the Taxable Supply being made.

22. General

22.1 Notices

- (a) A Party giving notice under this Agreement or, where applicable, the Deed of Consent, must do so in writing, including by facsimile, that is:
- (i) directed to the Party's addressee specified in Item 8 of Schedule 1; and
 - (ii) hand delivered or sent by pre-paid post or facsimile to that address.
- (b) A notice given in accordance with clause 22.1 is received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post on the third Business Day after the date of posting; and
 - (iii) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

22.2 Survival of provisions

Termination or expiry of this Agreement for any reason does not extinguish or otherwise affect:

- (a) any rights of the Commonwealth or the Organisation against the other which:
 - (i) accrued prior to the time of termination or expiry; or
 - (ii) otherwise relate to or may arise at any future time from any breach of non-observance of obligations under this Agreement which arose prior to the time of termination or expiry; and
- (b) the provisions of this Agreement which by their nature survive expiry or termination, including clauses 7.2, 7.8, 9, 10, 13.2, 13.3, 14, 15, 16, 18, 22.9 and 25.7.

22.3 Jurisdiction

This Agreement is to be interpreted in accordance with the Laws of the jurisdiction in which the Project is undertaken. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

22.4 Entire Agreement

To the extent permitted by Law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement, negotiations, understanding, representations or communications of the Parties.

22.5 Variation and Waiver

- (a) This Agreement or, where applicable, the Deed of Consent may only be varied by a document signed by each party.
- (b) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Agreement.

- (c) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (d) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

22.6 No Obligation regarding Review or Approvals

- (a) The Commonwealth does not assume or owe any duty of care to the Organisation to review, advise on or approve, or in reviewing, actions, documents, Reports or information submitted or proposed by the Organisation to the Commonwealth, for errors, omissions or compliance with the Agreement.
- (b) The Commonwealth's:
 - (i) review of, advice or comments upon, consent to or rejection of, or failure to review or comment upon or consent or permission to or reject, any proposed action, documents, Reports or information submitted or proposed to it by the Organisation;
 - (ii) issue of any other direction under this Agreement; or
 - (iii) acts or omissions or those of a party acting on behalf of the Commonwealth in relation to actions documents, Reports or information submitted or proposed to it by the Organisation,

will not:

 - (iv) relieve the Organisation from, or alter or affect, the Organisation's liabilities or responsibilities whether under the Agreement or otherwise according to law; or
 - (v) prejudice the Commonwealth's rights against the Organisation whether under the Agreement or otherwise according to law.

22.7 Illegality

If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law in any jurisdiction, that will not affect or impair the legality, validity or enforceability of any other provision of this Agreement, or the legality, validity or enforceability of that provision or any other provision of this Agreement in any other jurisdiction.

22.8 Novation and assignment

Except as expressly provided for under this Agreement, a Party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of the other Party.

22.9 Negation of employment, partnership and agency

- (a) The Organisation is not by virtue of this Agreement, or for any purpose, an employee, partner or agent of the Commonwealth, or invested with any power or authority to bind or represent the Commonwealth.
- (b) The Organisation must not represent itself and must ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

Part B: Provisions relating to the Works

23. Planning, design and performance of the Works

23.1 Project Plans and Budgets

- (a) The Organisation must submit to the Commonwealth each Project Plan and Budget detailed in this clause 23.1 on or before the relevant date specified in the Deliverables and Milestones Schedule.
- (b) The Organisation must ensure that each Project Plan and Project Budget:
 - (i) has been prepared diligently, effectively and to a high professional standard;
 - (ii) will, if implemented in accordance with this Agreement, ensure that all timeframes arising under this Agreement will be met and the Works will meet all requirements of this Agreement and, in particular, that the Works will be fit for the Designated Use;
 - (iii) is sequentially numbered and dated, and
 - (iv) meets the specific requirements of clauses 23.2 or 23.3 depending on whether the Project Plan and Budget is a Preliminary Project Plan and Budget or a Construction Ready Project Plan and Budget.

- (c) The Commonwealth will review each Project Plan and Budget submitted under clause 23.1(a) and notify the Organisation that either:
- (i) the Project Plan and Budget are acceptable to the Commonwealth (to be clear where the Project Plan and Budget identifies that the Organisation intends to subcontract the Operations of the GP Super Clinic to an Operator pursuant to clause 23.1(a)(vi) acceptance of the Project Plan and Budget does not imply approval of that Operator which approval will only be provided in accordance with clause 30.1(a); or
 - (ii) the Project Plan and Budget, in the Commonwealth's opinion, require amendment.
- (d) On receipt of notification under clause 23.1(c)(i), the Organisation must amend the relevant Project Plan and Budget so as to take into account the Commonwealth's comments and resubmit those documents within 20 Business Days of the date of the Commonwealth's notification for re-consideration by the Commonwealth in accordance with clause 23.1(c).
- (e) Subject to clause 23.1(f), the Organisation must perform the Project and the Operations in accordance with the each Project Plan and Budget once they are acceptable to the Commonwealth.
- (f) Where the Organisation proposes to change the scope, design, timeline, project structure, costs or other material elements set out in an approved Project Plan and Budget, the Organisation must submit to the Commonwealth a revised Project Plan and Budget which must:
- (i) meet the requirements of clause 23.1(b);
 - (ii) include a Risk Management Plan which includes risks associated with achieving the timeline and costs set out in the approved Project Plan and Budget and provides mitigation strategies to address those risks;
 - (iii) identify the proposed changes to the approved Project Plan and Budget and document the rationale for these proposed changes.
- (g) The Commonwealth will review the revised Project Plan and Budget and Risk Management Plan submitted under clause 23.1(f) and notify the Organisation that either:
- (i) the revised Project Plan and Budget is acceptable to the Commonwealth; or

- (ii) the revised Project Plan and Budget, in the Commonwealth's opinion, require amendment in order to meet the requirements specified in clause 23.1(f).
- (h) On receipt of notification under clause 23.1(g)(ii), the Organisation must amend the revised Project Plan and Budget so as to take into account the Commonwealth's comments and resubmit those documents within 20 Business Days of the date of the Commonwealth's notification for re-consideration by the Commonwealth in accordance with clause 23.1(g).
- (i) The Organisation must perform the Project in accordance with the revised Project Plan and Budget once they are acceptable to the Commonwealth in accordance with clause 23.1(g)(i).

23.2 Preliminary Project Plan and Budget

- (a) The Preliminary Project Plan and Budget must:
 - (i) document the Works at Schematic Design stage, providing a statement of how and when the Works are to be achieved, by showing the major sub-projects, Milestones, activities and resources required for the Works against a detailed timeline and that will guide the Works (the Construction Program);
 - (ii) identify the sum established by the Organisation as available for the entire project, including the estimated site preparation and construction budget, land costs (including stamp duties on purchase where applicable), costs of furniture, furnishings, and equipment including information management equipment and software, telephony and clinical equipment; financing requirements and costs; fees for professional services; cost of Organisation furnished goods and services; contingency allowance; and similar established or estimated costs associated with the Works;
 - (iii) identify the sum determined by the Organisation as available for the Project and the Operations that can be identified in accordance with the provisions of the National Program Guide regarding Capital Funding, Non-Capital Funding, Recurrent Funding and Relocation Incentive payments;
 - (iv) identify whether borrowings will be sought to complete the Project. In the event the Commonwealth's approval for borrowings will be sought, pursuant to clause 5.1(b), the Preliminary Project Plan and Budget must include:

- A. a Lender's Terms Sheet;
 - B. a valuation prepared by an independent valuer registered with the Australian Valuer's Institute that has regard to a Bill of Quantities prepared by the Quantity Surveyor; and
 - C. a Cash Flow Projection for the first three (3) years of Operations, in a form nominated by the Commonwealth.
- (v) identify whether the Organisation intends to subcontract the Operations of the GP Super Clinic to a third party Operator and, if so, specify the complete details of the Operator to the Commonwealth and the proposed Operational Contracting arrangements so that the proposed Operational Contract will comply with the requirements of clause 31;
 - (vi) provide information on the GP Super Clinic's likely Tenancy mix; and
 - (vii) include a Risk Management Plan for the Project.

23.3 Construction Ready Project Plan and Budget

- (a) The Construction Ready Project Plan and Budget must:
 - (i) update the Preliminary Project Plan documenting the changes (if any), including those required as a result of Approvals from relevant authorities, to the site preparation and construction timeframe, site plans including ingress and egress arrangements for pedestrians and motor vehicles, floor plans, parking arrangements, Milestones, activities, resources, etc and documenting sufficient detail and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity;
 - (ii) update the Preliminary Project Budget, further detailing actual costs and refining estimated costs associated with the Works including a Bill of Quantities prepared by the Quantity Surveyor;
 - (iii) update the Preliminary Project Budget, further detailing actual costs and refining estimated costs associated with the Project and the Operations that can be identified in accordance with the provisions of the National Program Guide regarding Capital Works Funding, Non-Capital

Works Funding, Recurrent Funding and Relocation
Incentive Payments; and

- (iv) include a Risk Management Plan for the Project;
- (v) any further revisions of the Project Plan and Budget that are requested by the Commonwealth.

23.4 Project Documents

- (a) The Organisation must develop, prepare and maintain copies of all documents necessary to complete the Works in accordance with this Agreement, in order to ensure the Works are, on completion, fit for use for the Designated Use, throughout the Designated Use Period.
- (b) The Organisation must deliver the Project Documents, comprising:
 - (i) drawings and specifications for the Works which contain sufficient details and definition to enable a subcontractor to carry out the Works;
 - (ii) a floor plan and, where appropriate, a site plan including access arrangements for pedestrians and motor vehicles where relevant, car-parking arrangements where relevant; and
 - (iii) a Risk Management Plan,to the Commonwealth no later than the date specified in the Deliverables and Milestones Schedule.
- (c) Without limiting or affecting the Organisation's obligations under this Agreement, the Organisation must make copies of the Project Documents available to the Commonwealth for inspection and audit in accordance with clause 9.

23.5 Design of the Works

The Organisation is responsible for the design of the Works and must ensure the design of the Works:

- (a) is conducted with the level of skill and care of a prudent and competent design professional, being a registered and accredited architect, unless the Commonwealth otherwise approves;
- (b) without limiting or affecting the Organisation's other obligations under this Agreement, complies with the regulatory requirements of the relevant State or Territory and local government in the jurisdiction which the Works are to be conducted;

- (c) where the Property (in whole or in part), or building from which the Operations will be undertaken, may be used for training purposes at any time during the Designated Use Period, takes into account the standards for training posts developed by the Royal Australia College of General Practitioners or the Australian College of Rural and Remote Medicine as they are relevant (or both as the case may be);
- (d) complies with all Laws and required Approvals;
- (e) is such that the Funds and all other contributions made or received by the Organisation will be sufficient for the completion of the Works (clause 6.5 requires the Organisation to warrant that the Funds, together with all other contributions made or received by the Organisation will be sufficient to ensure the completion of the Works);
- (f) will ensure that the Works are fit for the purpose of use for the Designated Use on and from the Commencement of Operations, and throughout the Designated Use Period; and
- (g) will ensure that a Certificate of Fitness for Occupancy and Use will be issued in respect of the Works on their completion.

23.6 Tender Plan

- (a) The Organisation must prepare a Tender Plan that documents the process to procure an appropriately qualified building and construction Subcontractor to carry out that part of the Works relating to building, construction and fit-out activities. To be clear, this includes a design and construction Subcontractor but not a Subcontractor who is engaged solely for design consultancy or project management services. The Tender Plan must document timeframe, scope, terms and conditions (including proposed contract) and method for selecting a builder for the Works.
- (b) The Organisation must develop the Tender Plan in accordance with the following principles:
 - (i) a tender must be either an open, public tender or a select tender process;
 - (ii) where a select tender process is used, not less than three (3) quotations must be sought;
 - (iii) the tender must be conducted fairly and transparently in accordance with commonly accepted principles of probity and in accordance with industry standards and practice; and

- (iv) Value for Money must be the paramount principle applied by the Organisation in assessing tenders received and selecting a successful tenderer.
- (c) Successful tenderers must be selected by the Organisation on the basis of the Value for Money the tendered offer provides.
- (d) The Organisation must provide the Tender Plan to the Commonwealth no later than the date specified in the Deliverables and Milestone Schedule.

23.7 Performance of the Works

- (a) The Organisation must:
 - (i) appoint a Project Manager to supervise the Works and to provide certification regarding the conduct of the Works as and if required to do so by the Commonwealth (or ensure that a Project Manager is so appointed);
 - (ii) appoint a Superintendent (or ensure that a Superintendent is appointed) pursuant to the Subcontract in accordance with clause 23.8(d) to supervise all day-to-day onsite Works operations carried out at the Property, and manage the short-term Works schedule, including quality control and coordinate subcontractors;
 - (iii) appoint a Quantity Surveyor to supervise and advise on decisions in relation to the management of the Project, including estimating (such as producing the bill of quantities), cost control, managing the Works contract and the procurement of subcontractors and suppliers, contract management, including regular valuations, control of variations, contract administration and the assessment of claims;
 - (iv) comply with the timeframes (if any) specified in the approved Project Plan and otherwise comply with the timeframes specified in the Deliverables and Milestones Schedule for completion of the Works and the Project more generally; and
 - (v) ensure that the Works are carried out:
 - A. in accordance with the Approvals for the Works;
 - B. in accordance with the approved Project Plan and Project Budget;

- C. in accordance with the requirements and standards of all Laws applicable to the Works;
- D. diligently, effectively and to a high professional standard; and
- E. so as to ensure that the Works will be fit for the Designated Use.

23.8 Subcontracting the Works

- (a) The Organisation must undertake a competitive process in accordance with the Tender Plan to procure one or more appropriately qualified Subcontractors to carry out that part of the Works under contracts relating to:
 - (i) building and construction of the base building part of the Works (including design where relevant);
 - (ii) building, construction and fit-out of the Works (including design where relevant); and
 - (iii) fit-out of the Works (including design where relevant),
- (b) A Building, Construction or Fit-Out Contract includes a contract where design is undertaken as part of the building and construction contract (for example a design and construct contract) but not a contract where a Subcontractor is engaged only for design, consultancy and/or project management services in relation to the Works.
- (c) The Organisation must undertake the competitive procurement process referred to in clause 23.8(a) in accordance with the following principles:
 - (i) a tender must be either an open, public tender or a select tender process;
 - (ii) where a select tender process is used, not less than three (3) quotations must be sought;
 - (iii) the tender must be conducted fairly and transparently in accordance with commonly accepted principles of probity and in accordance with industry standards and practice;
 - (iv) the successful tenderer must be selected by the Organisation on the basis of the Value for Money the tendered offer provides; and

- (v) Value for Money must be the paramount principle applied by the Organisation in assessing tenders received and selecting a successful tenderer.
- (d) The Organisation must not enter into a Subcontract of the type described in clause 23.8(a) unless and until the Commonwealth gives the Organisation notice in writing that it has received, reviewed and has no objection to, a Procurement Report signed by a Director of the Organisation:
 - (i) detailing the type of competitive procurement process undertaken (i.e. open, public tender or select tender);
 - (ii) detailing copies of the Tender Documents;
 - (iii) detailing the name, address and builder's licence number of each tenderer who responds to the tender;
 - (iv) detailing the accreditation details of the preferred tenderer;
 - (v) detailing how the principle of Value for Money was applied in selecting the building and construction contractor(s); and
 - (vi) including a copy of the (unexecuted) building, construction or fit-out contract,and that it has no objection to the Building Construction or Fit-Out Contract's terms under clause 23.8(f).
- (e) Where the Commonwealth is not satisfied with the Procurement Report described in clause 23.8(d) or the Building, Construction or Fit-Out Contract referred to in clause 23.8(f):
 - (i) the Commonwealth will notify the Organisation of its objections to the Procurement Report; and
 - (ii) the Organisation must address and resolve the objections, and submit a revised Procurement Report and / or Building, Construction or Fit-Out Contract to the Commonwealth for the Commonwealth's review and advice as to whether or not it has objections to those documents in accordance with clause 23.8(d) or 23.8(f).
- (f) The Organisation must enter into a written contract with the selected building and construction, or fit-out Subcontractors as described in clause 23.8(a) which Building, Construction or Fit-Out Contract must:

- (i) be in a form acceptable to the Commonwealth, and which, unless otherwise permitted by the Commonwealth, will include the following recommended standard construction industry terms and conditions:
- A. AS 2124-1992, or its successor AS4000-1997;
 - B. AS 4300-1995, or its successor AS4902-2000;
 - C. Australian Building Industry Contract ABIC MW-1 2003; or
 - D. Property Council Construction Contract PC-1 1998;
- (ii) be provided to the Commonwealth for review in accordance with clause 23.8(d), and have received the Commonwealth's advice that it does not object to the terms of the Building, Construction or Fit-Out Contract;
- (iii) include provisions that require the building and construction, or fit-out Subcontractors as described in clause 23.8(a) to notify the Organisation (or the Superintendent where applicable):
- A. of any delay that may be likely to the due completion of the Works, within 7 days of becoming aware of the delay; and
 - B. if the delay is likely to exceed more than 1 month in duration, or affect the Date for Practical Completion or the Date for Commencement of Operations by such a period, within a further 7 days from the notification specified in clause 23.8(f)(iii)A, of the nature and likely impact of the delay and measures to be adopted to mitigate that delay;

and

- (iv) otherwise meet the requirements of this Agreement.

23.9 Subcontracting the Works generally

- (a) The Organisation must, promptly on request by the Commonwealth, provide details in writing of all Subcontractors that the Organisation is using, or proposes to use, in relation to conducting the Works.

- (b) Before entering into any Subcontract, the Organisation must ensure that all Subcontracts it enters into in respect of the Project:
 - (i) are consistent with and will not in any way limit or affect the Organisation's compliance with its obligations, or the Commonwealth's rights, under this Agreement, including without limiting the Commonwealth's right to terminate this Agreement pursuant to clause 13;
 - (ii) contain all terms that this Agreement requires those Subcontracts to contain (whether expressly or impliedly), including without limitation rights of novation of any arrangement required to give effect to the Commonwealth's rights under clause 12.1(a) and clause 13;
 - (iii) do not give rise to a Conflict of Interest;
 - (iv) have been entered into on the basis of the Organisation making a Value for Money Assessment and determining that the Subcontract represents Value for Money to the Commonwealth; and
 - (v) contain clauses which place on Subcontractors equivalent obligations to the obligations that are contained in clauses 7.2 and 7.8; and
 - (vi) contain clauses which may be otherwise necessary for the Organisation to comply with any obligations to require a Subcontractor to place obligations on its subcontractors to provide certain information.
- (c) Before entering into any Subcontract, the Organisation must ensure that the Subcontractor provides a Conflict of Interest Declaration on behalf of the Subcontractor itself and its key personnel who will be involved in undertaking work on the Project as required under the Subcontract.

23.10 Commencement of the Works

- (a) The Organisation must obtain the Commonwealth's approval to commence that part of the Works that relates to the construction and/or fit-out of the Works. The Commonwealth may give or withhold its approval at its discretion but will only provide such approval:
 - (i) after the Organisation has delivered, to the Commonwealth's satisfaction, the relevant Deliverables set out in the Deliverables and Milestones Schedule; and

- (ii) if it is satisfied that the Organisation has complied with the requirements set out in clause 23.10(b).
- (b) Without limiting clause 23.10(a) or the Organisation's obligations under clause 23.10, the Organisation must not commence that part of the Works that relates to the construction and/or fit-out of the Works until it has:
 - (i) obtained written approval from the Commonwealth under clause 23.10(a) (which will not be unreasonably withheld);
 - (ii) obtained all relevant Approvals required under clause 3.1 that are necessary to enable the Commencement of the Works;
 - (iii) obtained all insurances required under clause 16.1(a);
 - (iv) complied with its obligations under clause 4.3(a); and
 - (v) provided security to the Commonwealth in accordance with clause 5.1.
- (c) The Organisation must:
 - (i) obtain written approval from the Commonwealth under clause 23.10(a); and
 - (ii) commence that part of the Works that relates to the construction and/or fit-out of the Works,

on or before the date specified for the Commencement of the Works in Item 5 of Schedule 1.

23.11 Inspection of Works

- (a) At all reasonable times during the construction of the Works upon giving reasonable notice and subject to the Organisation's reasonable requirements in relation to safety and security:
 - (i) the Commonwealth or persons authorised by the Commonwealth may enter the Property to inspect and examine the Works; and
 - (ii) the Commonwealth may give notice to the Organisation of any omission, fault or defect in the Works.
- (b) Within 10 Business Days, or such longer time as may be agreed to in writing by the Commonwealth, having regard to the nature of the omission, fault or defect, after the receipt of a notice under clause 23.11(a)(ii), the Organisation must cause all matters

specified in that notice to be rectified and must notify the Commonwealth when rectification has been effected.

- (c) Despite the Commonwealth's right to inspect and examine the construction of the Works:
 - (i) the Commonwealth is not obliged to check the construction of the Works for any defect, fault or omission; and
 - (ii) the Organisation is not relieved of responsibility for any defect, fault or omission in respect of the Works.

23.12 Variations to the Works

- (a) In accordance with IPS 1 referred to in clause 7.6(c)(i)A.2, the Organisation must notify, and seek approval from, the Commonwealth in writing of all proposed variations to the Works that would or might reasonably be expected to have an effect on:
 - (i) the price of the Works;
 - (ii) the timeframes for completion of the Works, including the Date for Practical Completion and the Date for Commencement of Operations;
 - (iii) the fitness of the Works for the Designated Use;
 - (iv) the Project Plan or the Project Budget; or
 - (v) the Approvals obtained in relation to the Works.
- (b) The Organisation must not vary the Works in a manner described in clause 23.12(a) without the prior consent in writing of the Commonwealth, which will not be unreasonably withheld or delayed.

24. Project Control Group review for the Works

24.1 Project Control Group

- (a) Immediately following the Date of this Agreement, the Organisation must establish a Project Control Group or, where required, ensure that a Project Control Group is or Project Control Groups are, established as required to monitor the progress of the Works.
- (b) A Project Control Group should comprise, where appropriate, the following positions:
 - (i) one representative of the Organisation;
 - (ii) one representative of the Architect;
 - (iii) one representative of the Quantity Surveyor;
 - (iv) one representative of the Project Manager;
 - (v) one representative of the Superintendent; and
 - (vi) one representative of the contracted construction company (once engaged),(collectively, **PCG Representatives**).
- (c) The special provisions applicable to the Project Control Group (if any) are specified in Item 10 of Schedule 1 and the Organisation must comply with those provisions itself, and ensure that those provisions are complied with by all Subcontractors.
- (d) Subject to any provision of this Agreement to the contrary, the Project Control Group must facilitate Project communications, receive and consider all reports and information about the Project (including the Works) and give and make such approvals, notices, consents and decisions as it is required or permitted to give or make under this Agreement.
- (e) The PCG Representatives must ensure that they are authorised to give and make any approvals, notices, consents and decisions under this Agreement, except those which they have by notice informed the other PCG Representatives that they cannot give or make.
- (f) The Project Control Group must, from the Commencement of the Works until the Date of Practical Completion meet at least monthly or at such other times as the Parties may agree for the purpose of reviewing and monitoring the Project's progress.

- (g) The Project Manager's Representative must provide an agenda of each Project Control Group meeting to the other PCG Representatives at least 5 days before each meeting is scheduled to take place.
- (h) The Superintendent must, at least 5 days before a Project Control Group meeting is scheduled to take place, provide to each of the PCG Representatives, a progress report regarding carrying out the Project and Works in the period since the last Project Control Group meeting (**Progress Report**).
- (i) The PCG Representatives may bring consultants to the Project Control Group meetings who may address the Project Control Group on particular issues relating to carrying out the Project or the Works and the Project Control Group may itself call upon any person considered necessary for a report or other advice to assist in its deliberations.
- (j) The Project Manager's Representative will minute each Project Control Group meeting and provide a copy of the minutes to the PCG Representatives within 5 days after the meeting (**PCG Minutes**) in accordance with IPS 1 referred to in clause 7.6(c)(i)A.1).
- (k) The Project Manager's Representative must certify that the minutes are an accurate record of the meetings of the Project Control Group.

24.2 Project review

The Project Control Group must:

- (a) prepare, and provide to the Commonwealth, or its nominees, regular, monthly Progress Reports, plus the minutes of the most recent PCG meeting as required by the Bi-Monthly Implementation Progress Sheet referred to in clause 7.6;
- (b) meet with the Commonwealth and any other persons the Commonwealth might nominate at times reasonably specified by the Commonwealth;
- (c) discuss any reports it has prepared under this Agreement and such other matters as the Commonwealth may from time to time require;
- (d) promptly and fully respond to any questions which the Commonwealth asks in relation to the Project's progress; and
- (e) if it requires instructions from the Commonwealth, make all necessary recommendations as to the action required.

24.3 Project delays

- (a) As soon as practicable after having been notified by a Subcontractor or the Superintendent of a delay in respect of the Works, the Organisation must notify the Commonwealth of the delay that has been notified to it by the Subcontractor or the Superintendent.
- (b) Where the delay is likely to extend beyond 1 month or affect the Date for Practical Completion or the Date for Commencement of Operations by such a period, the Organisation must:
 - (i) notify the Commonwealth of this as soon as practicable after the Organisation becomes aware of this; and
 - (ii) update the Project Plan and Budget and Risk Management Plan and provide a revised Project Plan and Budget in accordance with clause 23.1(f) for the Commonwealth to review in accordance with clause 23.1(g):
 - A. by the time required for the next Progress Report under this clause 24; or
 - B. within 7 days from the date of any earlier written request of the Commonwealth.

25. Completion of Works and Commencement of Operations

25.1 Authorisation to Commence Operations

- (a) The Organisation must not commence Operations until:
 - (i) it has received notice of the Authorisation to Commence Operations from the Commonwealth to do so; and
 - (ii) it has met all conditions and requirements set out in clauses 25.2, achieves Practical Completion under clause 25.3, and complies with clause 25.4 in respect of the Certificate of Fitness for Occupancy and Use.
- (b) The Commonwealth will issue an Authorisation to Commence Operations once the Organisation has met all the conditions and requirements specified in clauses 25.2 and 25.3.
- (c) The Authorisation to Commence Operations takes effect only when the conditions of each of clauses 25.2, 25.3 and 25.4 have been met by the Organisation.

25.2 Workforce, services, communication strategy and insurances

- (a) Six (6) weeks prior to the Date for Practical Completion, the Organisation must provide to the Commonwealth:
- (i) the following information on the GP Super Clinic's Operations:
- A. the workforce that the Organisation will engage to perform the Operations whether as employees, full time or sessional contractors, or Tenants;
 - B. the number and type of personnel who will perform work from the Property on a permanent basis as part of the GP Super Clinic including, but not limited to full time equivalents, General Practitioners, nurses, and allied health professionals;
 - C. the number and type of visiting specialists who will perform work from the GP Super Clinic on an ad hoc, intermittent or temporary basis;
 - D. the GP Super Clinic's hours of opening;
 - E. the GP Super Clinic's billing arrangements;
 - F. any preventative healthcare or chronic disease management services or clinics which will operate from the Property; and
 - G. a statement signed by a Director of the Organisation indicating whether these arrangements differ from the approved Operational Plan and if so, what the difference is, the reasons for the difference and, where appropriate, strategies for mitigating the affect of the difference on the Operations capacity to achieve the Program Objectives;
- (ii) the following information on the Organisation's proposed communications strategy:
- A. the date on which the Organisation anticipates that it will be able to commence Operations;
 - B. any preferences that the Organisation has regarding a formal GP Super Clinic launch date;

- C. any proposals the Organisation has with respect to GP Super Clinic signage, promotion (including via the internet) and use of the GP Super Clinic logo; and
- (iii) a copy of the Certificates of Currency for the insurances that are required as at the commencement of the Designated Use Period.

25.3 Practical Completion of the Works

- (a) In order to achieve Practical Completion of the Works:
 - (i) the Works must be:
 - A. complete and free from errors, omissions and defects, except for errors, omissions or defects that:
 - 1) are of a minor nature;
 - 2) the immediate making good of which by the Organisation is not reasonably practicable;
 - 3) the existence of which or the making good of which by the Organisation will not significantly inconvenience users of the Property or the Works for the Designated Use; and
 - 4) which do not cause any legal or physical impediment to the use and occupation of the Property and the Works for the Designated Use; and
 - B. have fit-out, furnishing and equipping completed;
 - C. capable of being used and fit for the purpose of the Designated Use; and
 - (ii) the Organisation must obtain from:
 - A. its authorised representative; and
 - B. a suitably qualified and independent person (which may be the Superintendent) engaged for the purposes of inspecting the Works on their completion and determining whether, in the

professional opinion of that person, the Works meet the requirements set out in clauses 25.3(a)(i)A, 25.3(a)(i)B and 25.3(a)(i)C,

(iii) written certification that the Works meet the requirements set out in clauses 25.3(a)(i)A, 25.3(a)(i)B and 25.3(a)(i)C, and provide each such written certification to the Commonwealth.

(b) In this clause "Works" refers to Works being conducted on the Property or, in respect of a Hub and Spoke Model project, Works being conducted at a particular part of the Property as may be identified in Item 2.1 of Schedule 1).

25.4 Certificate of Occupancy

On or before the Date for Commencement of Operations, the Organisation must obtain the Certificate of Fitness for Occupancy and Use in respect of the Works, and provide a copy of that certificate to the Commonwealth.

25.5 Date for Practical Completion

The Organisation must achieve Practical Completion of the Works on or before the Date for Practical Completion as set out in Item 6.1(a) of Schedule 1.

25.6 Defects after Practical Completion

The Organisation must promptly rectify:

- (a) any defects, faults or omissions in the Works which are referred to in clause 25.3(a)(i)A; or
- (b) any defects, faults or omissions in the Works which otherwise become apparent after the Date for Practical Completion and which would, or would reasonably be expected to affect the fitness of the Works for the purpose of use for the Designated Use or the Property for use for its intended purpose (or both as the case may be).

25.7 Date for Commencement of Operations

The Organisation must commence Operations on or before the Date for Commencement of Operations as set out in Item 6.2 of Schedule 1.

26. Assumption of risks for the Works

26.1 Responsibility for the Project

The Organisation is fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement and all Laws, and will not be relieved of that responsibility because of any:

- (a) involvement by the Commonwealth or any third party in the performance of the Project;
- (b) payment of the Funds made to the Organisation on account of the Project; or
- (c) subcontracting of all or any part of the Works or the Project.

26.2 Acceptance of risk

The Organisation accepts all risks in respect of, and the Commonwealth does not accept any risk for, the conduct of the Works and the Project including without limitation all risks of and associated with the design, construction and commissioning of the Works, including, without limitation, the risk of the actual cost of the design, construction and commissioning of the Works being greater than anticipated.

27. Other contributions

27.1 Organisation's contribution

Where specified in Item 12.1 of Schedule 1, the Organisation must use its reasonable endeavours to contribute moneys specified in Item 12.1 of Schedule 1 for the purposes (if any) specified in Item 12.1 of Schedule 1.

27.2 Identified Third Party Contributors

- (a) Within 20 Business Days of the Date of this Agreement, the Organisation must provide evidence in writing to the Commonwealth that:
 - (i) it has obtained written undertakings from all Identified Third Party Contributors, under which the Identified Third Party Contributors are legally obliged to make the contributions to the Project and/or the Operations as set out in Item 12.2 of Schedule 1; and
 - (ii) the terms on which the Identified Third Party Contributors will make their contributions are not inconsistent with the terms of this Agreement and do not, in any way, limit or affect the Organisation's ability to comply strictly with its obligations, or the Commonwealth's ability to exercise its rights, under this Agreement; and
- (b) The Organisation must, within 20 Business Days of the Date of this Agreement, provide to the Commonwealth copies of all written arrangements which it has entered, or proposes to enter, into with the Identified Third Party Contributors in relation to the Project and/or the Operations.

27.3 Additional third party contributors

The Organisation must:

- (a) promptly notify the Commonwealth in writing of the amount and source of any funding or other contributions proposed for the Project or the Operations (other than Funds provided under this Agreement or contributions made by the Identified Third Party Contributors);
- (b) submit a revised Project Budget and updated Risk Management Plan including the amount of any funding or value of any other contribution proposed under this clause and any and all repayment or interest obligations relating to the funding or other contributions for approval by the Commonwealth under clause 23.1;
- (c) obtain written undertakings from any additional third party contributors, under which the additional third party contributors are legally obliged to make contributions to the Project;
- (d) within 20 Business Days of entering into any arrangements with any additional third party contributors, provide to the Commonwealth copies of such written arrangements with any additional third party contributors; and
- (e) ensure that the terms on which any other funding or contributions are provided to the Organisation for or in connection with the Project and the Operations are not inconsistent with the terms of this Agreement and do not, in any way, limit or affect the Organisation's ability to comply strictly with its obligations, or the Commonwealth's ability to exercise its rights, under this Agreement.

28. Assets

28.1 Purchasing of Assets

The Organisation must not use Funds towards the purchase of Assets unless:

- (a) the Asset is identified in Item 13 of Schedule 1; or
- (b) it obtains the prior written consent of the Commonwealth.

28.2 Use of Assets

The Organisation must not use Assets for any purpose other than the performance of the Project and the Designated Use unless it has obtained the prior written approval of the Commonwealth which will not be unreasonably withheld.

28.3 Obligations in relation to Assets

The Organisation must:

- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this Agreement, without the prior written approval of the Commonwealth which will not be unreasonably withheld;
- (b) maintain all Assets in good working order;
- (c) be fully responsible for, and bear all risks arising in relation to, the use or Disposal of any Asset;
- (d) maintain a register of all Assets, recording the date of purchase or lease, the purchase or lease price, Asset description, Asset location, the proportion of the Funds used to create or acquire the Asset, the carrying amount of the Asset and (where relevant) details of Asset Disposals including the price (where applicable); and
- (e) as and when requested, provide copies of the register of Assets to the Commonwealth.

28.4 Disposal of Assets

The Organisation must obtain prior approval, in writing, from the Commonwealth before Disposing of an Asset. If, at the time of the Disposal, the Asset has not been fully Depreciated the Organisation must, at the option of the Commonwealth:

- (a) pay to the Commonwealth within 20 Business Days of the date of the Disposal, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds; or
- (b) pay to the Commonwealth within 20 Business Days of the date of the Disposal, the proceeds of the sale or disposal, less an amount equal to the sum of the Organisation's proportionate contribution to the purchase price of the Asset and the Organisation's reasonable costs of Disposal of the Asset; or
- (c) use the amount specified in paragraphs (a) or (b) (as is determined by the Commonwealth) above for a purpose, and in accordance with conditions, approved in writing by the Commonwealth.

28.5 Interest

If the Organisation fails to make or use a payment as required by clause 28.4:

- (a) the Organisation must pay the Commonwealth Interest on the relevant amount from the date it was due, for the period it remains unpaid; and

- (b) the relevant amount, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Organisation.

29. Compliance with the BCII Act

- (a) In the performance of the Project, the Organisation must comply with the requirements of the Code and the Guidelines.
- (b) Subject to the exclusions specified in the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*, the Organisation must ensure that any contract will not be entered into with a builder for building work, as defined in section 5 of the BCII Act, relating to the Project, if the builder is not accredited under the OHS Accreditation Scheme, at the time the contract for building work is to be entered into.
- (c) The Organisation must ensure that any building contract to which clause 19.2 applies requires the builder to remain accredited under the OHS Accreditation Scheme while carrying out the building work relating to the Project.
- (d) Compliance with the Code and the Guidelines, or the OHS Accreditation Scheme does not limit or affect the Organisation's obligations under this Agreement, or otherwise arising out of or in connection with the Project.
- (e) The Organisation must ensure that adequate records are created and maintained in respect of compliance with the Code, the Guidelines and the OHS Accreditation Scheme in relation to the Project.
- (f) The Organisation must permit (and must ensure that each Subcontractor and builder permits) the Commonwealth or any person authorised by the Commonwealth, including the Office of the Australian Building and Construction Commissioner and the Office of the Federal Safety Commissioner, to have access to any construction sites or places (including privately funded construction sites or places) to which the Code, the Guidelines or the OHS Accreditation Scheme apply, to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project or this Agreement;
 - (iii) interview any person; and

- (iv) request the Organisation to produce any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post,

as is necessary to allow validation of compliance with the Code, the Guidelines and the OHS Accreditation Scheme in relation to the Project.

- (g) If the Organisation does not ensure compliance with the requirements of the Code, the Guidelines, or the OHS Accreditation Scheme in the performance of this Agreement such that a sanction is applied by the Code Monitoring Group, then the Commonwealth, without prejudice to any rights that would otherwise accrue, is entitled to record that non-compliance and take it into account in the evaluation of any future tenders or applications for funding that may be lodged by the Organisation or any of its related entities in respect of work for or funding from any part of the Commonwealth or its agencies.
- (h) Notwithstanding any other provision of this Agreement, the Organisation must not appoint a contractor, Subcontractor, consultant or supplier in relation to the Project where the appointment would breach a sanction imposed by the Code Monitoring Group.
- (i) The Organisation must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations under this clause 29 utilising the form set out in the "Model contract clauses: agreements with contractors" set out in the document titled "Model Tender and Contract Documentation" which is available at <http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>.

Part C: GP Super Clinic Operational provisions

30. The Operator, Operational Planning and Review

30.1 The Operator

- (a) The Organisation must obtain the Commonwealth's written approval:
 - (i) to subcontract the Operations of the GP Super Clinic to an Operator; and
 - (ii) for the Organisation and the proposed Operator to enter into the proposed Operational Contract,

which approvals must not be unreasonably withheld.

- (b) In order to obtain approval under clause 30.1(a), the Organisation must comply with the requirements of clause 31.1.
- (c) The Commonwealth may approve only one party to act as the Operator.
- (d) Provisions in this Part C that refer to the "Operator" apply to the extent that the Commonwealth has approved a party to act as the Operator in accordance with clause 30.1(a).
- (e) To the extent applicable, provisions in Part A of this Agreement also apply to the Operator where the Commonwealth has approved to act as the Operator in accordance with clause 30.1(a).

30.2 Draft Operational Plan

- (a) The Organisation must submit to the Commonwealth a Draft Operational Plan as detailed in clause 30.2(b), on or before the relevant date specified in the Deliverables and Milestones Schedule.
- (b) The Draft Operational Plan must document the proposed Operations and detail how the Operations will meet the Program Objectives throughout the Designated Use Period, including details of:
 - (i) the proposed services (particularly those that focus on services to people with or at risk of chronic disease(s) and preventative care services and provide services to Aboriginal and Torres Strait Islander people and Residential Aged Care facilities);
 - (ii) the clinical and organisational governance frameworks, including the resources to be allocated to these governance functions;
 - (iii) the anticipated workforce and working environment, including recruitment and retention strategies;
 - (iv) how the Operations will provide for affordable access to the GP Super Clinic's services (billing practices; hours of operation including extended hours; transport and parking arrangements);
 - (v) the information management / information technology arrangements including details of how such arrangements will support shared access to clinical information by members of a multi-disciplinary team;

- (vi) the financial modelling of the Operations phase of the GP Super Clinic (to be set out as a Cash Flow Projection, or using a template specified and provided by the Commonwealth);
 - (vii) the training and education facilities and the anticipated volume and timing of associated training and education activities;
 - (viii) the strategies to foster co-ordination with existing public and private health providers in the community to support integrated primary care; and
 - (ix) where the Organisation proposes to enter into an Operational Contract to lease pursuant to clause 31.2, detail how the benefit of the grant is being used under the Operational Contract to lease to support the achievement of the Program Objectives.
- (c) The Operations, as set out in the Cash Flow Projection, must include a detailed financial analysis of the prospective cash inflows and outflows associated with the operation of the GP Super Clinic, which considers and delineates all material categories of operating cash inflow and outflow, including:
- (i) receipts for each clinical service stream of the Operations;
 - (ii) receipts from Commonwealth practice incentive programs;
 - (iii) receipts for rent of the Property;
 - (iv) disbursements for each category of staff;
 - (v) disbursements associated with the Property; and
 - (vi) disbursements for other categories of non-salary operating costs,
- with details of all assumptions underpinning the projections and of any financing cash flows that may be required to meet any projected cash flow deficits, and in a format specified by the Commonwealth.
- (d) The Organisation must ensure that the Draft Operational Plan:
- (i) has been prepared diligently, effectively and to a high professional standard; and
 - (ii) includes a Risk Management Plan; and

- (iii) includes the matters specified in clause 30.2(b).
- (e) The Commonwealth will review the Draft Operational Plan submitted under clause 30.2(a) and notify the Organisation that the Draft Operational Plan is either:
 - (i) acceptable to the Commonwealth; or
 - (ii) in the Commonwealth's opinion, requires amendment in order to meet the requirements specified in clause 30.2(d).
- (f) On receipt of notification under clause 30.2(e)(ii), the Organisation must amend the Draft Operational Plan so as to take into account the Commonwealth's comments and resubmit the documents within 20 Business Days of the date of the Commonwealth's notification for re-consideration by the Commonwealth in accordance with clause 30.2(e).

30.3 Final Operational Plan

- (a) The Organisation must submit to the Commonwealth a Final Operational Plan as detailed in clause 30.3(b), on or before the relevant date specified in the Deliverables and Milestones Schedule.
- (b) The Final Operational Plan must document the proposed Operations and details how the Operations will meet the Program Objectives throughout the Designated Use Period, including details of:
 - (i) the proposed services (particularly those that focus on services to people with, or at risk of chronic disease(s) and preventative care services and provide services to Aboriginal and Torres Strait Islander people and Residential Aged Care facilities);
 - (ii) the clinical and organisational governance frameworks, including the resources to be allocated to these governance functions;
 - (iii) the anticipated workforce and working environment, including recruitment and retention strategies;
 - (iv) how the Operations will provide for affordable access to the GP Super Clinic's services (billing practices; hours of operation including extended hours; transport and parking arrangements);
 - (v) the information management / information technology arrangements including details of how such arrangements will support shared access to clinical information by members of a multi-disciplinary team;

- (vi) the financial modelling of the Operations phase of the GP Super Clinic (to be set out as a Cash Flow Projection, or using a template specified and provided by the Commonwealth);
 - (vii) the training and education facilities and the anticipated volume and timing of associated training and education activities;
 - (viii) the strategies to foster co-ordination with existing public and private health providers in the community to support integrated primary care; and
 - (ix) where the Organisation proposes to enter into an Operational Contract to lease pursuant to clause 31.2, detail how the benefit of the grant is being used under the Operational Contract to lease to support the achievement of the Program Objectives.
- (c) The Operations, as set out in the Cash Flow Projection, must include a detailed financial analysis of the prospective cash inflows and outflows associated with the proposed Operations, which considers and delineates all material categories of operating cash inflow and outflow, including:
- (i) receipts for each clinical service stream of the Operations;
 - (ii) receipts from Commonwealth practice incentive programs;
 - (iii) receipts for rent of the Property;
 - (iv) disbursements for each category of staff;
 - (v) disbursements associated with the Property; and
 - (vi) disbursements for other categories of non-salary operating costs,
- with details of all assumptions underpinning the projections and of any financing cash flows that may be required to meet any projected cash flow deficits, and in a format specified by the Commonwealth.
- (d) The Organisation must ensure that the Final Operational Plan:
- (i) has been prepared diligently, effectively and to a high professional standard; and
 - (ii) includes a Risk Management Plan; and

- (iii) includes the matters specified in clause 30.3(b).
- (e) The Commonwealth will review the Final Operational Plan submitted under clause 30.3(a) and notify the Organisation that the Operational Plan is either:
 - (i) acceptable to the Commonwealth; or
 - (ii) in the Commonwealth's opinion, requires amendment in order to meet the requirements specified in clause 30.3(d).
- (f) On receipt of notification under clause 30.3(e)(ii), the Organisation must amend the Final Operational Plan so as to take into account the Commonwealth's comments and resubmit the documents within 20 Business Days of the date of the Commonwealth's notification for re-consideration by the Commonwealth in accordance with clause 30.3(e).
- (g) Either Party may request an amendment to the approved Final Operational Plan at any time during the Term of this Agreement. Where an amendment to an Final Operational Plan is requested by the Organisation, the Organisation must submit a revised Final Operational Plan to the Commonwealth for approval that specifies the reason that the Organisation considers amendment is necessary and how the revised Final Operational Plan addresses this need.
- (h) The Organisation must use reasonable endeavours to comply with the Final Operational Plan submitted under clause 30.3(a) at all times throughout the Designated Use Period. Where a change in the Final Operational Plan is required to be made for reasons such as (but not limited to) the availability of suitable workforce, evidence based on a clinical audit or changes to local health needs and priorities, the Organisation must report that change and the reason for it in the next Implementation Progress Sheet under clause 7.6, and any such change to the Final Operational Plan must be consistent with the Program Objectives.
- (i) The revised Final Operational Plan is subject to the review and approval process specified set out in clause 30.3(e). The Commonwealth's approval to the amendment may be given or withheld at its discretion.
- (j) The Organisation is required to report on its performance against the requirements of the Final Operational Plan in the Implementation Progress Sheets as specified in the Deliverables and Milestones Schedule.

30.4 Operational Phase Review

- (a) The Commonwealth may review the Implementation Progress Sheets and require the Organisation to meet with it, at such times and places that it reasonably requests to address any issues that the Commonwealth has arising out of the Implementation Progress Sheet, or any other aspect of the operation of the GP Super Clinic, including the matters set out under clause 30.4(b).
- (b) Without limiting its rights under clause 30.4, the Commonwealth may issue a direction to the Organisation to do such acts or things so as to comply with the Final Operational Plan.
- (c) If the Organisation fails to comply with any aspect of the Final Operational Plan, or a direction under clause 30.4(b), the Commonwealth may do either or both of the following:
 - (i) appoint a receiver;
 - (ii) require the Organisation to show cause why the Commonwealth should not exercise its step in rights under clause 12.1.

31. Operational Contracting

31.1 Operational Contracting generally

- (a) Where the Organisation has identified that it intends to subcontract the Operations of the GP Super Clinic to an Operator in accordance with clause 23.2(a)(v), before the Organisation enters into any Operational Contract, it must:
 - (i) provide to the Commonwealth a copy of any proposed Operational Contract for the Commonwealth to review and approve;
 - (ii) procure from the Operator a Conflict of Interest Declaration on behalf of the Operator itself and its key personnel who will be involved in undertaking work on the Operations as required under the Operational Contract;
 - (iii) require the Operator to enter into a Deed of Consent between the Commonwealth, the Organisation and the Operator whereby the Operator agrees to comply with the terms of Part C of this Agreement and, to the extent applicable, also Part A of this Agreement and Schedule 1 of this Agreement, as varied from time to time.

- (b) Before entering into any Operational Contract, the Organisation must ensure that all proposed Operational Contracts:
- (i) are consistent with, and will not in any way limit or affect the Organisation's compliance with, its obligations, or the Commonwealth's rights, under this Agreement, including without limitation the Commonwealth's right to terminate this Agreement pursuant to clause 13;
 - (ii) contain all terms that this Agreement requires those Operational Contracts to contain (whether expressly or impliedly), including without limitation rights of assignment or novation of any arrangement required to give effect to the Commonwealth's rights under clause 12.2(a) and clause 13;
 - (iii) entitle the Organisation to terminate an Operational Contract where the Commonwealth directs the Organisation to do so;
 - (iv) require the Operator to comply with clause 6.2 (Use of the Funds) to the extent it applies to the Operator's obligations to perform the Operational Contract;
 - (v) require that any notices given to a party to an Operational Contract must also be provided the Commonwealth; and
 - (vi) have been entered into on the basis of the Organisation making a Value for Money Assessment and determining that the Operational Contract represents Value for Money to the Commonwealth.
- (c) The Commonwealth may direct that the Organisation terminate an Operational Contract where the Operator has breached a term of any Operational Contract.

31.2 Operational Contracting - Leasing between the Organisation and Operator

- (a) This clause 31.2 applies where the Commonwealth has approved the Organisation to subcontract the Operations of the GP Super Clinic in accordance with clause 30.1 of this Agreement, and the resulting Operational Contract is a lease between the Operator and the Organisation of the Property (wholly or partly) (an **Operational Contract to lease**).
- (b) The lessor must ensure that the Operational Contract to lease all or part of the Property provides that during the term of the Operational Contract to lease the Property:

- (i) where 100% of the Funds have been contributed towards the Works, the lessor must not charge the lessee more than a nominal rental amount during the term of the lease and must detail in the lease the arrangements that will be undertaken by the Operator to achieve the Program Objectives in lieu of paying market rental for the leased premises; or
- (ii) where the Funds contributed toward only a portion of the Works, the lessor is limited to charging the lessee, during the term of the lease, a rental amount that is a proportion of what the market rate would be for the leased premises (the proportion of rent to be charged must be equivalent to the proportion that the Funding contribution represents as a proportion of the Works Cost, as described in Item 11.1(a)(i)A of the Schedule 1 and must detail in the lease the arrangements that will be undertaken by the Operator to achieve the Program Objectives in lieu of paying market rental for the leased premises;
- (iii) during the term of the lease, the lessor must not determine the lease or enter into possession of the whole or any part of the leased premises unless it has given the Commonwealth not less than 28 days prior notice of its intention to do so; and
- (iv) during the term of the lease, the lessor must not Dispose of the leased premises, any interest in the leased premises, or any part of the leased premises, without first:
- A. obtaining the Commonwealth's consent in writing (such consent may be withheld at the Commonwealth's sole and unfettered discretion); and
 - B. requiring the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent to enter into a deed of covenant with the Commonwealth under which the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent covenants in favour of the Commonwealth to use the demised premises for the Designated Use;
- and
- (v) the Commonwealth is entitled to access to the Property.
- (c) If a lessor is to charge a proportion of market rate rental in accordance with clause 31.2(b)(ii), the lessor must obtain a

valuation from a registered valuer to determine the appropriate market rate rental for the relevant leased premises so as to calculate what the proportionate rental amount to be charged to the lessee.

- (d) To avoid doubt, the lessor in any Operational Contract to lease may require a lessee to pay rates and taxes and reasonable outgoings.

32. Designated Use

32.1 Use of the Property and the Works for the Designated Use

As a fundamental condition of this Agreement, the Organisation and, where applicable, the Operator, undertake:

- (a) for the Designated Use Period:
- (i) to use the Property, or to ensure that the Property is used, for the Designated Use;
 - (ii) to use the Property, or to ensure that the Property is used, consistently with the Operational Plan (as approved at that time);
 - (iii) to ensure the Property is not left unused or unoccupied for a period in excess of four weeks without first obtaining the written consent of the Commonwealth; and
 - (iv) not to use the Property, or permit the Property to be used for any purpose, other than the Designated Use, without first obtaining the written consent of the Commonwealth; and
- (b) at all times during the Term of this Agreement:
- (i) to safeguard the Property and the Works against loss, damage and unauthorised use;
 - (ii) to maintain the Property and the Works in good condition;
 - (iii) to reinstate the Property (or part thereof), where applicable the building or improvements of which the Property forms part, and Works if they are damaged or destroyed; and
 - (iv) not to grant or dispose of any interest in the Property, or any part of the Property, without first:
 - A. obtaining the Commonwealth's consent in writing (such consent being given or withheld at the Commonwealth's absolute discretion); and

- B. requiring the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent, to enter into a deed of covenant with the Commonwealth, on terms acceptable to the Commonwealth under which the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent covenants in favour of the Commonwealth to use the Property for the Designated Use until the expiry of the Designated Use Period.

33. Leasing the Property to Tenants

33.1 Leasing the Property to Tenants generally

- (a) Either:
 - (i) the Organisation; or
 - (ii) where the Commonwealth has approved the Organisation to subcontract the Operations of the GP Super Clinic in accordance with clause 30.1 of this Agreement, the Operator,

(in this clause, the **Lessor**) may lease the Property, wholly or partly, to a Tenant (**Tenant Lease**).
- (b) Before the Lessor enters into any Tenant Lease, it must:
 - (i) ensure that the proposed Tenant is either:
 - A. a health care service provider; or
 - B. provides ancillary services to support the achievement of the Program Objectives;
 - (ii) provide to the Commonwealth a copy of any proposed Tenant Lease for the Commonwealth to review and approve;
 - (iii) procure from the proposed Tenant a Conflict of Interest Declaration on behalf of the Tenant itself and its key personnel who will be providing health care services; within the scope of the National Program Guide or ancillary services that support the Program Objectives;
 - (iv) obtain the Commonwealth's written approval to enter into the proposed Tenant Lease, which approval must not be unreasonably withheld; and

- (v) have regard to the Program Objectives and use its best endeavours to ensure that a proposed Tenant Lease includes obligations that foster achieving the Program Objectives but which may be specific to the particular Tenant.
- (c) Before entering into any Tenant Lease, the Lessor must ensure that all proposed Tenant Leases:
- (i) are consistent with, and will not in any way limit or affect the Lessor's compliance with, its obligations, or the Commonwealth's rights, under this Agreement, including without limitation the Commonwealth's right to terminate this Agreement pursuant to clause 13;
 - (ii) contain all terms that this Agreement requires those Tenant Leases to contain (whether expressly or impliedly);
 - (iii) contain audit and access provisions equivalent to those specified in clause 9;
 - (iv) contain provisions requiring the Tenant to provide to the Lessor the following information Trimester IPSs as provided for in clause 7.6 and as requested by the Lessor from time to time;
 - A. the number and type of the Tenant's employees who provide services from the Tenant's leased premises;
 - B. subcontractors or agents who provide services from the Tenant's leased premises;
 - C. the services the Tenant delivers to meet or support local health needs and priorities;
 - D. the extended hours of service (if any) provided by Tenants; and
 - E. how the services the Tenant delivers meet or support the achievement of the Program Objectives;
 - (v) contain provisions entitling the Commonwealth to direct that the Tenant provide information to the Commonwealth as the Commonwealth may request from time to time;

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- (vi) contain provisions entitling the Commonwealth to remove people from the Tenant's leased premises and require people so removed not to continue providing health care services or ancillary services from the Property;
 - (vii) require the Tenant to comply with Commonwealth policies and obligations under the Privacy Act as if it were an agency under that Act, as varied from time to time;
 - (viii) require the Tenant to use the Property, or part of it, for that part of the Designated Use appropriate to the services the Tenant provides;
 - (ix) entitle the Lessor to terminate a Tenant Lease where the Commonwealth directs the Lessor to do so;
 - (x) require the Lessor not to determine the Tenant Lease or enter into possession of the whole or any part of the leased premises unless the Lessor has given the Commonwealth not less than 28 days prior notice of its intention to do so;
 - (xi) entitle the Lessor to terminate the Tenant Lease where the Tenant breaches any of the requirements imposed on Tenant Leases by this Agreement;
 - (xii) require the Lessor not to Dispose of the leased premises, or any part of the leased premises, without first:
 - A. obtaining the Commonwealth's consent in writing (such consent may be given subject to conditions but will not be unreasonably withheld); and
 - B. requiring the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent to enter into a deed of covenant with the Commonwealth under which the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent covenants in favour of the Commonwealth to use the demised premises for the Designated Use; and
 - (xiii) require that any notices given to a party to a Tenant Lease must also be provided the Commonwealth.
- (d) The Commonwealth may direct that the Lessor terminate a Tenant Lease where the Operator has breached a term of any Operational Contract.

33.2 Tenant Leasing - Rental to be charged to the Tenant

- (a) During the term of a Tenant Lease, the Lessor may require the Tenant to pay a market rate rental amount.
- (b) If a Lessor is to charge a market rate rental or a proportion of market rate rental in accordance with clauses 33.2(a), the Lessor must obtain a valuation from a registered valuer to determine the appropriate market rate rental for the relevant leased premises.
- (c) To avoid doubt, the Lessor in any Tenant Lease may require a Tenant to pay rates and taxes.

34. Health care services provided from the Property

34.1 Accreditation, registration and licensing

The Organisation or, where applicable, the Operator must:

- (a) take all reasonable steps to ensure that the services provided as part of the Designated Use meet all relevant industry accreditation standards; and
- (b) ensure that all general practitioners and other health care service providers operating from the Property are at all times appropriately licensed and registered in accordance with the requirements of relevant regulatory bodies in the jurisdiction in which the Property are situated.

35. Program evaluation

- (a) The Commonwealth may engage an evaluator to evaluate the performance of the Program, including the Project, at any time during the Term.
- (b) The Commonwealth, the Organisation and, where applicable, the Operator must each bear their own costs of participating in an evaluation under this clause 35.
- (c) The purpose of the evaluation will be to evaluate the performance of the Program, the Operations and the Project, and provide a report to the Commonwealth.
- (d) The Commonwealth may engage the evaluator to perform such other tasks as it determines from time to time.
- (e) The Commonwealth's Project Contact may, on request, provide the Organisation and, where applicable, the Operator, with the terms of reference and evaluation criteria for any evaluation conducted

pursuant to this clause 35, if any such terms of reference and evaluation criteria exist.

- (f) The Organisation and, where applicable, the Operator, must co-operate, at their own cost, with the Commonwealth's Project Contact and the evaluator in relation to any evaluation conducted pursuant to this clause 35.
- (g) Without limiting subclause (f) above, the Organisation and, where applicable, the Operator must provide the Commonwealth's Project Contact and the evaluator with:
 - (i) access to all information, documents, establishments and personnel; and
 - (ii) all such facilities and all such other assistance,which are reasonably necessary to enable the evaluation to be conducted in a prompt and thorough manner.
- (h) The Commonwealth and the Organisation and, where applicable, the Operator acknowledge and agree that:
 - (i) the evaluation does not in any way affect the parties' rights or obligations, whether under this Agreement, the Deed of Consent or otherwise at law or in equity, in connection with this Agreement, the Deed of Consent, the Project and the Operations unless the parties agree to vary this Agreement and consequently the Deed of Consent, where applicable, in accordance with clause 22.5;
 - (ii) neither the evaluation, nor the conduct of the Organisation, the evaluator or, where applicable, the Operator, during or in connection with the evaluation, nor the contents of the evaluation report will limit the Commonwealth's rights under this Agreement or the Deed of Consent;
 - (iii) on no account will the Commonwealth be liable to the Organisation or, where applicable, the Operator for any act or omission of the evaluator;
 - (iv) neither the Organisation nor, where applicable, the Operator will be relieved of any responsibility or liability under this Agreement or the Deed of Consent as a result of anything which the evaluator may do or fail to do; and

- (v) without limiting the Commonwealth's other rights or the Organisation's or, where applicable, the Operator's other obligations under the Agreement or the Deed of Consent, the Organisation must cooperate with the Commonwealth in the implementation of any recommendations which are made by the evaluator.

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BY THE DEPARTMENT OF HEALTH

Schedule 1 Particulars

1. Project

1.1 The Project

The Project consists of:

(a) s47E

(b) s47E

(c) s47E

(d) s47E

(e) s47E

1.2 Program Objectives

The Program Objectives are as follows:

- (a) GP Super Clinics provide their patients with *well integrated multidisciplinary patient centred care*. GP Super Clinics will support their patients, particularly those with, or at risk of, chronic disease(s), with the option of receiving the full range of health services they need in a coordinated manner, where possible and appropriate, in a single convenient location. Underpinning this care will be integrated models of clinical governance and shared care

protocols, as well as a strong focus on supporting patient self management.

- (b) GP Super Clinics are ***responsive to local community needs and priorities, including the needs of Aboriginal and Torres Strait Islander peoples and older Australians in Residential Aged Care Facilities and community based settings***. Ensuring GP Super Clinics will address local needs and priorities and have local community support will be a key element of the establishment process. As part of a demonstrated long term commitment to local health care services, organisational governance arrangements for the clinics will need to provide for ongoing community engagement and input.
- (c) GP Super Clinics will provide ***accessible, culturally appropriate and affordable care*** to their patients. While health professionals will retain their autonomy over billing, GP Super Clinics will be strongly encouraged to bulk bill MBS funded services.
- (d) GP Super Clinics will provide ***support for preventive care***, including promotion of healthy lifestyles, addressing risk factor and lifestyle modification to prevent chronic disease and improving early detection and management of chronic disease.
- (e) GP Super Clinics will demonstrate ***efficient and effective use of Information Technology***. This would include an electronic clinical information system that can make patients' medical records available (with patient consent) to all practitioners (including allied health professionals) at the GP Super Clinic and to external providers as appropriate.
- (f) GP Super Clinics will provide a ***working environment and conditions which attract and retain their workforce***. This could entail a range of models, including scope for health professionals to contribute clinical sessions and teaching activities, possibly on a salary basis, without needing to consider routine administrative and practice management activities. As workplaces of choice, GP Super Clinics also provide support for primary health care research to complement clinical service delivery.
- (g) GP Super Clinics will be centres of ***high quality best practice care*** and will be expected to meet industry accreditation standards, including accreditation against the Royal Australian College of General Practitioners' Standards for General Practice (3rd edition), and accreditation for training, where this is applicable. Where appropriate, GP Super Clinics would also be encouraged to participate in the Australian Primary Care Collaboratives Program.
- (h) Post establishment, GP Super Clinics will ***operate with viable, sustainable and efficient business models***, drawing revenue from

existing programs and initiatives (including provision of health services under usual fee for service arrangements), and potentially other sources such as community partners.

- (i) The GP Super Clinics initiative will *support the future primary care workforce* by providing high quality education and training opportunities supported by infrastructure for trainee consulting rooms, teaching rooms and training facilities to make general practice attractive to students, new graduates, GP trainees and registrars and other health professionals.
- (j) GP Super Clinics will *integrate with local programs and initiatives*, demonstrating enhanced co-ordination with other health services and a partnership approach to local health service planning and coordination. This will further strengthen local general practice and the broader primary local primary health care services.

2. The Property

2.1 The Property

The Property comprises:

- (a) the **Sippy Downs Hub Site**: the Property (9,000 sqm) is part of Lot 22 on SP214340, being proposed Lot 23 on Proposal Plan M1888 in the State of Queensland as marked in the diagram set out in Attachment 4 and, upon completion of the Works, includes the GP Super Clinic.
- (b) The **Maleny Hub Site**: the Property is Lots 1, 2 and 3 on SP191008 commonly known as Units 1, 2 and 3, 39 Coral Street, Maleny in the State of Queensland as marked in the diagram set out in Attachment 5 and, upon completion of the Works, includes the GP Super Clinic.
- (c) the **Eumundi Spoke Site**: the primary care medical facility located at 2-6 Etheridge Street, Eumundi in the State of Queensland; and
- (d) the **Montville Spoke Site**: the primary care medical facility is located at Shop 6-7, Montville Village Square, 168 Main Street, Montville in the State of Queensland.

3. The Trust and Trustee

3.1 The Trust

Not used.

3.2 The Trustee

Not used.

4. Designated Use

4.1 Designated Use Period

The Designated Use Period for Property A, B and D is the period commencing on the Date for Commencement of Operations and expiring 20 years after the Date for Commencement of Operations.

The Designed Used Period for Property D (the Eumundi spoke) is the period commencing on the Date of Commencement of Operations and expiring 3 years after the Date for Commencement of Operations.

4.2 Designated Use

The Designated Use is the provision of health care services as set out in the National Program Guide and the provision of ancillary services that support the Program Objectives.

5. Commencement of the Works

The Organisation must Commence the Works on or before 31 October 2012.

6. Date for Practical Completion and Commencement of Operations

6.1 Date for Practical Completion

- (a) The date by which Practical Completion of the Works at the Sippy Downs Hub site must be achieved is 21 February 2014.

6.2 Date for Commencement of Operations

- (a) The date by which Commencement of Operations must be achieved is 28 February 2014.

7. Funds

7.1 Total Amount of Funds

The maximum amount of Funds payable by the Commonwealth under this Agreement will be the lesser of the amount required to complete the Project and \$16,500,000.00 (inclusive of GST).

7.2 s47E, s47G

(a) s47E

(b) s47E

7.3 Recurrent Funds

(a) s47E, s47G

- (b) The procedures and requirements for the payment of the Recurrent Funds are as follows:
- (i) The Organisation must submit a correctly rendered invoice for payments of Recurrent Funds. Such invoices must detail the expenses incurred by the Organisation for which payment of Recurrent Funds is sought (refer clause 7.3).
 - (ii) The Organisation must provide a statement of verification by the Organisation's Project Contact that the expenses in the invoice have been properly incurred by or on behalf of the Organisation in accordance with this Agreement and meet the requirements of clause 6.2 and the National Program Guide.
 - (iii) Invoices for Recurrent Funds must be provided quarterly unless otherwise agreed with the Commonwealth.
 - (iv) The Commonwealth may require the Organisation to provide further information or substantiating evidence relating to an invoice for Recurrent Funds and the Organisation must comply with such request within the timeframe required by the Commonwealth.
- (c) The Commonwealth will not pay to the Organisation any amounts of Recurrent Funds after the day which is four (4) years from the date of this Agreement.

7.4 Relocation Incentives

Not used.

8. Project Contact

- (a) The Commonwealth's Project Contact will be the person occupying the position of:
Director
Implementation and Reporting Section
GP Super Clinics Branch
Department of Health
GPO Box 9848
Canberra ACT 2601

This position is currently occupied by Mr Craig Rayner.
Ph: (02) 6289 9034
Fax: (02) 6289 1777
Email: craig.rayner@health.gov.au

- (b) The Organisation's Project Contact will be the person occupying the position of:
Chief Operating Officer
Ochre Health (QLD SC) Pty Ltd
Suite D, Level 5
140 William Street
East Sydney NSW 2010

This position is currently occupied by Mr John Burns.
Ph: (02) 9264 4300, Mobile: 0428 313 732
Fax: (02) 9261 0171
Email: john@ochrehealth.com.au

9. Specified Personnel Positions

The Specified Personnel Positions for the purposes of this Agreement are:

- Architectural services.
- Consulting Engineer services.
- Project Manager services.
- Quantity Surveyor services.
- Superintendent services.

10. PCG Representatives

The parties acknowledge that the Organisation will notify the Commonwealth in writing of the Representatives as they are appointed. To be completed in accordance with clause 24.1(c).

11. Insurance

11.1 The construction of the Works

(a) The Organisation must obtain and maintain the following insurance up until Commencement of Operations in accordance with clause 16.1:

(i) contract works policy covering loss or damage to the Works and any temporary work including materials stored off-site or in transit, for the full reinstatement and replacement cost of the Works including:

- A. the full amount of the cost to the Organisation to construct the Works (**Works Cost**);
- B. an amount reasonably providing for additional costs of demolition and of removal of debris (to be not less than 10% of the Works Cost);
- C. a further amount reasonably sufficient for consultants' fees (to be not less than 5% of the Works Cost); and
- D. an amount providing for escalation costs incurred including those costs as may be incurred (during any period of reinstatement or replacement) during the period up to Practical Completion,

and the Organisation must ensure that the policy specified in this Item 11.1(a)(i) notes the interest of the Commonwealth;

(ii) public and products liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, for the sum of \$20 million for any one occurrence;

(iii) if asbestos decontamination work is required as part of the Works, an asbestos liability policy in respect of the risks associated with asbestos decontamination work, for the sum of \$20 million for any one occurrence.

(b) The Organisation must ensure that each professional service provider identified in the table below, holds a professional indemnity policy in the amount specified in respect of that professional service provider in the table below, to cover its liability for breach of professional duty (if applicable) arising out of any negligence, whether in relation to errors in design, documentation,

supervision or other professional duties. Such cover must extend to liability for personal injury, illness or death of anyone in connection with the provision of professional services or as a result of breach of professional duty and must be maintained for a period of at least 7 years following the achievement of Practical Completion of the Works:

Professional Service Provider	Professional indemnity coverage
Architect	\$20 million
Builder	\$10 million where the Contract for the Works is a "Design and Construct" contract
Fire Services	\$2 million
Electrical	\$5 million
Hydraulic	\$5 million
Civil	\$5 million
Mechanical	\$5 million

11.2 The Designated Use Period

The Organisation must obtain and maintain insurance during the Designated Use Period such as would be maintained by a prudent, careful and commercial owner of the Property, including for the replacement value of the Works, having regard to the nature of the Works and the value and use of the Property for the Designated Use.

At a minimum the Organisation must ensure that it and each health professional working at the Property obtains the levels of insurance described in the tables below prior to the commencement of the Designated Use Period and maintains these insurances throughout the Designated Use Period. Insurance levels for the Organisation

Type of Insurance	Level of cover
Professional Indemnity	\$10 million
Public Liability	\$20 million
Workers' Compensation	To an amount required by law

Insurance levels for health professionals

Type of Insurance	Level of cover
Professional Indemnity	\$10 million
Public Liability	\$20 million
Workers' Compensation	To an amount required by law

12. Other contributions

12.1 Organisation's contribution

Not used.

12.2 s47E, s47G

13. Assets

The Organisation must acquire the following Assets with the Funds:

- (a) Consistent with the approved Project Budget.

14. Special conditions

The following special conditions apply for the purposes of this Agreement:

14.1 Existing services

Not used.

14.2 Mortgages/Borrowings

Not used.

14.3 s47E

s47E

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(b) s47E

(c) s47E

s47E

(d) s47E

(e) s47E

(f) s47E

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(g) s47E

s47E

(h) s47E

(i) s47E

15. Repayment amount

The repayment amount will be calculated according to the following formula:

$$\text{Repayment} = F - (F \times Y / \text{DUP})$$

where:

F is the total of all Funds paid by the Commonwealth to the Organisation plus any interest earned on those Funds, but excluding all monies that have been previously recovered from the Organisation by the Commonwealth at the date that the formula is applied;

Y is the number of completed years since the commencement of the Designated Use Period (or if the Designated Use Period has not yet commenced Y is zero); and

DUP is the number of years in the Designated Use Period.

Executed as an agreement.

**Executed by Commonwealth of
Australia as represented by the
Department of Health**
(ABN 83 605 426 759) by and in the
presence of:



Signature of Witness

PETER HERAK

Name of Witness in full
Date

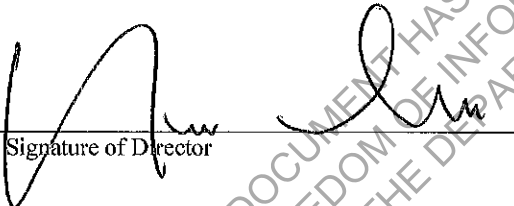


Signature of Authorised Person

ANNE LORRANE THORPE

Name of Authorised Person in full
Date 25 May 2012

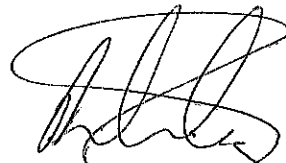
**Executed by Ochre Health (QLD SC)
Pty Limited**
(ACN 158 015 804 /
ABN 99 158 015 804)
in accordance with section 127 of the
Corporation Act 2001 (C'th)



Signature of Director

HAMISH MELDRUM

Name of Director in full
Date 23, MAY, 12.



Signature of Director/Company Secretary

ROSS LAMPRECHT

Name of Director/Company Secretary in
full
Date 25/5/12

Annexure A

s47E

s47E, s47G

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Attachment 1 - Conflict of Interest Declaration Template

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

NOTE:

In this document:

- a “Conflict” means a circumstance in which the Organisation or any of the Organisation's officers, employees, agents or Subcontractors has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Organisation's ability to perform the Project, or its obligations under this Agreement, fairly, independently;
- “Organisation” means Ochre Health (QLD SC) Pty Limited;
- “Funding Agreement” means the agreement dated **[Insert date]** between Ochre Health (QLD SC) Pty Limited ABN 99 158 015 804 and the Commonwealth; and
- unless the contrary intention appears, all the capitalised terms used in this Deed have their respective meanings as they are defined in the Funding Agreement.

1 *Insert the name, address and occupation of person making the declaration* I,¹
make the following declaration under the *Statutory Declarations Act 1959* as required by the Funding Agreement:

2 *Set out matter declared to in numbered paragraphs* 2

1. I am **[Specify details of the declarer's role in the Project.]**
2. I am required to notify the Commonwealth of an conflict that relates to, or arises out of my involvement in the Project.
3. I declare that I have the following actual or perceived Conflict(s):
 - **[Specify the details of your Conflicts]**
4. I will notify Ochre Health (QLD SC) Pty Limited of any material changes in the facts set out in 3 above and take action to avoid the Conflict(s) in 3 above as directed by Ochre Health (QLD SC) Pty Limited or the Commonwealth.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 *Signature of person making the declaration* 3
Full name of person making declaration:

4 *Place* Declared at ⁴ on ⁵ of ⁶

5 *Day* Before me,

6 *Month and year*

7 *Signature of person before whom the declaration is* 7

made (see over)

8 Full name,
qualification and
address of person
before whom the
declaration is
made (in printed
letters)

8

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration under the *Statutory Declarations Act 1959* may be made before—

- (1) a person who is currently licensed or registered under a law to practise in one of the following occupations:
- | | | |
|----------------------|----------------------|--------------------|
| Chiropractor | Dentist | Legal practitioner |
| Medical practitioner | Nurse | Optometrist |
| Patent attorney | Pharmacist | Physiotherapist |
| Psychologist | Trade marks attorney | Veterinary surgeon |
- (2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) a person who is in the following list:
- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
 - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
 - Bailiff
 - Bank officer with 5 or more continuous years of service
 - Building society officer with 5 or more years of continuous service
 - Chief executive officer of a Commonwealth court
 - Clerk of a court
 - Commissioner for Affidavits
 - Commissioner for Declarations
 - Credit union officer with 5 or more years of continuous service
 - Employee of the Australian Trade Commission who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
 - (c) exercising his or her function in that place
 - Employee of the Commonwealth who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
 - (c) exercising his or her function in that place
 - Fellow of the National Tax Accountants' Association
 - Finance company officer with 5 or more years of continuous service
 - Holder of a statutory office not specified in another item in this list
 - Judge of a court
 - Justice of the Peace
 - Magistrate
 - Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
 - Master of a court

Legal\306147547.1

- Member of Chartered Secretaries Australia
- Member of Engineers Australia, other than at the grade of student
- Member of the Association of Taxation and Management Accountants
- Member of the Australasian Institute of Mining and Metallurgy
- Member of the Australian Defence Force who is:
 - (a) an officer; or
 - (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
 - (c) a warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
- Member of:
 - (a) the Parliament of the Commonwealth; or
 - (b) the Parliament of a State; or
 - (c) a Territory legislature; or
 - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961
- Notary public
- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
- Permanent employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority; or
 - (c) a local government authority;
 with 5 or more years of continuous service who is not specified in another item in this list
- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- Police officer
- Registrar, or Deputy Registrar, of a court
- Senior Executive Service employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority
- Sheriff
- Sheriff's officer
- Teacher employed on a full-time basis at a school or tertiary education institution

Attachment 2 - Payment Certificate Template

Commonwealth of Australia STATUTORY DECLARATION *Statutory Declarations Act 1959*

1 Insert the name,
address and
occupation of
person making the
declaration

I,¹

make the following declaration under the *Statutory Declarations Act 1959* as required by the Funding Agreement dated [Insert date] between Ochre Health (QLD SC) Pty Limited ABN 99 158 015 804 and the Commonwealth (**Funding Agreement**):

2 Set out matter
declared to in
numbered
paragraphs

²

1. All work Ochre Health (QLD SC) Pty Limited has paid for using the funds payable by the Commonwealth under the Funding Agreement and any interest earned on those funds (**Funds**) was properly required for the "Project" as it is defined in the Funding Agreement; and
2. The amounts of each payment Ochre Health (QLD SC) Pty Limited has made using the Funds represent the reasonable price for the value of the work carried out or to be carried out in light of the price for similar work undertaken in the relevant industry marketplace.
3. No "Conflicts" (as defined in the Funding Agreement) arose in Ochre Health (QLD SC) Pty Limited making payments for work using the Funds that Ochre Health (QLD SC) Pty Limited did not, or has not, declared to the Commonwealth; and
4. No "Conflicts" (as defined in the Funding Agreement) arose in Ochre Health (QLD SC) Pty Limited entering into any Subcontracts (as they are defined in the Funding Agreement).
5. All Funds that Ochre Health Pty (QLD SC) Pty Limited has spent have been used for the purpose for which they were provided.
6. To the best of my information, knowledge and belief, Ochre Health (QLD SC) Pty Limited has complied with all material terms and conditions of the Funding Agreement.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of
person making the
declaration

³

Full name of person making declaration:

4 Place

Declared at ⁴

on ⁵

of ⁶

5 Day

6 Month and year

Before me,

7 Signature of
person before
whom the
declaration is
made (see over)

⁷

8 Full name,
qualification and
address of person
before whom the
declaration is
made (in printed
letters)

⁸

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration under the *Statutory Declarations Act 1959* may be made before—

- (1) a person who is currently licensed or registered under a law to practise in one of the following occupations:
- | | | |
|----------------------|----------------------|--------------------|
| Chiropractor | Dentist | Legal practitioner |
| Medical practitioner | Nurse | Optometrist |
| Patent attorney | Pharmacist | Physiotherapist |
| Psychologist | Trade marks attorney | Veterinary surgeon |
- (2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) a person who is in the following list:
- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
 - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
 - Bailiff
 - Bank officer with 5 or more continuous years of service
 - Building society officer with 5 or more years of continuous service
 - Chief executive officer of a Commonwealth court
 - Clerk of a court
 - Commissioner for Affidavits
 - Commissioner for Declarations
 - Credit union officer with 5 or more years of continuous service
 - Employee of the Australian Trade Commission who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
 - (c) exercising his or her function in that place
 - Employee of the Commonwealth who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
 - (c) exercising his or her function in that place
 - Fellow of the National Tax Accountants' Association
 - Finance company officer with 5 or more years of continuous service
 - Holder of a statutory office not specified in another item in this list
 - Judge of a court
 - Justice of the Peace
 - Magistrate
 - Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
 - Master of a court
 - Member of Chartered Secretaries Australia
 - Member of Engineers Australia, other than at the grade of student
 - Member of the Association of Taxation and Management Accountants
 - Member of the Australasian Institute of Mining and Metallurgy
 - Member of the Australian Defence Force who is:
 - (a) an officer; or
 - (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
 - (c) a warrant officer within the meaning of that Act

- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
- Member of:
 - (a) the Parliament of the Commonwealth; or
 - (b) the Parliament of a State; or
 - (c) a Territory legislature; or
 - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961
- Notary public
- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
- Permanent employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority; or
 - (c) a local government authority;
 with 5 or more years of continuous service who is not specified in another item in this list
- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- Police officer
- Registrar, or Deputy Registrar, of a court
- Senior Executive Service employee of:
 - (a) the Commonwealth or a Commonwealth authority; or
 - (b) a State or Territory or a State or Territory authority
- Sheriff
- Sheriff's officer
- Teacher employed on a full-time basis at a school or tertiary education institution

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (C1111)
BY THE DEPARTMENT OF HEALTH

s47E

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

s47E

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

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BY THE DEPARTMENT OF HEALTH



Australian Government
Department of Health and Ageing

Sunshine Coast GPSC Funding Agreement Deed of Variation No 1 (DoV 1)

Commonwealth of Australia as represented by the Department of Health
and Ageing
Commonwealth

Ochre Health (QLD SC) Pty Limited
Organisation

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

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THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

Sunshine Coast GPSC Funding Agreement - Deed of Variation No 1
dated 2012

Parties **Commonwealth of Australia** as represented by the Department of Health and Ageing ABN 83 605 426 759 (the **Commonwealth**)

 Ochre Health (QLD SC) Pty Limited ABN 99 158 015 804
 (the **Organisation**)

Background

- A. The Commonwealth and the Organisation entered into the Funding Agreement to establish the Sunshine Coast GP Super Clinic.
- B. The Parties wish to vary the Funding Agreement as provided for in this Deed.
- C. In particular, the Parties wish to vary the Funding Agreement to:
- (a) Amend the commencement of works from 31 October 2012 to 28 February 2013;
 - (b) **s47E, s47G**
 - (c) Update the contact details for the Commonwealth and Organisation;
 - (d) Amend the public liability insurance requirements for the architect from \$20 million to \$10 million in accordance with the Commonwealth's current requirements;
 - (e) Amend the Sippy Downs Hub Deliverables and Milestones Schedule (Annexure A) in accordance with the Commonwealth approved project commencement report and subsequent negotiations to address project delays, amendments to deliverable requirements, the addition of a new milestone and reallocation of capital works funding; and
 - (f) Amend the Maleny Hub Deliverables and Milestones Schedule (Annexure A) in accordance with the Commonwealth approved project commencement report and subsequent negotiations to address project delays, amendments to deliverable requirements, removal of milestones, the addition of a new milestone and reallocation of capital works funding.
- D. Clause 22.5(a) of the Funding Agreement states that no variation is binding unless it is agreed in writing between the Parties.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Deed means this deed of variation number 1.

Effective Date means the date this Deed is signed by the last party to sign this Deed.

Funding Agreement means the agreement dated 25 May 2012 between the Commonwealth and the Organisation.

Organisation means Ochre Health (QLD SC) Pty Limited (ABN 99 158 015 804).

Program has the meaning given in the Funding Agreement.

Project has the meaning given in the Funding Agreement.

Party has the meaning given in the Funding Agreement.

Other defined terms used in this Deed have the meaning given to them (if any) in the Funding Agreement.

1.2 Interpretation

Clause 1.3 of the Funding Agreement applies in the interpretation of this Deed.

1.3 General

- (a) If any amendment made by this Deed would be invalid apart from this clause, the amendment is not made.
- (b) Clause 22 of the Funding Agreement applies to this Deed.

1.4 Commencement

- (a) This Deed takes effect on and from the Effective Date.

2. Variation

The parties agree to vary the Funding Agreement, with effect on and from the Effective Date, as set out in this clause 2.

2.1 Schedule 1 Particulars, 5 - Commencement of the Works

Delete 5 – Commencement of Works entirely and replace it with a new 5 – Commencement of Works which reads as follows:

The Organisation must Commence the Works on or before 28 February 2013.

2.2 Schedule 1 Particulars, 7.2 – Capital Works Funds

Delete 7.2 – Capital Works Funds entirely and replace it with a new 7.2 – Capital Works Funds which reads as follows:

The Commonwealth will pay \$15,835,600 (inclusive of GST) to the Organisation in the form of Capital Works Funds to support the construction of the Works:

- a. which Capital Works Funds will be payable in the instalments specified in the Deliverables and Milestones Schedule;
- b. The Commonwealth will pay the Capital Works Funds in accordance with Clause 6.1.

2.4 Schedule 1 Particulars, 8 – Project Contact

Delete 8 – Project Contact entirely and replace it with a new 8 – Project Contact which reads as follows:

- a. The Commonwealth's Project Contact will be the person occupying the position of:
 Director
 Program Support and Communications Section
 GP Super Clinics Branch
 Department of Health
 GPO Box 9848
 Canberra ACT 2601

This position is currently occupied by Mr Craig Rayner.

Ph: (02) 6289 9034

Fax: (02) 6289 1777

Email: craig.rayner@health.gov.au

- b. The Organisation's Project Contact will be the person occupying the position of:
 Chief Executive Officer
 Ochre Health (QLD SC) Pty Ltd
 Suite D, Level 5
 140 William Street
 East Sydney NSW 2010

This position is currently occupied by Mr John Burns.

Ph: (02) 9264 4300, Mobile: 0428 313 732

Fax: (02) 9261 0171

Email: john@ochrehealth.com.au.

2.5 Schedule 1 Particulars, 11.1 – The construction of the works

Delete 11.1 – The construction of the works (b) entirely and replace it with a new 11.1 – The construction of the works (b) which reads as follows:

- b. The Organisation must ensure that each professional service provider identified in the table below, holds a professional indemnity policy in the amount specified in respect of that professional service provider in the table below, to cover its liability for breach of professional duty (if applicable) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties. Such cover must extend to liability for personal injury, illness or death of anyone in connection with the provision of professional services or as a result of breach of professional duty

and must be maintained for a period of at least 7 years following the achievement of Practical Completion of the Works:

Professional Service Provider	Professional indemnity coverage
Architect	\$10 million
Builder	\$10 million
Fire Services	\$2 million
Electrical	\$5 million
Hydraulic	\$5 million
Civil	\$5 million
Mechanical	\$5 million

2.6 s47E

s47E

s47E, s47G

s47E, s47G

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2.7 s47E

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Executed as a deed.

Commonwealth

Executed by Commonwealth of Australia as represented by the Department of Health and Ageing ABN 83 605 426 759 by and in the presence of:



Signature of Witness

VANESSA MOY

Name of Witness in full

Date: 10 JANUARY 2013



Signature of Authorised Person

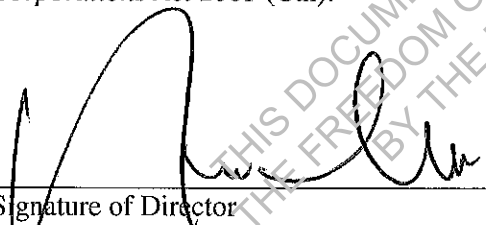
Craig Phillip Rayner

Name of Authorised Person in full

Date: 10 January 2013

Organisation

Executed by Ochre Health (QLD SC) Pty Limited ABN 99 158 015 804 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

NAMISH MEVDUM

Full name of Director

Date: 7.1.13.



Signature of company Secretary/Director

ROSS LAMPSON

Full name of company Secretary/Director

Date: 27/12/12



Australian Government

Department of Health and Ageing

Sunshine Coast GPSC Funding Agreement Deed of Variation No 2 (DoV 2)

Commonwealth of Australia as represented by the Department of Health
and Ageing
Commonwealth

Ochre Health (QLD SC) Pty Limited
Organisation

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BY THE DEPARTMENT OF HEALTH

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BY THE DEPARTMENT OF HEALTH

Sunshine Coast GPSC Funding Agreement - Deed of Variation No 2
dated 2 MAY 2013

Parties Commonwealth of Australia as represented by the Department of Health and Ageing ABN 83 605 426 759 (the **Commonwealth**)

Ochre Health (QLD SC) Pty Limited ABN 99 158 015 804
(the **Organisation**)

Background

- A. The Commonwealth and the Organisation entered into the Funding Agreement to establish the Sunshine Coast GP Super Clinic.
- B. The Parties wish to vary the Funding Agreement as provided for in this Deed.
- C. In particular, the Parties wish to vary the Funding Agreement to:
 - (a) Amend the commencement of works from 28 February 2013 to 27 March 2013;
 - (b) Amend the Maleny Hub Deliverables and Milestones Schedule (Annexure A) to address the delay in the commencement of works milestone;
 - (c) Amend the Sippy Downs Hub Deliverables and Milestones Schedule (Annexure A) to address project delays, the addition of a new milestone and reallocation of milestone payments.
- D. Clause 22.5(a) of the Funding Agreement states that no variation is binding unless it is agreed in writing between the Parties.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Deed means this deed of variation number 2.

Effective Date means the date this Deed is signed by the last party to sign this Deed.

Funding Agreement means the agreement dated 25 May 2012 between the Commonwealth and the Organisation.

Organisation means Ochre Health (QLD SC) Pty Limited (ABN 99 158 015 804).

Program has the meaning given in the Funding Agreement.

Project has the meaning given in the Funding Agreement.

Party has the meaning given in the Funding Agreement.

Other defined terms used in this Deed have the meaning given to them (if any) in the Funding Agreement.

1.2 Interpretation

Clause 1.3 of the Funding Agreement applies in the interpretation of this Deed.

1.3 General

(a) ~~If any amendment made by this Deed would be invalid apart from this clause, the amendment is not made.~~

(b) Clause 22 of the Funding Agreement applies to this Deed.

1.4 Commencement

(a) This Deed takes effect on and from the Effective Date.

2. Variation

The parties agree to vary the Funding Agreement, with effect on and from the Effective Date, as set out in this clause 2.

2.1 Schedule 1 Particulars, 5 - Commencement of the Works

Delete 5 – Commencement of Works entirely and replace it with a new 5 – Commencement of Works which reads as follows:

The Organisation must Commence the Works on or before 27 March 2013.

2.2 s47E

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s47E, s47G

s47E, s47G

s47E, s47G

s47E, s47G

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s47E, s47G

2.3 s47E

s47E

s47E, s47G

s47E, s47G

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TH
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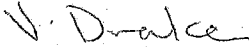
s47E, s47G

s47E, s47G

s47E, s47G

Executed as a deed.
Commonwealth

Executed by Commonwealth of Australia as
represented by the Department of Health
and Ageing ABN 83 605 426 759 by and in the
presence of:



Signature of Witness

Veronica Drake

Name of Witness in full

Date: 2 May 2013.



Signature of Authorised Person

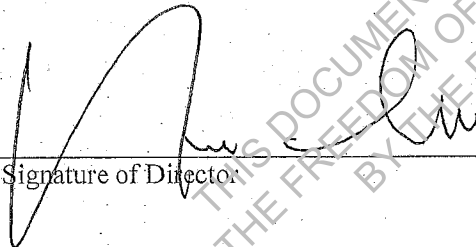
KIRSTY FAICHNEY

Name of Authorised Person in full

Date: 2 MAY 2013

Organisation

Executed by Ochre Health (QLD SC)
Pty Limited ABN 99 158 015 804 in
accordance with section 127 of the
Corporations Act 2001 (Cth):

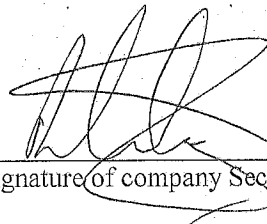


Signature of Director

NAMISH MEEDRUM

Full name of Director

Date: 22/4/13



Signature of company Secretary/Director

ROSS LAMPWAY

Full name of company Secretary/Director

Date: 23/4/13

THIS DOCUMENT HAS BEEN RELEASED UNDER
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BY THE DEPARTMENT OF HEALTH



Australian Government
Department of Health

Sunshine Coast GPSC Funding Agreement Deed of Variation No 3 (DoV 3)

Commonwealth of Australia as represented by the Department of Health
Commonwealth

Ochre Health (QLD SC) Pty Limited
Organisation

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

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THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH

Sunshine Coast GPSC Funding Agreement - Deed of Variation No 3
dated 2013

Parties **Commonwealth of Australia** as represented by the Department of Health
ABN 83 605 426 759 (the **Commonwealth**)

Ochre Health (QLD SC) Pty Limited ABN 99 158 015 804
(the **Organisation**)

Background

- A. The Commonwealth and the Organisation entered into the Funding Agreement dated 25 May 2012 to establish the Sunshine Coast GP Super Clinic.
- B. The Parties wish to vary the Funding Agreement as provided for in this Deed.
- C. In particular, the Parties wish to vary the Funding Agreement to:
- (a) amend the Sippy Downs Hub Deliverables and Milestones Schedule (Annexure A) to address the reallocation of milestone payments from the 'Start up and Operational Arrangements' and 'Recurrent funds' milestones;
 - (b) amend the Maleny Hub Deliverables and Milestones Schedule (Annexure A) to include the addition of the milestone 'Recurrent funds' and associated milestone payment;
 - (c) amend the Eumundi spoke Deliverables and Milestone Schedule (Annexure A) to address the addition of new milestones and milestone payments;
 - (d) update clause 2.1(c) - The Property to update the address details for the Eumundi spoke site;
 - (e) update clause 4.1 – Designated Use Period for the Eumundi spoke site;
 - (f) update clause 6.1 (a) – Date for Practical Completion to include the practical completion date for the Eumundi spoke site; and
 - (g) **s47E, s47G**
- D. Under clause 22.5(a) of the Funding Agreement no variation to the Funding Agreement is binding unless it is agreed in writing between the Parties.

Operative provisions

1. Definitions and interpretation

1.2 Definitions

In this deed:

Deed means this deed of variation number 3.

Effective Date means the date this Deed is signed by the last party to sign this Deed.

Funding Agreement means the agreement dated 25 May 2012 between the Commonwealth and the Organisation and varied from time to time.

Organisation means Ochre Health (QLD SC) Pty Limited (ABN 99 158 015 804).

Other defined terms used in this Deed have the meaning given to them in the Funding Agreement.

1.3 Interpretation

Clause 1.3 of the Funding Agreement applies to the interpretation of this Deed.

1.4 General

- (a) If any amendment made by this Deed would be invalid apart from this clause, the amendment is not made.
- (b) Clause 22 of the Funding Agreement applies to this Deed.

1.5 Commencement

- (a) This Deed takes effect on and from the Effective Date.

2. Variation

The parties agree to vary the Funding Agreement, with effect on and from the Effective Date, as set out in this clause 2.

2.1 Annexure A of Schedule 1 (Sippy Downs Hub Site Deliverables and Milestones Schedule)

Delete Annexure A of Schedule 1 (Sippy Downs Hub Site Deliverables and Milestones Schedule) entirely and replace it with a new Annexure A of Schedule 1 (Sippy Downs Hub Site Deliverables and Milestones Schedule).

2.2 Annexure A of Schedule 1 (Maleny Hub Site Deliverables and Milestones Schedule)

Delete Annexure A of Schedule 1 (Maleny Hub Site Deliverables and Milestones Schedule) entirely and replace it with a new Annexure A of Schedule 1 (Maleny Hub Site Deliverables and Milestones Schedule).

2.3 Annexure A of Schedule 1 (Eumundi Spoke Site Deliverables and Milestones Schedule)

Delete Annexure A of Schedule 1 (Eumundi Spoke Site Deliverables and Milestones Schedule) entirely and replace it with a new Annexure A of Schedule 1 (Eumundi Spoke Site Deliverables and Milestones Schedule).

2.4 Schedule 1 Particulars, 2.1(c) – The Property

Delete item 2.1(c) The Property - Eumundi Spoke Site and replace it with a new 2.1(c) The Property - Eumundi Spoke Site which reads as follows;

- (c) *The Eumundi Spoke Site: the primary care medical facility located at 6/2-6 Etheridge Street, Eumundi in the State of Queensland.*

2.5 Schedule 1 Particulars, 4.1 – Designated Use Period

Delete item 4.1 – Designated Use Period entirely and replace it with a new 4.1 – Designated Use Period which reads as follows:

The Designated Use Period for Property A, B and D is the period commencing on the Date for Commencement of Operations and expiring 20 years after the Date for Commencement of Operations.

The Designed Used Period for Property D (the Eumundi spoke) is the period commencing on the Date of Commencement of Operations and expiring 10 years after the Date for Commencement of Operations.

2.6 Schedule 1 Particulars, 6.1(a) – Date for Practical Completion

Delete 6.1(a) – Date for Practical Completion entirely and replace it with a new 6.1(a) – Date for Practical Completion which reads as follows:

- (a) *The date by which Practical Completion of the Works at the Sippy Downs Hub site and the Eumundi Spoke site must be achieved is 28 February 2014.*

2.7 s47E

2.8 Schedule 1 Particulars, 7.3(a) - Recurrent Funds

Delete 7.3(a) – Recurrent Funds entirely and replace it with a new 7.3(a) – Recurrent Funds which reads as follows:

- (b) *The Commonwealth will pay up to a total of \$818,400 (inclusive of GST) to the Organisation in the form of Recurrent Funds to cover additional personnel costs (incurred within four years of the date of this Agreement) associated with the implementation of integrated, multidisciplinary, team based approaches to the delivery of health care services from the GP Super Clinic and as detailed in the National Program Guide.*

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

2.9 Annexure A

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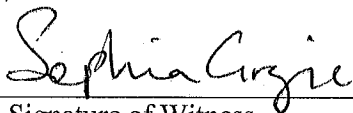
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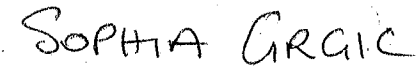
Executed as a deed.

Commonwealth

**Executed by Commonwealth of Australia as
represented by the Department of Health
ABN 83 605 426 759 by and in the presence of:**

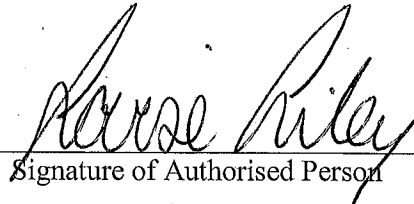


Signature of Witness



Name of Witness in full

Date: 22/11/13



Signature of Authorised Person

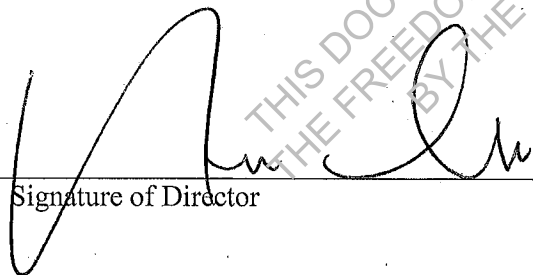


Name of Authorised Person in full

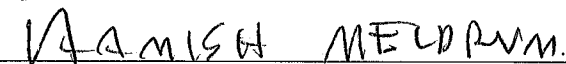
Date: 22/11/2013

Organisation

**Executed by Ochre Health (QLD SC)
Pty Limited ABN 99 158 015 804 in
accordance with section 127 of the
Corporations Act 2001 (Cth):**

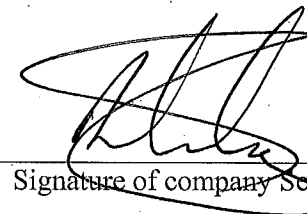


Signature of Director

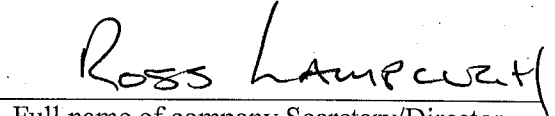


Full name of Director

Date: 18/11/13



Signature of company Secretary/Director



Full name of company Secretary/Director

Date: 18/11/13