

SUBCONTRACTOR AGREEMENT

between

AHA PTY LTD
ABN 82 072 790 848

and

[SUBCONTRACTOR]
[ABN]



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Subcontractor Agreement

Date _____, 2026

Parties	AHA PTY LTD (ABN 82 072 790 848) of Level 6, 140 Bourke Street, Melbourne Victoria 3000 (AHA)
	[SUBCONTRCATOR] ([ABN]) of [ADDRESS] (Contractor)

Background	A. AHA has entered into an agreement with the Commonwealth of Australia as represented by the Department of Health, Disability and Ageing (Health) to provide Services for the Administration of Pharmacy Programs. B. AHA will engage the Contractor to carry out the Subcontracted Services and the Contractor has accepted the engagement on the terms and conditions of this Agreement.
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Agreement

1. Defined terms and interpretation

1.1 Definitions in the Dictionary

- (a) A term or expression starting with a capital letter:
- (i) which is defined in the Dictionary in Schedule 1, has the meaning given to it in the Dictionary;
 - (ii) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
 - (iii) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the table of contents, headings and underlinings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) use of the word "including" and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (e) a reference to a part, clause, Party, annexure or schedule is a reference to a part and clause of, and a party, annexure and schedule to, this Agreement;
- (f) a reference to any statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it;
- (h) a reference to a "person" includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency except where express mention is made of a "natural person";
- (i) a reference to this Agreement or any Document or other agreement includes any amendments, variations or additions to them that may be made from time to time in accordance with this Agreement;
- (j) a reference to a Party to this Agreement or to any other Document or agreement includes a permitted substitute or a permitted assign of that Party;
- (k) if a Party to this Agreement comprises more than 1 person, then this Agreement binds them jointly and each of them separately;
- (l) a reference to monetary units is to units of Australian currency;
- (m) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day.

2. Engagement and Term

2.1 Engagement

AHA has agreed to engage the Contractor to provide the Subcontracted Services, and the Contractor has agreed to provide the Subcontracted Services on the terms and conditions of this Agreement

2.2 Term

This Agreement begins on the Commencement Date for provision of ELS Services from 1 January 2027 and continues for a period to the End Date (**Term**) unless terminated in accordance with clause 20 or extended by agreement of the Parties in writing.

3. Whole of Government (WoG) Arrangements

3.1 Health option to transfer to WOG Arrangement

- (a) If, during the Term, part or all of the Subcontracted Services fall within the scope of a WoG Arrangement to which AHA or the Contractor is a party, the parties acknowledge and agree that:
 - (i) Health, in its discretion, may notify AHA that it requires some or all of the Subcontracted Services to be provided under that WoG Arrangement; and
 - (ii) if Health issues a notice under clause 3.1(a)(i), the Parties must agree amendments to this Agreement so that:
 - (A) the terms applicable to the provision of Subcontracted Services identified in Health's notice will be those in the WoG Arrangement (to the extent that Health believes the terms of the WoG Arrangement are more beneficial for Health);
 - (B) the Fees will be reduced to reflect the fees or charges in the WoG Arrangement on a like-for-like basis, so that the categories of Fees in this Agreement (and their components if specified) are reduced to reflect the amounts for the same categories (or their components if specified) in the WoG Arrangement; and
 - (C) any discounts applicable to a WoG Arrangement for categories of products and services will apply to the same categories of products and services in this Agreement.
 - (iii) a WoG Arrangement may include standing offers under which goods and services are offered to Agencies.
- (b) AHA will prepare the necessary Documentation to reflect any amendment to this Agreement effected by any notice given by Health and forward that Documentation to the Contractor.
- (c) Nothing in this clause 3.1 limits AHA's rights under clause 20.3.

4. Transferred Operations of Health

4.1 Contractor to continue to provide Subcontracted Services for transferred operations

- (a) If any part of the operations or business of Health is transferred to another Agency or a separate entity:

- (i) The Contractor must, if and as requested by AHA (having received a like request from Health), continue to provide the affected Subcontracted Services to AHA for the benefit of the transferred operations or business to that new Agency or other entity on the terms of this Agreement for the remainder of the Term;
 - (ii) if necessary, AHA and the Contractor will enter into a new agreement on substantially the same terms as this Agreement (the amount of Fees payable under any such new agreement must reflect the scope of the transferred operations or business as a result of the transfer to a new Agency or other entity);
 - (iii) the Fees under this Agreement will be changed to reflect the reduced scope of the Subcontracted Services provided to AHA (subject to the total Fees payable by AHA and the new Agency or other entity being the same as if there had been no partial transfer to another Agency or entity); and
 - (iv) AHA may remove the affected Subcontracted Services from the scope of this Agreement in accordance with clauses 20.3(a) to 20.3(c).
- (b) If any changes under this clause impact upon the ability of the Contractor to perform the Subcontracted Services, the parties will discuss those impacts in good faith and may amend this Agreement in accordance with clause 25 as required to ensure the Contractor can continue to perform the Subcontracted Services. If the Contractor seeks any amendment to this Agreement, it must do so within three (3) Months from the date the impact upon the ability of the Contractor to perform the Subcontracted Services is known.

5. Performance of Subcontracted Services

5.1 General Obligations of Contractor

- (a) The Contractor must, at all times:
 - (i) comply with its obligations under this Agreement;
 - (ii) act reasonably and in good faith in performing its obligations and exercising its rights under this Agreement;
 - (iii) perform the Subcontracted Services and deliver the Deliverables in accordance with all applicable Laws and in a skilful, diligent, responsive, professional, courteous, efficient, timely and controlled manner and with a high degree of quality and so that it complies with this Agreement and meets in full:
 - (A) the applicable Program Rules and all other reasonable requirements and specifications of Health in relation to the Subcontracted Services and Deliverables, as provided herein or made available or advised by Health or AHA to the Contractor from time to time or which otherwise come to the attention of the Contractor;
 - (B) any Milestones specified in this Agreement by the corresponding Milestone Dates (provided that AHA will not unreasonably withhold its consent to an extension of time for delivery of a Deliverable to take account of any circumstance beyond the reasonable control of the Contractor);

- (iv) work with AHA in a collaborative manner and with other organisations (as directed by AHA) involved with the delivery of the Services;
- (v) ensure that it, and each of the Subcontractors, complies with all obligations relating to payments of Tax instalment deductions, deductions from prescribed payments, fringe benefits Tax, superannuation, payroll Tax and any other Taxes or levies imposed upon an employer which arise in respect of the Contractor Personnel or otherwise in respect of any amounts paid to the Contractor under this Agreement and that it complies with all requirements imposed on an employer under the relevant legislation to keep records, lodge returns and provide information in relation to such obligations. Upon request, the Contractor must provide to AHA proof that it has complied with these obligations.
- (b) The Contractor must provide all reasonable assistance consistent with the Contractor's obligations under this Agreement and required by AHA.
- (c) The Contractor must not do anything or omit to do anything that would cause AHA to be in breach of its Services Agreement with Health.
- (d) The Contractor must provide AHA with the plans, documents, information, progress updates and reports as specified in Schedule 2 – Subcontracted Services and Fees or as otherwise requested by AHA from time to time to enable AHA to meet its reporting obligations to Health under the Services Agreement.
- (e) The Contractor shall ensure that the Contractor Representative is reasonably available to attend meetings and answer any questions relating to the provision of the Subcontracted Services raised by AHA.
- (f) Except as otherwise expressly provided in this Agreement, the Contractor must provide all accommodation, travel, Personnel, equipment and other resources necessary to meet its obligations under this Agreement and to provide the Subcontracted Services.
- (g) Without limiting its other obligations and liabilities under this Agreement, the Contractor must correct at its cost any failure to comply with its obligations to provide the Subcontracted Services in accordance with this Agreement as soon as practicable after becoming aware of the failure.

5.2 Applicable Requirements

- (a) The Contractor must comply with, and use reasonable endeavours to ensure that the Contractor Personnel comply with all Health's Applicable Requirements in providing the Subcontracted Services.
- (b) As at the Commencement Date, the Applicable Requirements are identified or referred to in Schedule 3 - Applicable Requirements.
- (c) The Parties acknowledge that Health may, at its absolute discretion alter the Applicable Requirements that are policies from time to time and the amendments will be Notified by AHA to the Contractor.

5.3 Standards and Codes

- (a) The Contractor must, in performing the Subcontracted Services and providing the Deliverables, comply with:

- (i) any standards reasonably required of AHA by Health in relation to the Subcontracted Services and Notified by AHA to the Contractor;
 - (ii) if there are no standards specified under clause 5.3(a), any applicable Australian or New Zealand standards that are consistent with the requirements of this Agreement, or if there are no applicable Australian or New Zealand standards, any applicable international standards that are consistent with the requirements of this Agreement; and
 - (iii) any industry codes and best practice methodologies.
- (b) The contractor must perform its obligations under this Agreement in such a way that AHA is able to participate in any necessary inspections of work in progress, and is able to obtain the full benefit of the Subcontracted Services for the purposes for which they are delivered.
 - (c) The Contractor must, if requested in writing by AHA, provide evidence of its compliance with any applicable standards, industry codes, and methodologies.

5.4 Directions by AHA

- (a) If AHA reasonably considers that the Contractor has failed or may fail to perform the Subcontracted Services in accordance with a requirement of this Agreement, then AHA may, after consultation with the Contractor, issue a direction to the Contractor, including one which clarifies:
 - (i) the actions that the Contractor must take within a reasonable time period in order to meet the requirements of this Agreement; and
 - (ii) any governance, communication or reporting arrangements which AHA reasonably considers necessary in order to facilitate the Contractor providing the Subcontracted Services in accordance with this Agreement.
- (b) If a direction given by AHA is unclear (e.g. the direction could be implemented in more than one way), may adversely affect the performance of the Subcontracted Services or the Contractor considers the direction is inconsistent with this Agreement, then the Contractor must:
 - (i) consult with AHA; and
 - (ii) follow any subsequent direction by AHA as to how the initial direction must be implemented.
- (c) A direction issued by AHA does not limit the Contractor's obligations under this Agreement.

5.5 Personnel

- (a) The Contractor must utilise such Personnel as are necessary to enable it to fulfil its obligations under this Agreement.
- (b) The Contractor must ensure that the Contractor Personnel that it utilises pursuant to this clause 5.5 have the requisite skills, qualifications, and experience necessary to properly perform the Subcontracted Services.
- (c) The Contractor must:

- (i) provide, or procure the provision of, such information as can be lawfully provided (such as details of their education, training and qualifications) and which is reasonably requested by AHA concerning the Contractor Personnel (if any) it proposes to use for the purposes of this Agreement;
- (ii) The Contractor must obtain National Police Checks for all management and operational staff at its own cost.
- (iii) ensure that Contractor Personnel comply with the Contractor's obligations in this Agreement (including with respect to privacy, security and confidential information) and all applicable Laws relating to the Subcontracted Services;
- (iv) ensure that the Contractor Personnel comply with any policies, protocols, codes of conduct or procedures specified by Health (and conveyed by AHA) from time to time;
- (v) ensure that Contractor Personnel have, if required pursuant to clause 10.2(b), signed an undertaking in the form of Schedule 5 - Health Deed of Confidentiality and Privacy; and

5.6 Key Personnel

- (a) If Key Personnel are specified in Schedule 2 – Subcontracted Services and Fees as being responsible for the performance of key roles or tasks under this Agreement, the Contractor must:
 - (i) provide those individuals to perform those roles or tasks;
 - (ii) ensure that the Key Personnel that it uses have the necessary education, training, qualifications, skills and if required, security clearances to fulfil those tasks;
 - (iii) ensure that the Key Personnel comply with the obligations of this Agreement.
- (b) If a person specified as Key Personnel is unavailable at any time, then the Contractor must promptly advise AHA and propose a substitute. The substitute provided must also have the necessary education, training, qualifications and skills to fulfil the required tasks.
- (c) Any substitute Key Personnel must be approved by AHA. AHA may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under this Agreement.
- (d) The unavailability of Key Personnel during the substitution process will not limit the Contractor's obligations to provide the Subcontracted Services under this Agreement.
- (e) AHA may, in its absolute discretion and in good faith after having consulted with the Contractor, Notify the Contractor that it requires the Contractor to replace any Contractor Personnel (including Key Personnel) involved in performing the Subcontracted Services for the reasons stated in the Notice. After receipt of that Notice, the Contractor must replace that person with another person of suitable ability and qualifications.
- (f) The Contractor remains obliged to perform the Subcontracted Services in accordance with this Agreement in the event that AHA requires the Contractor to replace any of the Contractor Personnel. The unavailability of Personnel during any replacement process will not limit the Contractor's obligations to provide the Subcontracted Services under this Agreement.

5.7 Contract Managers and Representatives

- (a) Each Party must appoint a Contract Manager to conduct the day to day-to-day administration of this Agreement. If the Contractor is providing Subcontracted Services in relation to more than one Program, then it may appoint a Contract Manager for each Program.
- (b) Each Party must Notify the other Party of any change in the identity, address and/or contact details of their Contract Manager
- (c) Each Party must appoint a representative with the authority to represent it and to:
 - (i) give and receive Notices under this Agreement;
 - (ii) exercise rights and give approvals under this Agreement, subject to any provision to the contrary in this Agreement; and
 - (iii) oversee the day-to-day administration of this Agreement by its Contract Manager.
- (d) The AHA Representative is responsible for administration of this Agreement on behalf of AHA.
- (e) The Contractor Representative is responsible for administration of this Agreement on behalf of the Contractor.
- (f) The AHA Representative and the Contractor Representative must meet and communicate as required by AHA.
- (g) The AHA Representative and Contractor Representative may each delegate their functions, or authorise that their functions be carried out on their behalf, and will Notify the other Party of any such delegation or authorisation.

5.8 Conflicts of Interest

- (a) The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no Conflict of Interest (either potential, perceived or actual) exists or is likely to arise in the performance of its obligations under this Agreement.
- (b) A 'Conflict of Interest' for the purposes of this clause 5.8, includes:
 - (i) connections or relationships between the Contractor and Program Recipients which may, or may be perceived as, inhibiting the Contractor's ability to fairly and impartially perform the Subcontracted Services;
 - (ii) the Contractor accepting benefits or bribes from a third party; or providing benefits or bribes to AHA in respect of this Agreement;
 - (iii) unauthorised distribution of Confidential Information by the Contractor for the purposes of the Contractor gaining financial or other benefit from a third party; or
 - (iv) a conflict created as a result of a breach by the Contractor of a fiduciary obligation to AHA.
- (c) If, during the performance of this Agreement, a Conflict of Interest (either potential, perceived or actual) arises, or appears likely to arise, then the Contractor must:

- (i) Notify the AHA Representative immediately in writing;
- (ii) make full disclosure of all relevant information relating to the Conflict of Interest; and
- (iii) take such steps as AHA reasonably requires to resolve or otherwise deal with the Conflict of Interest.

5.9 Supply Chain Integrity

- (a) To ensure the Integrity of Equipment, Software, people and process that are provided to Health through the Services Agreement and this Agreement the Contractor must:
 - (i) provide Health with visibility of its local and global supply chains as they relate to the Subcontracted Services. This includes reporting each quarter on Subcontractor arrangements, alliances and partnerships with third party suppliers and Software providers;
 - (ii) provide to Health any additional supply chain information in a timely manner at the request of Health (or AHA, having received a like request from Health) at any time during the Term;
 - (iii) allow Health to conduct a due diligence and risk review of suppliers and supply chain elements during the Term to acquire information regarding System Equipment, Software, firmware, or services and ensure security risks are adequately addressed. Health, in its sole discretion, may require the Contractor to remove suppliers and/or supply chain elements as a result of any due diligence or risk review. The Contractor must not deliver Subcontracted Services, store Health Data or information about Health on Equipment or Software from specific suppliers when requested by Health;
 - (iv) (iv) protect the Integrity of the Equipment and Software, Health Data and information about Health from unauthorised interference; and
 - (v) employ independent analysis and penetration testing against delivered information systems, information system components, and information technology products.

5.10 Limitation of relationship

- (a) The Contractor must not represent itself, and must ensure that its Contractor Personnel do not represent themselves, as being an officer, employee, partner or agent of AHA, or as otherwise able to bind or represent AHA unless authorised by AHA.
- (b) This Agreement does not create any relationship of employment, agency or partnership between the Parties.

5.11 Acceptance of Deliverables/Milestones

- (a) The Contractor agrees that the Deliverables and the Contractor's achievement of the Milestones are subject to AHA's Acceptance, where this Agreement indicates they are subject to Acceptance, in accordance with the process in paragraph (b)
- (b) The process for Acceptance of a Deliverable (or group of Deliverables) is:

- (i) AHA will promptly assess the Deliverable/s submitted to it for compliance with the requirements of this Agreement;
- (ii) If AHA:
 - (A) Accepts the Deliverable/s, then it will issue an Acceptance Notice to the Contractor; or
 - (B) if it does not Accept the Deliverable/s, then it will Notify the Contractor of its decision and reasons and the Contractor must (at no cost to AHA) then do all things necessary to correct and resubmit the Deliverable/s for re-assessing by AHA.
- (c) If the Contractor does not deliver a compliant Deliverable/s:
 - (i) 15 Business Days after the Deliverable was required to be delivered (or by such later date as AHA may Notify the Contractor, acting reasonably having regard to the relevant circumstances); or
 - (ii) if any further assessment of the Deliverable by AHA is required under this clause 5.6, such further period as is Notified by AHA,

then AHA may treat the non-compliance as a failure by the Contractor to comply with the relevant obligation under this Agreement and proceed to terminate this Agreement in accordance with clause 20.1 (provided that where the non-compliance is capable of remedy, AHA must first give the notice to remedy required under clause 20.1(a)(ii)).
- (d) The issuing of an Acceptance Notice in accordance with clause 5.6(c) is not a waiver of rights and an Acceptance Notice may impose such conditions and qualifications as AHA reasonably requires and the Contractor must comply with these conditions and qualifications.

5.12 Subcontracting

- (a) The Contractor must:
 - (i) not Subcontract any of its obligations under this Agreement without the prior written Approval of AHA;
 - (ii) not Subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Contractor, constitute a breach of this Agreement;
 - (iii) not Subcontract with an entity that has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;
 - (iv) not Subcontract with an entity that is, or which has one (1) or more employees that are member(s) of an entity that is an Inappropriate Person;
 - (v) comply with its obligations under section 2.2 of Schedule 3 - Applicable Requirements;
 - (vi) include in the Subcontract provisions that require the Subcontractor to comply with all Laws applicable to the provision of the subcontracted services and any rules, policies, guidelines, processes and procedures of Health that are relevant to the Subcontractor's performance of the services;

- (vii) without limiting paragraph (vi), ensure that any Subcontractor Approved under this Agreement complies with the following clauses of this Agreement:
 - A. clause 13 (Audit and access);
 - B. clause 14 (Data Management);
 - C. clause 14.4 (Compliance with Health Security requirements);
 - D. clause 5.9 (Supply Chain Integrity and Security);
 - E. clause 10 (Confidentiality);
 - F. clause 11 (Privacy);
 - G. clause 21 (Disengagement);
 - H. clause 22 (Knowledge transfer); and
 - I. clause 5.8 (Conflicts of Interest); and
- (b) Where any part of the Subcontracted Services is directly or indirectly provided to AHA by a Subcontractor of the Contractor:
 - (i) the Contractor is and remains fully responsible in accordance with this Agreement for providing those Subcontracted Services and meeting the requirements with respect to those Subcontracted Services;
 - (ii) the rights and remedies of AHA under this Agreement against the Contractor for any default in the Contractor's obligations under this Agreement are not affected or in any way diminished by the Contractor Subcontracting the Subcontracted Services.

5.13 Revocation of Health Approval

The Parties acknowledge that Health may revoke its Approval of the Contractor (as Subcontractor of AHA) or a Subcontractor of the Contractor (in each case, an **Approved Subcontractor**), on reasonable grounds, at any time and AHA must cease using the Contractor or the Contractor must cease using its Subcontractor, as applicable to perform the relevant services within the time frames reasonably required by Health. For the purposes of this clause 5.13, reasonable grounds include the following:

- (a) if the Approved Subcontractor fails to comply in any material respect with any of its obligations under its Subcontract;
- (b) if the Approved Subcontractor's performance is materially deficient;
- (c) if the Approved Subcontractor assigns or delegates performance of its obligations under the Subcontract to another entity that is not Approved in writing by Health;
- (d) if the Approved Subcontractor contravenes any obligation of AHA under the Services Agreement or of the Contractor under this Agreement or any procedure or direction of Health in respect of Personal Information, security (including Data security) or Harmful Code protection;
- (e) if there have been material misrepresentations by or concerning the Approved Subcontractor;

- (f) without limiting the above, if the Approved Subcontractor or any of its subcontractors breach confidentiality or related obligations to Health or AHA in relation to Health's Confidential Information, privacy obligations, data protection obligations or otherwise engages in conduct that:
 - (i) infringes or prejudices any of Health's Intellectual Property Rights or any rights Health may have in relation to any third party's Intellectual Property Rights or exposes Health to a third party Intellectual Property Rights claim; or
 - (ii) detrimentally affects or might reasonably be expected to detrimentally affect the reputation of Health or the Australian Government; or
- (g) if Health determines that the relevant Approved Subcontractor is, or will be:
 - (i) unable to effectively perform its responsibilities; or
 - (ii) in breach of the Subcontract.

5.14 Agreement Review

- (a) The Parties will, at least annually, comprehensively review the operation of this Agreement, including for compliance by the Contractor with the obligations specified in this Agreement.
- (b) The Contractor must comply with any reasonable obligations for review specified by Notice from AHA.
- (c) Each Party must bear its own costs of any review conducted under this clause 5.14.

5.15 Acknowledgment

The Contractor acknowledges and agrees that that its participation in fulfilling the Services Agreement may be publicly disclosed.

6. Additional Services

6.1 Additional Services

- (a) At any time, AHA may request the Contractor to provide Additional Services. Additional Services may include major new or change initiatives or discrete one-off or short-term initiatives that Health initiates with AHA.
- (b) If AHA requires Additional Services to be provided by the Contractor pursuant to the terms of this Agreement, then the Parties will negotiate in good faith to reach agreement on the details for the Additional Services and any necessary amendment to this Agreement. The following and any other relevant items may need to be negotiated and agreed:
 - (i) the specifications for the Additional Services;
 - (ii) the Fees and payment arrangements;
 - (iii) Milestones and any Milestone Dates or other timeframes to apply; and

- (iv) any consequential amendment to this Agreement (if any).
- (c) Where an Additional Service will result in a change to this Agreement, this change must be agreed in accordance with clause 25. Unless agreed otherwise in writing, changes which result from Additional Services implemented in accordance with this clause 6.1 will become part of the Subcontracted Services and will be subject to this Agreement.
- (d) Where agreed in writing between the Parties, the Contractor must perform the Additional Services from the date specified by AHA and in accordance with the relevant Documentation.
- (e) The Contractor:
 - (i) warrants that AHA will not be charged any amount for Contractor Personnel providing any Additional Services if the Contractor is already being charged for those Personnel on a Full Time Equivalent basis; and
 - (ii) must ensure that it first seeks to use the spare capacity of any Personnel that AHA is already paying for on a Full Time Equivalent basis to satisfy any request by AHA for the performance of any Additional Service and any response to a request for Additional Services must include a price that reflects the use of those Personnel at no additional charge.
- (f) The Parties agree that Additional Services do not include anything required to remedy any failure by the Contractor to perform the Subcontracted Services.

7. New or Changed Program Services

- (a) The Contractor acknowledges that Health may require:
 - (i) the implementation of a new Community Pharmacy Program or change to an existing Community Pharmacy Program; or
 - (ii) another change to the number, size, scope or operations of the Community Pharmacy Programs; or
 - (iii) the provision by AHA of the Services to additional Agencies or End Users, **(New or Changed Program Services)**, and
- (b) If Health requires the performance by AHA of New or Changed Program Services and gives written notice to AHA specifying:
 - (i) the New or Changed Program Services to be performed; and
 - (ii) the date upon which the New or Changed Program Services must commence.

then AHA may give the Contractor a like Notice providing the Contractor with as much notice as possible of its requirements for any consequent new or changed Subcontracted Services **(New or Changed Subcontracted Services)**.
- (c) The Contractor must perform the New or Changed Subcontracted Services in accordance with the Notice issued by AHA under paragraph (b).

- (d) To the extent that AHA reasonably considers (after consultation with the Contractor) that the New or Changed Subcontracted Services can be funded by the then current Fees, the Contractor must provide the New or Changed Program Services for such Fees, and the New or Changed Subcontracted Services will not be, and must not be treated as, Additional Services. The Contractor may (and must if requested by AHA) provide AHA with evidence to substantiate any claim that the New or Changed Subcontracted Services cannot be funded by the then current Fees.
- (e) If paragraph (d) does not apply, the Contractor may propose that the New or Changed Subcontracted Services be included as Additional Services, or may propose that another amendment be made to this Agreement to take into account the changed requirements. AHA will consider any proposal in good faith and in accordance with this Agreement. Any amendments proposed by the Contractor must:
 - (i) equitably reflect the changes; and
 - (ii) be consistent with the existing cost, resource, pricing and services approach of this Agreement.

8. Payment and Invoicing

8.1 Payment

- (a) In consideration for the performance of the Subcontracted Services by the Contractor, but subject to this Agreement and Acceptance by AHA of any applicable Deliverables:
 - (i) AHA must pay the Fees set out in Schedule 2 – Subcontracted Services and Fees to the Contractor; and
 - (ii) AHA will pay the Fees within 30 calendar days after receiving a Correctly Rendered Invoice (including any required substantiating documentation) from the Contractor.
 - (iii) AHA will provide the annual budget provided by Health to cover placement fees and locum travel costs and if exhausted during the financial year, locum placements may need to be placed on hold by the Contractor while final budget is confirmed with Health
- (b) The Parties acknowledge and agree that:
 - (i) the Fees fully compensate the Contractor for performing all the Subcontracted Services;
 - (ii) The Contractor is not entitled to charge AHA any amounts in addition to the Fees (including any amounts associated with any changes in the way the Subcontracted Services are performed) unless:
 - (A) this Agreement has been varied as set out in clause 25; or
 - (B) such additional amounts are for Additional Services or New or Changed Program Services agreed in accordance with clauses 6 or 7.
- (c) The Parties agree that payments may be effected by electronic transfer of funds into the recipient's nominated bank account.

8.2 Invoicing

- (a) The Contractor must provide AHA with a Correctly Rendered Invoice (or invoices) through AHA's PPA Portal (or such other method between the Parties) for all Fees specified in Schedule 2 – Subcontracted Services and Fees.
- (b) AHA is not required to pay any amount which is not invoiced in accordance with this Agreement.
- (c) An invoice is a Correctly Rendered Invoice if it is a Tax Invoice and includes the following information:
 - (i) date of the invoice;
 - (ii) an invoice summary setting out:
 - (A) the relevant Subcontracted Service or Deliverable or group of Deliverables billed and the Fee for such service or Deliverable/s;
 - (B) the total Fees;
 - (C) the GST payable on the total Fees; and
 - (D) the total Fees (including GST).

8.3 Fees are all inclusive

The Fees include all costs and resources required by the Contractor to perform this Agreement. Unless specified otherwise in this Agreement, the Contractor must not charge AHA for any fees, charges or expenses (including travel and accommodation, Document reproduction, meeting attendance, transportation and courier charges, and telecommunications charges) in addition to the Fees. AHA is under no obligation to pay any amount in excess of the Fees.

8.4 Payment not evidence

- (a) Any payment of moneys under this Agreement is not:
 - (i) evidence of the value of Subcontracted Services or that the Subcontracted Services have been satisfactorily carried out in accordance with this Agreement;
 - (ii) an admission of liability; or
 - (iii) Acceptance or approval by AHA of the Contractor's performance or compliance with this Agreement.

8.5 Disputed invoices

- (a) AHA will act in good faith in reviewing invoices. If AHA disputes an invoice or an amount payable pursuant to an invoice:
 - (i) AHA will promptly Notify the Contractor of the details and nature of the disputed portion;

- (ii) AHA may withhold the disputed portion pending resolution of the dispute but will pay the undisputed portion;
- (iii) if required by AHA, the Contractor must cancel the original invoice and issue a new Correctly Rendered Invoice for the undisputed portion, and AHA will pay the new invoice within the period specified in clause 8.1(a)(ii); and
- (iv) clause 24 will apply in relation to the disputed portion and if that dispute resolution process results in a determination that AHA should pay the disputed portion, the Contractor may issue a new Correctly Rendered Invoice for that amount and AHA must pay that invoice in accordance with clause 8.1(a)(ii).

8.6 Set Off

- (a) If under this Agreement:

- (i) any amount is payable by the Contractor to AHA; or
- (ii) an invoice is found to have been rendered incorrectly after payment,

any payment due to AHA or overpayment by AHA will be a debt due to AHA under this Agreement and, without limiting recourse to other available means, may be offset against any amount subsequently due by AHA to the Contractor under this Agreement.

8.7 Taxes

All Taxes except GST (see clause 9) imposed or levied in Australia or overseas in connection with this Agreement must be met by the Contractor and are included in the Fees.

9. GST

9.1 Interpretation

- (a) In this clause 9.1:

- (i) a word or expression defined in the GST Act has the meaning given to it in that Act;
- (ii) unless expressly states otherwise, all consideration to be provided under any other provision of this Agreement is exclusive of GST;
- (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.1;
- (iv) a reference to GST payable by the Supplier includes GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (v) a reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax

credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

9.2 GST gross up

- (a) If a Party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable by the Supplier, the Party who provides or is liable to provide the consideration for the supply (**Recipient**) must pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**) at the same time as the other consideration is to be first provided for that supply.
- (b) Clause 9.2(a) does not apply to the extent that an amount payable or other consideration for the supply is expressly stated to be inclusive of GST.

9.3 Reimbursements

If a Party must reimburse or indemnify another Party for a Loss, cost, or expense, the amount to be reimbursed or indemnified is first reduced by the amount of any input tax credit the other Party is entitled to in connection with the Loss, cost or expense, and then increased in accordance with clause 9.2(a) if applicable.

9.4 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Agreement varies from the GST Amount paid or payable by the Recipient under clause 9.2(a) for any reason, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) If an adjustment event occurs in relation to a supply, the Supplier must give an adjustment note to the Recipient in relation to that supply within 10 Business Days after becoming aware of the adjustment event.

9.5 Tax invoice

A Party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a Tax Invoice for the supply to which the payment relates.

10. Confidentiality

10.1 Disclosure and care of Confidential Information

- (a) Subject to clause 10.3, a Party must not, without the prior written consent from the other Party, disclose any Confidential Information of the other Party to a third party.
- (b) In giving its consent to the disclosure of Confidential Information of AHA, AHA may impose such conditions as it thinks fit, and the Contractor must comply with these conditions if it proceeds to make the disclosure.

- (c) Each Party must take all reasonable steps to ensure that, subject to clause 10.3, its Personnel engaged to perform work under this Agreement do not disclose Confidential Information of the other Party obtained during the course of performing such work.
- (d) The Contractor must:
 - (i) use due care to safeguard AHA's Confidential Information and comply with any security requirements specified by AHA from time to time;
 - (ii) implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of any of AHA Confidential Information;
 - (iii) immediately notify AHA if the Contractor:
 - (A) suspects or becomes aware of any unauthorised access to or copying, use, disclosure in any form, damage or destruction of any of AHA Confidential Information; or
 - (B) is required by law to disclose any of AHA's Confidential Information;
 - (iv) take all reasonable steps to enforce any obligation of confidence imposed or required to be imposed by this Agreement; and
 - (v) do all things, execute all Documents and give all assistance reasonably required by AHA to enforce any obligation of confidence imposed or required to be imposed by this Agreement.

10.2 Written undertakings

- (a) AHA may at any time require the Contractor to arrange for any of its Personnel to whom information may be disclosed pursuant to clauses 10.3(a)(i) or 10.3(a)(ii) to give a written undertaking in the form set out at Schedule 4 - AHA Deed of Confidentiality, as the case may be, relating to the use and non-disclosure of AHA's Confidential Information.
- (b) If the Contractor receives a request under clause 10.2(a), then it must arrange for all such undertakings to be given and provide copies to AHA.

10.3 Exceptions to obligations

- (a) The obligations of the Parties under this clause 10 will not be taken to have been breached to the extent that Confidential Information:
 - (i) is disclosed by a Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement, or to the extent necessary in order to obtain advice in relation to its rights under this Agreement;
 - (ii) is disclosed to a Party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - (iii) is information for which disclosure is authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed;

- (iv) is in the public domain otherwise than due to a breach of this clause 10.3 or any other obligation of confidentiality.

10.4 Obligations on disclosure

- (a) If a Party discloses Confidential Information to another person:
 - (i) pursuant to clauses 10.3(a)(i) or 10.3(a)(ii) the disclosing Party must:
 - (A) inform the receiving person that the information is Confidential Information; and
 - (B) not provide the information, unless the receiving person agrees to keep the information confidential; or
 - (ii) pursuant to clauses 10.3(a)(iii), the disclosing Party must inform the receiving Party that the information is Confidential Information.
- (b) It is acknowledged that where disclosure is made under clauses 10.3(a)(iii), no confidentiality undertaking will be required and no guarantee can be given that the information may not be further disclosed by the recipient.

10.5 Additional Confidential Information

The Parties may agree in writing at any time that certain additional information is to constitute Confidential Information for the purposes of this Agreement, and that information will be Confidential Information from the date agreed.

10.6 No reduction in privacy obligations

Nothing in clauses 10.1 to 10.5 derogates from any obligation which either Party may have either under the Privacy Act 1988 (Cth) as amended from time to time, or under this Agreement, in relation to the protection of Personal Information.

10.7 Public Announcements

- (a) The Contractor or any Subcontractor must, before making any public announcement in connection with this Agreement or any transaction contemplated by this Agreement, obtain AHA's agreement to the announcement, except if the public announcement is required by Statute or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor or any Subcontractor is required by Law or a regulatory body to make a public announcement in connection with:
 - (i) this Agreement; or
 - (ii) any transaction contemplated by this Agreement,then the Contractor or the Subcontractor must limit the public announcement to the extent required by the relevant Law or regulatory body, and, to the extent practicable, first (through AHA) consult with and take into account the reasonable requirements of Health.

11. Privacy

11.1 Application of the clause

This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing Subcontracted Services under this Agreement. This clause does not derogate from any obligation the Contractor may have under the Law or under this Agreement in relation to the protection of Personal Information or security.

11.2 Obligations

- (a) In the course of providing the Subcontracted Services, the Contractor must:
 - (i) comply with its obligations under the Privacy Act, including all applicable regulations and registered APP codes or CR codes;
 - (ii) not engage in an act or practice in connection with the provision of the Subcontracted Services that would:
 - (A) breach an Australian Privacy Principle; or
 - (B) be an interference with the privacy of an individual under the Privacy Act, unless that act or practice is permitted under the Privacy Act;
 - (iii) not do any act, or engage in any practice, in connection with the provision of the Subcontracted Services or this Agreement, that would breach an Australian Privacy Principle if it were done or engaged in by AHA;
 - (iv) collect, use, disclose, store, retain and dispose of any Personal Information obtained in the course of providing Subcontracted Services under this Agreement only for the purposes of, and as required by, this Agreement;
 - (v) notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (vi) without limiting paragraph 11.2(a)(iv), not use or disclose any Personal Information or engage in an act or practice that would breach, or cause to breach, an Australian Privacy Principle of the Privacy Act unless the use or disclosure is authorised by this Agreement or is necessary, directly or indirectly, to discharge an obligation under this Agreement;
 - (vii) comply with AHA's security obligations in relation to the collection, storage, use or disclosure of any Personal Information obtained in the course of providing Subcontracted Services under this Agreement;
 - (viii) not transfer outside of Australia any Personal Information obtained as a result of, or in connection with, providing the Subcontracted Services, or allow access to such Personal Information from a location outside of Australia;

- (ix) comply with any Notice given to the Contractor by AHA (whether as a consequence of a like notice given by Health to AHA or otherwise) which is necessary in order for AHA to comply with any:
 - (A) notice, direction, determination, recommendation or other requirement of the Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner; or
 - (B) any undertaking given to the Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner by Health;
 - (x) comply with any Notice given to the Contractor by AHA (whether as a consequence of a like notice given by Health to AHA or otherwise) which is, in the opinion of required in order for AHA to comply with data breach notification guidelines;
 - (xi) comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 11;
 - (xii) comply with any other applicable Law in relation to Health Data and Personal Information obtained during the course of providing the Subcontracted Services under this Agreement;
 - (xiii) ensure that all of the Contractor Personnel who deal with Personal Information obtained in the course of providing the Subcontracted Services are made aware of the Contractor's obligations under this clause 11;
 - (xiv) ensure that any Subcontract for the provision of the Subcontracted Services contains clauses requiring the Subcontractor to comply with this clause 11 as if it were the Contractor including the requirement in relation to subcontracts; and
 - (xv) immediately Notify AHA if the Contractor becomes aware of any breach, or possible breach, of any obligations under this clause 11, including by Contractor Personnel or any Subcontractors.
- (b) Without derogating from any other obligations of the Contractor under Statute or otherwise, the Contractor must assist AHA to enable any person, on request, to ascertain in respect of Personal Information:
- (i) whether the Contractor has possession or control of any records that contain such Personal Information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which the Personal Information is used by the Contractor; and
 - (iv) the steps that the person should take if the person wishes to obtain access to the Personal Information.
- (c) To avoid doubt:
- (i) the Contractor's obligations in this clause 11 are in addition to, and (to the fullest extent practicable) do not restrict, any other obligations it may have under the Privacy Act, any other applicable Law or any privacy codes or privacy principles contained in, authorised

by or registered under any Law, including any such privacy codes or principles that would apply to the Contractor but for the application of the other provisions of this clause 11; and

- (ii) except as expressly specified in this Agreement, the provisions of this Agreement do not authorise, and are not to be taken as authorising, the Contractor to engage in any act or practice that is inconsistent with any Australian Privacy Principle.

11.3 Breach of Australian Privacy Principle

If either Party believes that any act or practice required under this Agreement would or might breach an Australian Privacy Principle, it must immediately Notify the other Party. The Parties will promptly take action to discuss and agree any changes to this Agreement which are necessary to ensure that neither the Contractor or AHA are in breach of their obligations under the Privacy Act.

12. Books and records

12.1 Maintenance of Records

- (a) The Contractor must, at all times, maintain full, true, and up-to-date accounts and records relating to this Agreement. Such accounts and records must:
 - (i) include appropriate audit trails for transactions performed;
 - (ii) record all receipts and expenses in relation to the provision of Subcontracted Services on all matters on which the Contractor is obliged to report;
 - (iii) be kept in a manner that permits them to be conveniently and properly audited, and enables the amounts payable by AHA under this Agreement to be determined;
 - (iv) for financial records, be drawn in accordance with any applicable Australian Accounting Standards, and where possible be certified as true and correct by the Contractor or other appropriate person (e.g. auditor);
 - (v) in the case of any Subcontracted Services provided on a time and Materials or cost plus basis, identify the time spent by Contractor Personnel (e.g. timesheets) in providing those Subcontracted Services;
 - (vi) be in accordance with the relevant requirements set out in this Agreement and enable the extraction of all information relevant to the performance of, and compliance with, this Agreement; and
 - (vii) be made available to AHA as required for monitoring and reviewing the performance of the Contractor's obligations under this Agreement.

12.2 Subcontractor requirements

The Contractor must securely retain and require its Subcontractors to securely retain, for a period of seven (7) years after termination or expiration of this Agreement, whichever is later, all accounts and records referred to in clause 12.1.

12.3 Archival Requirements

- (a) The Contractor agrees to comply with, and to follow any reasonable directions by Health (Notified to the Contractor by AHA) which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements.
- (b) The Contractor must maintain all accounts and records in relation to this Agreement for the Term and for a period of seven (7) years after the date of expiry or termination of this Agreement.

12.4 Costs

The Contractor must bear its own costs of complying with this clause 12.

13. Audit and access

13.1 Right to conduct audits

- (a) AHA may conduct audits, inspections or reviews (audits) relevant to the performance of the Contractor's obligations under this Agreement at any time. Audits may be conducted of:
 - (i) the Contractor's operational practices and procedures as they relate to this Agreement, including security procedures;
 - (ii) the accuracy of the Contractor's invoices. This includes substantiating whether the Fees payable or paid by AHA are accurate and gathering such information as required to confirm whether the Fees payable or paid by AHA are accurate (including the basis for the calculation of the Fees);
 - (iii) the Contractor's compliance with its confidentiality, privacy and security and other obligations under this Agreement;
 - (iv) material (including books and records) in the possession of the Contractor relevant to this Agreement; and
 - (v) subject to clause 13.1(b) any other matters determined by AHA, or a representative to be relevant to this Agreement.
- (b) AHA will not seek:
 - (i) cost models and information relating to the Contractor's profit margin;
 - (ii) information that is confidential to other customers of the Contractor; or
 - (iii) Personal Information of Contractor Personnel unless a security issue warrants such access.

13.2 Access by AHA

AHA, or a representative may, at reasonable times and on giving reasonable Notice to the Contractor:

- (a) access the premises of the Contractor to the extent relevant to the performance of this Agreement;
- (b) require the provision by the Contractor, Contractor Personnel, agents or Subcontractors, of records and information in a data format and storage medium accessible by AHA, or a representative by use of AHA's existing computer Equipment;
- (c) inspect and copy relevant Documentation, books and records, however stored, in the custody or under the control of the Contractor or Contractor Personnel; and
- (d) require assistance in respect of any inquiry into or concerning this Agreement. For these purposes an inquiry includes any administrative or Statutory review, audit or inquiry (whether within or external to Health's organisation as appropriate), any request for information directed to Health as appropriate, and any inquiry conducted by Parliament or any Parliamentary Committee.

13.3 Conduct of audit and access

- (a) The Contractor must provide access to its premises to the extent necessary for AHA or its representative to exercise its rights under this clause 13, and provide AHA or its representative with any reasonable assistance requested by AHA or its representative.
- (b) AHA must use reasonable endeavours to ensure that:
 - (i) audits performed pursuant to clause 13.1(a); and
 - (ii) the exercise of the general rights granted by clause 13.1(a),
will:
 - (iii) not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Agreement; and
 - (iv) comply with the Contractor's reasonable security requirements.

13.4 Costs

- (a) Except as set out in clause 13.4(b), each Party must bear its own costs of any inspections, access and audits.
- (b) If the Contractor is able to substantiate (to AHA's satisfaction) that it has incurred direct expenses in AHA's exercise of the rights granted under clause 13.1(a) or clause 13.2 which, having regard to the value of this Agreement, are substantial, AHA and the Contractor may negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated (to AHA's satisfaction), and will not be payable where the audit reveals failures by the Contractor to comply with this Agreement.

13.5 Auditor General, ANAO, Information Commissioner and Privacy Commissioner

- (a) The Contractor acknowledges and agrees that the Auditor-General, the Australian National Audit Office, the Information Commissioner and the Privacy Commissioner, or their delegates, may for the purpose of performing their Statutory functions, at reasonable times and on giving reasonable notice to the Contractor:

- (i) require the provision by the Contractor or Contractor Personnel, of records and information which are directly related to this Agreement or the Services Agreement;
- (ii) have access to the premises of the Contractor for the purpose of inspecting and copying documentation and records, however stored, in the custody or under the control of the Contractor or Contractor Personnel, which are directly related to this Agreement or the Services Agreement.
- (iii) i.
- (b) The Contractor must ensure that any subcontract entered into for the purposes of this Agreement contains an equivalent clause granting the rights specified in this clause (Auditor-General, ANAO, Information Commissioner and Privacy Commissioner).
- (c) This clause (Auditor-General, ANAO, Information Commissioner and Privacy Commissioner) applies for the Term of this Agreement and for a period of seven (7) years after the date of expiration or termination of this Agreement. The Contractor must ensure that any records and documentation related to this Agreement are maintained for a minimum of seven (7) years.

13.6 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Agreement.

13.7 Subcontractor requirements

The Contractor must ensure that any Subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 13.

13.8 Consequences of audit

The Contractor must promptly take, at no additional cost to AHA, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has performed its obligations under this Agreement, including but not limited to, the way the Contractor has:

- (a) provided any Subcontracted Service; or
- (b) calculated Fees, and billed to AHA accurately.

14. Data Management

14.1 Generally

- (a) The Parties acknowledge that the Subcontracted Services may involve the access to or creation of information incorporating personal and other sensitive information and that compliance with this Agreement and applicable Laws, including in respect of privacy and security, are of paramount importance.
- (b) The Contractor acknowledges and agrees that:
 - (i) AHA holds and deals with highly sensitive information;

- (ii) AHA is concerned to ensure that such information is not improperly damaged, destroyed, lost, used or disclosed contrary to this Agreement or any Laws;
- (iii) use or disclosure of such information contrary to this Agreement may constitute a breach to which clause 20.1(a) applies; and
- (iv) the Contractor must notify AHA immediately and comply with all directions of AHA if the Contractor becomes aware of any contravention of security requirements.

14.2 Ownership of Health Data

Health Data remains the property of Health at all times.

14.3 Protection of Health Data

- (a) The Contractor must comply with all data security requirements in respect of access to and use of Health Data (if any) advised by Health or Notified to the Contractor by AHA. Individual Data classification of each item is "UNCLASSIFIED DLM of Sensitive: Personal". The aggregation of all the records will increase the risk associated with release of information, necessitating the implementation of additional controls which, subject to the requirements of this clause 14, are to be agreed between the Parties.
- (b) The Contractor must not, and must ensure that its Subcontractors and Contractor Personnel do not:
 - (i) remove Health Data or allow Health Data to be removed from Health's, or an End User's premises, otherwise than as required by, and in accordance with, this Agreement;
 - (ii) take Health Data or allow Health Data to be taken outside of or stored outside of, or accessed from outside of, Australia or require Health to allow Health Data to be taken outside of, stored outside of, or accessed from outside of, Australia;
 - (iii) use Health Data for purposes other than those directly related to the performance of the Subcontracted Services;
 - (iv) sell, let for hire, assign rights in or otherwise dispose of any Health Data;
 - (v) make available any Health Data to any third party other than Subcontractors Approved in accordance with this Agreement and then only to the extent necessary to enable the Subcontractor to perform its part of the Subcontracted Services;
 - (vi) allow any person who does not have the appropriate level of security clearance from gaining access to Health Data; or
 - (vii) commercially or otherwise exploit Health Data,

without Health's prior written consent (sought through AHA).
- (c) The Contractor must ensure that it has in place, at all times, safeguards against the unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data (including by third parties) which is in the possession of the Contractor or Contractor Personnel. The Contractor must ensure that such safeguards comply with any other security procedures or

requirements specified by Health to AHA (and Notified to the Contractor) from time to time and all applicable Laws.

14.4 Compliance with Health Security requirements

- (a) The Contractor must, and must ensure that its Subcontractors and Contractor Personnel, comply with all relevant Health security procedures and other security requirements as specified by Notice from Health (or AHA) to the Contractor from time to time.
- (b) The Contractor must comply with any such security procedure or other security requirement (including in relation to the protection of Health Data) immediately if directed by Health (or AHA) or, if no direction is given, within a reasonable time, having regard to the nature of the requirement.
- (c) Where a new security requirement is added or an existing security requirement is changed (other than a Statutory requirement), Health will provide as much notice as possible of the addition or change. However, the Contractor acknowledges that Health may have limited ability to provide advance notice. The Contractor will implement the addition or change in a timely manner.
- (d) The Contractor must send AHA a Notice identifying any potentially relevant security procedure or other security requirement of Health of which it is aware and which is not the subject of a Notice in accordance with clause 14.4(a).
- (e) The Contractor must allow Health or AHA to undertake assessment visits from time to time to verify that the Contractor complies with the requirements set out in clauses 14.4(a) to 14.4(c).
- (f) The Contractor must:
 - (i) comply with all relevant requirements of the Commonwealth Protective Security Policy Framework at <http://www.protectivesecurity.gov.au>, as amended or replaced from time to time and its Protective Security Protocols, including the Protective Security Governance Guidelines - Security of outsourced services and functions and the Information Security Manual at <http://www.asd.gov.au/infosec/ism/index.htm>;
 - (ii) comply with the requirements of the Information Security Manual, as amended from time to time;
 - (iii) comply with the requirements of the Australian Signals Directorate (ASD) Essential Eight at a minimum Maturity Level Two;
 - (iv) comply with the requirements of the Australian Security Intelligence Organisation (ASIO) T4 Protective Security Standards, as amended from time to time;
 - (v) ensure that Contractor Personnel and Subcontractors undertake any security checks, clearances or accreditations as required by Health; and
 - (vi) notify AHA of any changes to circumstances which may affect the Contractor's capacity to provide the Subcontracted Services in accordance with Health's security requirements.
- (g) Security Classified Information furnished or generated under this Agreement, must not be released to a third party, including a representative of another country, without prior written acceptance of the originator through Health.

- (h) In giving any acceptance to the Contractor under clause 14.4(g), Health may impose such conditions as Health thinks fit, including conditions requiring any recipient of Security Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to Health.
- (i) The Contractor must promptly report to AHA any instance in which it is known or suspected that Security Classified Information furnished or generated under this Agreement has been lost or disclosed to unauthorised persons, including a representative of another country.
- (j) All Security Classified Information transmitted between the Parties or a Party and a Subcontractor, located overseas, whether generated in Australia or by another country, must be subject to the Laws of the overseas country regarding the custody and protection of Security Classified Information, and to any bilateral security instrument between Australia and the overseas country.
- (k) If there has been a breach by the Contractor, Contractor Personnel or a Subcontractor of clause 14.4, AHA may give the Contractor a notice of immediate termination for default under clause 20.1(a)(i).
- (l) The Contractor must ensure that the requirements of this clause 14.4 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to Security Classified Information, in order to perform the obligations of the Subcontract.

14.5 Return of Health Data

- (a) Upon Health's or AHA's request, or on expiry or termination of this Agreement, the Contractor must:
 - (i) promptly return all Health Data and all physical and written records containing any of Health's confidential information, and all documentation relating to or concerning that Health Data and confidential information (or the part Health or AHA requests) (including copies) to AHA in a form reasonably requested by AHA; or
 - (ii) if requested by Health (or by AHA having received a like request from Health):
 - (A) destroy that Health Data and Health's confidential information (including copies) in the manner specified by Health (or AHA) or otherwise deal with these items in the manner specified by Health (or AHA); and
 - (B) promptly certify to Health in writing that it has done so.
- (b) Without limiting clause 14.5(a), upon Health's (or AHA's) request, or on expiry or termination of this Agreement, the Contractor must:
 - (i) provide Health (or AHA) with access to, and the ability to retrieve any Health Data (at no additional charge);
 - (ii) comply with any directions of Health (or AHA) in relation to the destruction or de-identification of Health Data;
 - (iii) not destroy any Health Data unless it has the prior written Approval of Health (or AHA) to do so; and

- (iv) return all Health Data in the format required by Health.

14.6 Breaches of data security

- (a) The Contractor must Notify AHA immediately and comply with all directions of AHA if the Contractor becomes aware of:
 - (i) any contravention of AHA's data security requirements; and
 - (ii) any requests from foreign governments or agencies for access to any Data (unless such Notification is prohibited by Law).
- (b) If the Contractor becomes aware of any actual, potential or suspected:
 - (i) action taken through the use of computer networks that result in an actual or potentially adverse effect on AHA's systems (including those operated by AHA to provide the Services to Health) (**Cyber Incident**); or
 - (ii) any other unauthorised access, misuse, damage, destruction, loss, alteration or corruption of data by any person (**Other Incident**),the Contractor must:
 - (iii) Notify AHA in writing immediately (and no later than 12 hours after becoming aware of the Cyber Incident or Other Incident); and
 - (iv) comply with any directions issued by AHA in connection with the Cyber Incident or Other Incident, including in relation to:
 - (A) notifying CERT Australia, or any other relevant body;
 - (B) obtaining evidence about how, when and by whom data has or may have been compromised, and preserving and protecting that evidence for no less than 12 Months;
 - (C) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
 - (D) preserving and protecting data (including as necessary reverting to any backup or alternative site or taking other action to recover data).
- (c) The Contractor must ensure that:
 - (i) all Subcontracts and other supply chain arrangements, which may allow or cause access to data, contain no provisions that are inconsistent with clauses 14.6(a) or 14.6(b); and
 - (ii) all Contractor Personnel and any Subcontractors who have access to data act in a manner that is consistent with the Contractor's obligations under this clause 14.

14.7 Misuse of Health Data

- (a) The Contractor acknowledges and agrees that:
 - (i) any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Subcontracted Services may be an offence under Part 10.7 of the Criminal Code Act 1995 (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment;
 - (ii) the giving of false or misleading information to Health or Health Personnel is a serious offence under Division 137 of the Crimes Act 1914 (Cth); and
 - (iii) the publication or communication of any fact or Document by a person which has come to their knowledge or into their possession or custody by virtue of this Agreement (other than to whom the Contractor is authorised to publish or disclose the fact or Document) may be an offence under sections 70 and 79 of the Crimes Act 1914 (Cth), the maximum penalty for which is seven (7) years imprisonment.

14.8 Eligible Data Breaches

- (a) For the purpose of this clause 14.8, 'Eligible Data Breach' has the meaning given in the Privacy Act.
- (b) If the Contractor has reasonable grounds to suspect there has or may have been an event which amounts to an Eligible Data Breach:
 - (i) the Contractor must as soon as possible, but within no more than 2 Business Days, Notify AHA of that event;
 - (ii) comply with its obligations under the Privacy Act in relation to that event;
 - (iii) provide AHA with all information requested by Health or AHA about the event; and
 - (iv) if requested, allow Health to participate in the Contractor's assessment of the event and whether it amounts to an Eligible Data Breach.
- (c) If an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the Privacy Act, then AHA will confer with Health to decide who will issue the notification.
- (d) If the Contractor is to issue a notification, then:
 - (i) the Contractor must as soon as possible, but within no more than 10 Business Days (or such other period agreed in writing by the Parties), provide AHA with a draft of the notification;
 - (ii) the Contractor must make any changes to the draft notification that are reasonably required by AHA in consultation with Health; and
 - (iii) the Contractor must issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).
- (e) The Contractor must ensure that:

- (i) AHA is promptly Notified of any investigation or other action taken by the Information Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and
- (ii) AHA is kept informed in relation to that investigation or other action.

14.9 The Parties acknowledge and agree that nothing in this clause 14 affects their obligations under the Privacy Act or otherwise under this Agreement.

15. Intellectual Property Rights

15.1 Contractor to provide all necessary Intellectual Property Rights

- (a) The Contractor must do all things necessary to ensure that during the Term and Disengagement Period, AHA, Health and End Users have access to (or the right to exercise), or usage of, all Intellectual Property Rights necessary to:
 - (i) access and use the Deliverables (or for End Users, access and use the Deliverables which are made available to them by the AHA or Health);
 - (ii) properly exercise all functions and tasks contemplated by this Agreement and as necessary or incidental to the provision, use or receipt of the Subcontracted Services; and
 - (iii) fully benefit from the provision of the Subcontracted Services.
- (b) Clause 15.1(a) includes, without limitation, ensuring that during the Term and Disengagement Period:
 - (i) AHA, Health and End Users have the right to access and Use the Deliverables or any adaptation of the Deliverables undertaken by any person in accordance with, or as permitted by, the Services Agreement or this Agreement;
 - (ii) AHA and Health have the right to copy, reproduce in a material form, make extracts from, publish, display, perform in public, communicate to the public, and adapt the Deliverables or any adaptation of the Deliverables;
 - (iii) Health and End Users are able to do the things set out in clauses 15.1(b)(i) and 15.1(b)(ii) for any purpose, including for the purposes of developing, implementing and operating Health programs or policies, except that Health and End Users will not commercialise, or take any steps to commercialise, any of the Deliverables without AHA's and the Contractor's written consent; and
 - (iv) Health and End Users are able to do the things set out in clauses 15.1(b)(i) and 15.1(b)(ii) anywhere in the world.
- (c) The Contractor must meet the requirements in clauses 15.1(a) and 15.1(b) (without cost to AHA or Health) through one or more of the following means:

- (i) a licence or sublicense of the necessary Intellectual Property Rights, or access or usage rights in respect of those Intellectual Property Rights, including where applicable in relation to:
 - (A) Contractor Material in accordance with clause 15.3 or 15.4(c);
 - (B) Third Party Material in accordance with clause 15.5 or 15.4(c); and/or
 - (C) Existing Material in accordance with clause 15.4(b) or 15.4(c); or
- (ii) vesting of the necessary Intellectual Property Rights in, or transfer of the necessary Intellectual Property Rights to, AHA, including where applicable in relation to New Material in accordance with clause 15.4.
- (d) The Contractor must do all things necessary to ensure that following the end of the Term and Disengagement Period, Health has access to, or usage of, or is able to obtain access to (or the right to exercise) or usage of, all Intellectual Property Rights necessary to ensure continuity of delivery of services that are the same or similar to the Subcontracted Services.

15.2 Existing Material

- (a) Nothing in this Agreement affects the ownership of Existing Material.
- (b) This Agreement does not assign any Intellectual Property Rights owned by either Party (including Intellectual Property Rights owned by any of their Related Bodies Corporate) or a third party existing as at the Commencement Date or which is created by either Party (or their Related Bodies Corporate), independently of this Agreement.
- (c) Neither Party may assert ownership of all or part of the other Party's Intellectual Property Rights (including Intellectual Property Rights owned by any of their Related Bodies Corporate) in Existing Material.

15.3 Contractor Material

- (a) Unless otherwise agreed between the Parties in writing under this Agreement, but notwithstanding any other provision of this Agreement, the Contractor will at all times own and retain all rights, title and interest (including Intellectual Property Rights) in and to all Contractor Material (including Modifications of or to it) regardless of whether created before or during this Agreement.
- (b) Without limiting clause 15.1 but subject to clause 15.4, the Contractor grants to AHA:
 - (i) an irrevocable, perpetual, royalty free, non-exclusive (including a right to sublicense to Health and Other Contractors) world-wide licence to access and use, and permit End Users using the Solution including the System to access and use; and
 - (ii) a licence to copy and reproduce,

all Contractor Material (including Modifications to Contractor Material) solely in connection with Health's business and operations and to the extent necessary or desirable to receive and enjoy the benefit of the Subcontracted Services.
- (c) The licence granted by the Contractor to AHA under clause 15.3(b) will take effect from the date on which Contractor Material is first used by the Contractor to perform the Subcontracted

Services without the need for the Parties to effect any further Documentation. However, the Contractor agrees to execute any additional Documentation in a form reasonably required by AHA necessary to give full effect to such licence upon AHA's written request from time to time.

15.4 **New Material**

- (a) All rights (including Intellectual Property Rights), title and interest (including Intellectual Property Rights) in New Material (including any customisation, Modification, enhancement or derivative work of that New Material) are assigned to and vest in AHA at the time of their creation by virtue of this clause 15.4. For clarity, New Material will include all Deliverables.
- (b) To the extent that any New Material incorporates or is delivered in conjunction with any Existing Material, the Contractor grants to AHA:
 - (i) a perpetual, irrevocable (subject to compliance with this clause 15.4(b) royalty free, world-wide, non-exclusive (including a right to sublicense to Health and Other Contractors) licence to access, use, (and to permit End Users using the System) to access and use, Modify, adapt, copy and distribute but not to commercialise; and
 - (ii) a licence to copy and reproduce,

that Existing Material (including any customisation, Modification, enhancement or derivative work of that Existing Material created or brought into existence by the Contractor during the Term).
- (c) If the Contractor embeds any Contractor Material or any of the Contractor's Existing Material, or Third Party Material into New Material the licence in clause 15.4(b) applies to that embedded material (**Embedded Material**), provided that the Embedded Material is used only in conjunction with the relevant New Material and not on a standalone basis.

15.5 **Third Party Material**

- (a) Without limiting the Contractor's other obligations in this clause 15, in respect of any Third Party Material, used by the Contractor in the performance of the Subcontracted Services, the Contractor must from the date upon which the Contractor commences providing the relevant Subcontracted Services:
 - (i) ensure that AHA, Health, End Users, and any person acting for or on behalf of Health, are at all times during the Term and any Disengagement Period licensed to:
 - (A) use that Third Party Material to provide or obtain the benefit of the Subcontracted Services; and
 - (B) use that Third Party Material and the Modifications to that Third Party Material, where it would be necessary to do so in order to provide or obtain the benefit of the Subcontracted Services, on terms which are the same as those contained in clause 15.3; and.
 - (ii) use reasonable endeavours to ensure that Health and any person acting for or on behalf of Health has the right to purchase, on reasonable commercial terms (including

pricing), ongoing rights to use all Third Party Material after the Term and Disengagement Period.

- (b) During the Term and any Disengagement Period, the Contractor is responsible for all payments in respect of royalties, licence fees or other payments in respect of Intellectual Property Rights in all Third Party Material that the Contractor uses to provide the Subcontracted Services, within the Fees.
- (c) The Contractor or the third party as the case may be owns all title to and Intellectual Property Rights in any Modifications to Third Party Material with effect on and from the date on which the Modification was made or the Material was created. The Modification is licensed under this clause 15.5.

15.6 Moral Rights

- (a) To the extent permitted by applicable Laws and for the benefit of AHA and Health, the Contractor must do all things reasonably necessary to ensure that AHA, Health and End Users do not infringe any individual's Moral Rights by doing any of the things permitted by this clause 15. This includes obtaining genuine and effective consents from individuals as required to ensure that AHA and Health may:
 - (i) fail to attribute, or falsely attribute, the authorship of the Material, or any content in the Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));
 - (ii) materially alter the style, format, colours, content or layout of the Material and deal in any way with the altered Material;
 - (iii) reproduce, communicate, adapt, publish or exhibit any Material; and
 - (iv) add any additional content or information to the Material.

15.7 Health Material

- (a) During the Term and any Disengagement Period, AHA grants to the Contractor a revocable, non-exclusive, royalty-free and licence-free licence to access, use, copy and reproduce any Health Material to meet the requirements of this Agreement (including the right to grant a sub-licence to Subcontractors on the same terms for the sole purpose of meeting the requirements of this Agreement).
- (b) The Contractor must not and must ensure that Contractor Personnel do not Modify any Health Material without the prior written consent of AHA. AHA hereby consents to Modifications necessary for the performance by the Contractor of its obligations under this Agreement.
- (c) If the Contractor, Contractor Personnel or any person on behalf of the Contractor or a Subcontractor Modifies Health Material, then the Contractor assigns or will ensure the assignment of (as the case may be) all title to and Intellectual Property Rights, in the Modification and all Material created in designing and making the Modification to the Health Material, to AHA (for re-assignment to Health) with effect on and from the date on which the Modification was made or the Material was created.
- (d) The Contractor must do all things necessary (including, at AHA's option, ensuring that a Subcontractor, Contractor Personnel or other person enters into a deed of assignment of

Intellectual Property Rights with AHA) to confirm that the ownership of that Modification and Material and those Intellectual Property Rights passes to AHA (for re-assignment to AHA) on the date of creation of the Modification and the Material.

- (e) For clarity, the Contractor will not be required to pay any licence, upgrade, support or maintenance fees which were due and payable or owed by Health prior to the Commencement Date and which have not at the Commencement Date been paid by Health in relation to Health Material.
- (f) AHA will notify the Contractor of any third party terms and conditions that apply to the Health Supplied Items and the Contractor must comply with those third party terms and conditions.

15.8 IP Register and Asset Register

Noting Health's concern for Service continuity, the Contractor must:

- (a) ensure that a comprehensive, accurate, up-to-date, consolidated record is kept of all Intellectual Property Rights incorporated in or related to the Subcontracted Services (**IP Register**), that will enable Health to determine for each item:
 - (i) the ownership and licensing, usage or other access arrangements for that item; and
 - (ii) the method by which the Contractor has made that item available to AHA, Health and End Users under this Agreement (that is, which of the mechanisms in clause 15.1(c) has been utilised);
- (b) ensure that a comprehensive, accurate, up-to-date, consolidated record is kept of all Assets used by the Contractor to provide the Subcontracted Services (**IP Register**). The Contractor must continuously update the Asset Register as required to conduct the following actions
 - (i) remove Assets that are no longer in use;
 - (ii) Modify Asset information resulting from Asset relocation;
 - (iii) Modify Asset information in response to upgrades and Software updates;
 - (iv) add new Asset information upon implementation of new Equipment or Software;
 - (v) capture information about Software licences and Software licence usage;
 - (vi) include details of any problems relating to Assets; and
 - (vii) track and report on the completion progress of Asset refresh by lease-end date (where applicable).
- (c) provide a copy of IP Register and Asset Register to AHA in accordance with the reporting requirements in Schedule 2 – Subcontracted Services and Fees.

15.9 Contractor Database

It is acknowledged that the Contractor has developed an extensive proprietary database of pharmacists which includes details of pharmacists who may be available from time to time for locum placements (the **Contractor's Database**). Notwithstanding any other provision of this Agreement it is agreed that;

- (a) the Contractor holds all Intellectual Property Rights in the Contractor's Database; and
- (b) while the Contractor proposes to access the Contractor's Database to assist it in providing the Subcontracted Services, no licence or other right is granted to AHA, Health or any third party in respect of the Contractor's Database (whether for access, use or otherwise) either during or following the expiry of the Term.

16. Warranties

16.1 General Warranties

The Contractor warrants, represents and undertakes on the Commencement Date and at all times during the Term that:

- (a) it has, and the Contractor Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to provide the Subcontracted Services in a skilful, diligent, responsive, professional, courteous, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Agreement and meets AHA's requirements in full;
- (b) the Subcontracted Services and use of the Subcontracted Services by AHA and Health (including End Users) will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (c) it has or will have the necessary rights to vest the Intellectual Property Rights and grant all necessary licences or sublicences under clause 15;
- (d) it will not infringe any person's Intellectual Property Rights in performing the Subcontracted Services;
- (e) no Health Data will be accessed without authorisation, misused, damaged, destroyed, lost, altered or corrupted in the course of the provision of the Subcontracted Services;
- (f) it is not aware of any circumstances that would affect its ability to perform the Subcontracted Services in a manner that complies with all Laws and this Agreement and it will immediately notify AHA if any such circumstances arise;
- (g) it has and will be deemed to have done everything possible to inform itself completely as to:
 - (i) AHA's requirements for Subcontracted Services under this Agreement;
 - (ii) the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Agreement; and
 - (iii) all things necessary for delivery and management of this Agreement and the performance of the Contractor's obligations under this Agreement;
- (h) it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (i) in providing the Subcontracted Services, it will at all times comply with this Agreement;

- (j) each of the Subcontracted Services will conform with this Agreement;
- (k) if and to the extent ownership of a Subcontracted Service or Deliverable under this Agreement is to pass to AHA, the Subcontracted Service or Deliverable will be free from any charge or encumbrance and will meet the required functional and performance requirements;
- (l) it has the right to enter into this Agreement;
- (m) it meets all Commonwealth eligibility criteria and has:
 - (i) full corporate power and authority; and
 - (ii) all rights, title, licences, permits, authorisations, registrations, interests and property necessary,

to participate in the Program specified in Schedule 2 – Subcontracted Services and Fees and lawfully enter into, perform and observe its obligations under this Agreement;
- (n) the execution, delivery and performance of this Agreement has been duly and validly authorised by all necessary corporate action;
- (o) it is not, and Contractor Personnel are not, an Inappropriate Person; and
- (p) it will promptly Notify and fully disclose to AHA any event or occurrence actual or threatened during the Term of this Agreement that would materially affect the Contractor's ability to perform any of its obligations under this Agreement;
- (q) the Subcontracted Services will be provided in accordance with:
 - (i) the requirements of this Agreement in all material respects; and
 - (ii) due care and skill.

16.2 Effect of warranties

- (a) Nothing in this clause 16:
 - (i) restricts the effect of any conditions or warranties which may be implied by the Competition and Consumer Act 2010 (Cth) or any sale of goods or fair trading Laws; or
 - (ii) limits AHA's right to take action on the basis of the common law that would be applied by the High Court of Australia in respect of a breach of this Agreement, tort, equity or any other common law or Statutory cause of action.
- (b) Where the Contractor supplies Subcontracted Services that have been procured from a third party, the Contractor assigns to AHA (for re-assignment to Health), to the extent permitted by Law, the benefits of the warranties given by the third party. This assignment does not in any way relieve the Contractor of the obligation to comply with warranties provided directly by the Contractor under this Agreement.
- (c) The Contractor acknowledges that AHA has executed this Agreement and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made in this clause 16.

16.3 AHA warranties

AHA warrants that it has the right and authority to enter into this Agreement.

17. Indemnities

17.1 Contractor's Indemnity

- (a) The Contractor indemnifies the Indemnified Persons against any Losses whatsoever sustained or incurred by any of the Indemnified Persons as a result of, or arising out of, or in connection with:
 - (i) any breach of this Agreement by the Contractor;
 - (ii) any breach of any Law by the Contractor or its Subcontractors or Contractor Personnel in the performance of this Agreement;
 - (iii) any claim by a third party against AHA in connection with any failure by the Contractor or any of Contractor Personnel or Subcontractors to comply with any Law;
 - (iv) any Wilful Misconduct or any negligent or unlawful act or omission of the Contractor or its Subcontractors or Contractor Personnel in the performance of this Agreement (including any act or omission that constitutes repudiation of this Agreement);
 - (v) any Loss or liability suffered or incurred by AHA which is caused by a breach by the Contractor, Contractor Personnel or Subcontractors, of the obligations under clauses 10 or 11.
- (b) The Contractor's liability to any Indemnified Person under clause 17.1(a) will be reduced proportionally to the extent that any Wilful Misconduct or any unlawful or negligent act or omission of, or breach of this Agreement by, that Indemnified Person caused or contributed to the Loss.
- (c) Nothing in an indemnity contained in clause 17.1(a) will in any way reduce or qualify an Indemnified Person's rights at Law in respect of the events which are the subject of the indemnity. Thus, the rights in clause 17 are in addition to, and not exclusive of, any other right, power or remedy provided at Law.
- (d) The indemnity under clause 17.1(a) will survive the expiration or termination of this Agreement.
- (e) AHA Personnel hours will be counted as an element relevant to the calculation of AHA Loss.

17.2 Contractor's Intellectual Property Right Indemnity

- (a) The Contractor indemnifies the Indemnified Persons against any Losses whatsoever sustained or incurred by any Indemnified Persons as a result of, or arising out of, or in connection with a claim, suit, demand, action or proceedings made or threatened by a third party that the performance of the Subcontracted Services by the Contractor, or use of or access to the Subcontracted Services or Deliverables by AHA (in accordance with this Agreement) or by Health, infringes the Intellectual Property Rights or Moral Rights of a third party, even if AHA does not terminate this Agreement;

- (b) For the purposes of clause 17.2(a), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), section 96 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the Circuit Layouts Act 1989 (Cth), constitute an infringement.
- (c) If any Material or item used by the Contractor to provide the Subcontracted Services becomes, or in the Contractor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or Proceeding, the Contractor must, in addition to indemnifying AHA as provided in this clause 17.2 and to the other rights AHA may have under this Agreement, promptly:
 - (i) use its reasonable endeavours to secure the right to continue using the Material or item to continue providing the Subcontracted Services or Modify the Material or item so as to continue to provide the Subcontracted Services without infringing any entity's Intellectual Property Rights or Moral Rights;
 - (ii) replace or Modify the Material or item to make it non-infringing, provided that any such replacement or Modification will not degrade the performance or quality of the affected Subcontracted Services; or
 - (iii) if, and only if, the Contractor cannot do those things in this clause or if Health as the ultimate user of the Material (under the Services Agreement) does not exercise its rights under legislation referred to in paragraph (d), the Contractor must remove the Material or item from the Subcontracted Services and the Fees will be reduced to reflect that removal.
- (d) If the Contractor has been unsuccessful under paragraph (c), the Parties acknowledge that Health may decide to continue to possess and use the infringing part of the Subcontracted Services by exercising its rights under section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), if it has power to do so. In such a case Health may, after consulting with AHA, reach agreement with the owner of the affected Intellectual Property Rights for Health's continued possession and use of the relevant Materials, item and Subcontracted Services.
- (e) The actions under paragraphs (c) and (d) will be at the Contractor's expense.

17.3 Rights held on trust

If an indemnity in this clause 17 provides a benefit to a person who is not a Party to this Agreement, that benefit will be held on trust for that person by AHA through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by AHA as trustee.

17.4 Enforcement of indemnities

It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement. The Contractor agrees that AHA may enforce any indemnity in this Agreement in favour of any of its officers, employees or agents as a trustee for and on their behalf.

18. Insurance

18.1 Obligation to maintain insurance

The Contractor must have and maintain valid and enforceable insurance policies (with reputable insurance companies and on terms acceptable to AHA) to the following levels:

- (a) for the Term of this Agreement:
 - (i) public liability insurance - an insured amount of not less than AUD 10,000,000 per claim;
 - (ii) professional indemnity or errors and omissions insurance - on a claims made basis for an insured amount of not less than AUD 10,000,000 per claim which covers the legal liability of the Contractor arising from wrongful acts of the Contractor, its employees, or of someone for whose wrongful acts the Contractor is legally responsible.
 - (iii) workers' compensation insurance as required by Law;
- (b) for seven (7) years following the expiry or termination of the later of this Agreement, AUD 10,000,000 per claim either professional indemnity or errors and omissions insurance which covers the legal liability of the Contractor arising from wrongful acts of the Contractor, its employees, or of someone for whose wrongful acts the Contractor is legally responsible.

18.2 Evidence

The Contractor must, on request by AHA:

- (a) promptly (and no later than 10 Business Days after the request) provide to AHA a certificate of currency evidencing compliance with the terms of clause 18 for any insurance policy required to be effected and maintained pursuant to clause 18 and such documentation must record the name of the insurer or the insurers, the insured, the profession or business activities, the type of policy, policy number, the policy expiry date and the amount of cover, the excess or deductible, territorial or geographical limits and the extensions or exclusions applying;
- (b) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iii) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement is obtained;
 - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by this Agreement without the prior written consent of the AHA Representative;
 - (v) immediately notifies the AHA Representative in writing of any event which may result in a required insurance policy lapsing, being cancelled or rescinded; and
 - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies; and

- (c) ensure that the Approved Subcontractors effect and maintain valid and enforceable insurance policies of the types specified in clause 18.1 and in amounts that are appropriate taking into consideration the services to be provided by the Approved Subcontractor in connection with this Agreement.

19. Suspension of Subcontracted Services

- (a) The Contractor acknowledges and agrees that if Health considers that suspension of the whole or part of the Services Agreement is necessary or appropriate for any reason and AHA receives a suspension notice from Health, AHA may by Notice (**Suspension Notice**) direct the Contractor to suspend the progress of the whole or part of this Agreement and the Contractor must promptly suspend work under this Agreement.
- (b) To avoid doubt, the Contractor is not required to consent to AHA's exercise of its right of suspension under this clause 19.
- (c) The Parties may agree on cost implications of a suspension of this Agreement and must at the request of the either party negotiate in good faith to alter the Fees for this Agreement in accordance with clause 25.
- (d) A Suspension Notice given under paragraph (a) may, if required by AHA, include details of when the Contractor must recommence performance of the suspended obligations.

20. Termination and Reduction of Scope

20.1 Termination by AHA for default

- (a) Without limiting any other rights or remedies AHA may have against the Contractor arising out of or in connection with this Agreement, AHA may terminate this Agreement in whole or in part, by giving Notice to the Contractor:
 - (i) if the Contractor commits a breach of this Agreement where that breach is not capable of remedy and the breach has a material adverse impact on the Subcontracted Services;
 - (ii) if the Contractor commits a material breach of this Agreement, including as defined in clause 20.1(d), and fails to remedy the breach within 20 Business Days or such other timeframe as is agreed in writing after receiving Notice requiring it to do so;
- (a **Termination Event**).
- (b) Without limiting AHA's other rights or the Contractor's other obligations under this Agreement, the Contractor must notify AHA immediately upon becoming aware of a Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become a Termination Event.
 - (c) Any termination under paragraph (a) is effective immediately or on such later date specified in the Notice issued by AHA.

- (d) Without limitation, for the purposes of clause 20.1(a), each of the following constitutes a material breach:
- (i) a material breach at Law under this Agreement;
 - (ii) a failure to comply with clause 15 (Intellectual Property Rights);
 - (iii) a failure to comply with clause 14 (Data Management);
 - (iv) a failure to comply with clause 14.4 (Compliance with Health Security requirements);
 - (v) a failure to comply with clause 10 (Confidentiality);
 - (vi) a failure to comply with clause 11 (Privacy);
 - (vii) an event specified in clause 20.1(e) happens to the Contractor;
 - (viii) a failure to Notify AHA of a Conflict of Interest under clause 5.8 or an inability to resolve that Conflict of Interest to the reasonable satisfaction of AHA;
 - (ix) a failure to comply with clause 5.2;
 - (x) a failure to provide a compliant Deliverable in accordance with clause 5.11(c);
 - (xi) a breach of clause 16.1(m); or
 - (xii) if the Contractor commits frequent breaches of this Agreement which, in aggregate:
 - (A) substantially frustrate the objects of this Agreement;
 - (B) significantly impair AHA's ability to fulfil any of its functions;
 - (C) have a material adverse effect on the Subcontracted Services; or
 - (D) in AHA's reasonable opinion indicate that the Contractor does not intend to be or does not regard itself as being bound by this Agreement.
- (e) The Contractor must Notify AHA immediately if:
- (i) the Contractor suffers an Insolvency Event;
 - (ii) the Contractor ceases, or threatens to cease, to carry out its business;
 - (iii) any material statement made or particular given by the Contractor to AHA prior to or in relation to this Agreement or the Contractor is found to be incorrect in any material respect; and
 - (iv) any other event or series of events, whether related or not, exists or occurs (including any material adverse change in the business, assets, management or financial condition of the Contractor) which in the reasonable opinion of AHA would materially affect the ability of the Contractor to comply with any of its obligations under this Agreement.

20.2 Termination due to termination of Services Agreement or Revocation of Approval

- (a) AHA may by Notice terminate this Agreement (or part of this Agreement) at any time if Health exercises any right under the Services Agreement to terminate the Services Agreement (or any part of it) or if Health revokes its Approval of the Contractor as a Subcontractor.
- (b) If this Agreement is terminated under clause 20.2(a), AHA is only liable for payments due under this Agreement for any Subcontracted Services provided in accordance with this Agreement, if payment for that Subcontracted Service is payable before the effective date of termination of this Agreement (less any amount that AHA is entitled to deduct or set-off). To avoid doubt, this includes substantiated pro rata Milestone payments.
- (c) The Contractor is not entitled to compensation for:
 - (i) payments that would be due after the date of termination or reduction in scope; or
 - (ii) Loss of prospective profits or any other indirect or consequential Losses.
- (d) The Contractor must, wherever possible, include in all Subcontracts and supply contracts an equivalent provision to this clause.

20.3 Reduction in Scope

- (a) Without limiting clause 20.2, AHA may from time to time, by giving the Contractor written Notice, (subject to receipt of a like notice from Health in relation to the Subcontracted Services) remove any of the Subcontracted Services or reduce the scope of this Agreement (**Reduced Scope**).
- (b) If AHA issues a Notice under clause 20.3(a):
 - (i) the Reduced Scope will no longer form part of this Agreement from the date specified in the Notice;
 - (ii) AHA's liability to pay the Fees and any other relevant AHA obligations abate in accordance with the Reduced Scope;
 - (iii) the Fees will be equitably adjusted to reflect the Reduced Scope; and
 - (iv) each Party will comply with its obligations under the Disengagement Plan (if any) in relation to the Reduced Scope.
- (c) The Contractor is not entitled to compensation for:
 - (i) payments that would be due after the date of the reduction in scope; or
 - (ii) Loss of prospective profits or any other indirect or consequential Losses.

20.4 After termination or reduction in scope

- (a) On termination or reduction in scope (in whole or part) of this Agreement, the Contractor must:
 - (i) stop performance of:
 - (A) this Agreement; or

- (B) if this Agreement is terminated or reduced in part, the terminated or reduced part of this Agreement;
- (ii) take all available steps to minimise any Loss resulting from that termination or reduction and to protect material in which the Intellectual Property Rights or Confidential Information of AHA or Health subsists;
- (iii) return all of AHA's Confidential Information associated with:
 - (A) this Agreement; or
 - (B) if this Agreement is terminated in part or reduced in scope, the terminated or reduced part of this Agreement,

to AHA unless otherwise agreed in writing by AHA;
- (iv) follow any reasonable direction of AHA;
- (v) continue to perform any part of this Agreement not affected by the Notice of termination or reduction in scope (and the Fees will abate in accordance with the reduction in the scope of this Agreement); and
- (vi) transfer all Deliverables relating to the removed Subcontracted Service to AHA.

20.5 Consequences of termination

- (a) If this Agreement is terminated or reduced in scope (in whole or part) under this clause 20:
 - (i) subject to the terms of this Agreement, the Parties are relieved from future performance, without prejudice to any rights or remedies that have accrued at the date of termination or reduction in scope;
 - (ii) in the case of a termination arising from the Contractor's breach, AHA is entitled to recover its Losses (if any) at Law;
 - (iii) subject to this Agreement, all licences and authorisations relating to or concerning this Agreement granted to the Contractor by AHA terminate immediately despite anything to the contrary contained in the licence or authorisation (but only to the extent they apply to the terminated or reduced scope of this Agreement); and
 - (iv) licences that are perpetual continue despite any whole or partial termination or reduction in scope of this Agreement.

20.6 Deemed termination for convenience

If a purported termination for cause by AHA is determined by a competent authority not to be properly a termination for cause, then such termination by AHA will be deemed to be a termination for convenience.

20.7 Termination by Contractor for cause

- (a) The Contractor may terminate this Agreement by giving AHA a termination notice (in which the termination date is no less than twenty (20) Business Days after the date of the notice) if:

- (i) AHA:
 - (A) has not paid a Correctly Rendered Invoice for an amount that has been properly submitted to AHA under clause 8.2; and
 - (B) has not notified the Contractor that it disputes the Fees payable under the Correctly Rendered Invoice; and
- (ii) the Contractor has given AHA:
 - (A) a first notice twenty (20) Business Days after the due date, specifying the failure to pay and giving AHA at least 20 Business Days to pay the Correctly Rendered Invoice; and
 - (B) a second notice ten (10) Business Days after the first notice, referring to the first notice and giving AHA at least ten (10) Business Days to pay the Correctly Rendered Invoice or if a greater period than 20 Business Days is specified in the first notice, a period not less than that remaining under the first notice.
- (b) The Contractor may, by 40 Business Days' notice in writing, terminate this Agreement with effect from the date specified in the notice if AHA commits a fundamental breach of any term or condition of this Agreement, which is capable of remedy and AHA fails to take action to remedy such fundamental breach within 10 Business Days or such other period agreed by the Parties after being given notice in writing by the Contractor to remedy the fundamental breach, or fails to remedy the fundamental breach within 30 Business Days or such other period agreed by the Parties after being given such notice.
- (c) The Parties agree that the Contractor may only terminate this Agreement in accordance with this clause 20.7. Subject only to this clause 20.7 and despite any other provision of this Agreement to the contrary, or any right which would otherwise be conferred at Law, the Contractor has no right, and, to the extent permitted by Law, waives any right which it may otherwise have had, to rescind or terminate this Agreement.

21. Disengagement

21.1 Disengagement Assistance

- (a) The Contractor must perform all Subcontracted Services included in this Agreement in a manner that will effectively and efficiently allow for the Subcontracted Services to be provided by Health or an alternative provider of the Subcontracted Services.
- (b) The Contractor must for the purpose of Disengagement take all reasonable actions to ensure the Subcontracted Services or any part of the Subcontracted Services and all necessary information (which for the avoidance of doubt does not include any information pertaining to the Contractor's Database) are transferred to Health or another entity nominated by Health during the Disengagement Period.
- (c) The Contractor must comply with any notice issued by AHA about commencing Disengagement for part or all of the Subcontracted Services.

21.2 Disengagement Period

- (a) The Disengagement Period starts on the earlier of:
 - (i) the date 6 Months before the time for expiry of the Services Agreement, unless Health notifies AHA (and AHA in turn Notifies the Contractor) of a different date (earlier or later); or
 - (ii) the date on which a notice of termination or reduction in scope is given to AHA by Health in accordance with the Services Agreement,and will continue until 3 Months (or such other period Notified by AHA to the Contractor) after the date of expiry or termination of the Services Agreement unless:
 - (iii) Health and AHA agree a different period in writing; or
 - (iv) AHA Notifies the Contractor (having received notification from Health) that Disengagement Services are no longer required.
- (b) The Parties acknowledge and agree that the objectives of the Disengagement are:
 - (i) to enable Health to continue to ensure that services similar to the Services are provided, including for the benefit of End Users, by Health or another entity after the expiry or termination of the Services Agreement; and
 - (ii) to eliminate or minimise any disruption or deterioration of the Services, during and as a result of the transition of the Services to Health or another entity.
- (c) During any Disengagement Period, the Contractor:
 - (i) must comply with the Disengagement Plan Approved by Health;
 - (ii) must comply with all reasonable Disengagement Requirements; and
 - (iii) subject to the Disengagement Plan being Approved by Health, if requested by Health or AHA, must continue to perform the Subcontracted Services that have not been transferred to another entity at the then prevailing terms and conditions, including without limitation the Fees.
- (d) If the Contractor receives a Notice under clauses 20.2(a) or 20.3(a) from AHA (having received a like notice from Health) and the scope of the Subcontracted Services changes as a result, the Contractor must:
 - (i) conduct the Disengagement in accordance with AHA's updated Disengagement Documentation and the Disengagement Deliverables once Approved by Health; and
 - (ii) commence supplying any changed scope of Subcontracted Services as part of the Services from the relevant date specified in AHA's updated Disengagement Plan once Approved by Health.

22. Knowledge Transfer

22.1 Substitution

- (a) Without limiting clause 21, the Contractor must, provide the following assistance to Health (or its nominee) as appropriate on termination, Disengagement or expiration of the Services Agreement:
 - (i) transfer or provide access to all information, stored by whatever means, held by the Contractor or under the control of the Contractor in connection with this Agreement (which for the avoidance of doubt does not include any information pertaining to the Contractor's Database);
 - (ii) make Contractor Personnel available for discussions with Health (or its nominee) as may be required. The time, length and subject of these discussions will be at the sole discretion of Health (provided that any matter discussed is not considered to reveal any Confidential Information of the Contractor not otherwise required to be provided under this Agreement); and
 - (iii) comply with any additional reasonable requirements specified by Health or AHA's Approved Disengagement Plan.

23. Mitigation

23.1 Mitigation

Each Party must seek to minimise its Losses in the event of the occurrence of suspension under clause 19, default, termination (in whole or part) or expiration of this Agreement, including by redeploying resources where practicable.

24. Dispute Resolution

24.1 General

- (a) The Parties will each use their reasonable endeavours to resolve Disputes:
 - (i) cooperatively; and
 - (ii) in accordance with clauses 24.1(b) to 24.4.
- (b) The Contractor and AHA must, promptly after becoming aware of any Dispute (and in any event within two (2) Business Days after becoming aware of any Dispute), give the other Party Notice of the Dispute (**Dispute Notice**) that sets out the details of the Dispute including, to the extent relevant to the Dispute, the:
 - (i) nature of the Dispute;
 - (ii) date, time and location of the Dispute;

- (iii) known or likely cause of the Dispute;
 - (iv) known or likely consequences of the Dispute; and
 - (v) actions taken to date in response to the Dispute to mitigate its effects and prevent its recurrence.
- (c) The Parties must continue to comply with their obligations under this Agreement while attempting to resolve any Dispute.
- (d) The obligations under clauses 24.1 to 24.4:
- (i) are without limiting any rights that a Party has under this Agreement; and
 - (ii) do not prevent a Party from obtaining urgent interlocutory relief.

24.2 Representative review

- (a) If a Dispute Notice is issued under clause 24.1(b), the AHA Representative and the Contractor Representative are required to meet within 5 Business Days of the date of the Dispute Notice to attempt to resolve the Dispute in good faith.
- (b) Meetings of the Representatives will be held at convenient venues in Melbourne, unless otherwise agreed by the Representatives.
- (c) Decisions of the Representatives in relation to a Dispute Notice will be contractually binding on AHA and the Contractor provided they are in writing and signed by the AHA Representative and Contractor Representative.
- (d) If:
 - (i) the Representatives are unable to resolve the Dispute within 5 Business Days of first convening to resolve the dispute under clause 24.2(a); or
 - (ii) the Representatives do not convene within 5 Business Days following the issuing of a Dispute Notice under clause 24.2(a),

then either party may immediately refer the Dispute to both the Chief Executive Officer of the Contractor and the Chief Executive Officer of the Contractor (collectively, **Executive Officers**).

24.3 Executive Officer review

- (a) If a Dispute is referred to the Executive Officers under clause 24.2(d) the Executive Officers are required to meet within 5 Business Days of the dispute being referred to them to attempt to resolve the dispute in good faith.
- (b) The joint decisions of the Executive Officers will be contractually binding on AHA and the Contractor provided they are in writing and signed by the Executive Officers.
- (c) If:
 - (i) the Executive Officers are unable to resolve the Dispute within 5 Business Days of first convening to resolve the dispute under clause 24.3(a); or

- (ii) the Executive Officers do not convene within 5 Business Days following referral of the dispute to them under clause 24.2(d),

then either Party may refer the Dispute to mediation by giving written notice to the other Party (**Mediation Notice**).

24.4 Mediation

- (a) A mediation will be conducted by:
 - (i) a person agreed between the Parties; or
 - (ii) if the Parties are unable to agree under clause 24.4(a)(i) within 10 Business Days after the date the Mediation Notice is received by the Party it is given to, a person nominated by the Chair of Resolution Institute ACN 008 651 232 or the Chair's designated representative chair of the Resolution Institute ACN 008 651 232 or his or her delegate, (the **Mediator**).
- (b) The Parties must promptly enter into an engagement agreement with the Mediator on terms reasonably required by the Mediator.
- (c) The Parties:
 - (i) must require the Mediator to:
 - (A) act fairly, impartially and independently of each Party;
 - (B) use all reasonable endeavours to avoid any actual or potential conflict of interest;
 - (C) use all reasonable endeavours to avoid any actual or potential circumstance that may reasonably be considered to adversely affect the Mediator's impartiality or independence;
 - (D) immediately give the Parties written notice if the Mediator becomes aware of the existence of anything described in clauses 24.4(c)(i)(B) or 24.4(c)(i)(C); and
 - (E) conduct a mediation, including all preliminary steps and the giving of directions, in accordance with the Resolution Institute ACN 008 651 232 Mediation Rules;
 - (ii) are entitled to legal representation during the mediation; and
 - (iii) must:
 - (A) use reasonable endeavours to settle the Dispute;
 - (B) cooperate in good faith with the Mediator and each other in the conduct of the mediation;
 - (C) use reasonable endeavours to comply with all requests and directions reasonably given by the Mediator;

- (D) do all things reasonably necessary for the proper, expeditious and efficient conduct of the mediation;
 - (E) appear in person, or be represented by a person authorised to agree on procedural matters and resolve the Dispute;
 - (F) each pay one half of the Mediator's fees and disbursements in connection with the mediation; and
 - (G) bear their own costs in connection with the mediation.
- (d) A mediation under this clause 24.4 will terminate on the earlier of:
- (i) 40 Business Days after the date that the Mediation Notice was given; and
 - (ii) if the Mediator gives notice under clause 24.4(c)(i)(D), immediately on a Party giving written notice to the other Party and the Mediator terminating the mediation.
- (e) If a mediation is terminated under clause 24.4 and the Dispute is not otherwise resolved, then either Party may commence legal proceedings in relation to the Dispute.

25. Variations to this Agreement

- (a) This clause does not apply where this Agreement expressly gives AHA the right to:
- (i) reduce or change the scope of the Subcontracted Services;
 - (ii) make changes to this Agreement as a result of a WoG Arrangement; or
 - (iii) make any other change to this Agreement without obtaining the Contractor's consent in writing,
- and any change to this Agreement permitted by such a change will be effected by giving written Notice to the Contractor in accordance with this Agreement.
- (b) All other changes to this Agreement, will be dealt with as follows:
- (i) either Party may request a variation by providing a draft Variation Proposal to the other Party setting out the proposed variations;
 - (ii) within 10 Business Days after receipt of the draft Variation Proposal or within another period agreed by the Parties, the Parties must meet to consider the draft Variation Proposal. At the meeting, the Contractor must advise and discuss as required the impact the variations will have on:
 - (A) the Fees;
 - (B) the Subcontracted Services;
 - (C) the Contractor's ability to perform its obligations under this Agreement; and
 - (D) this Agreement;

- (iii) at the meeting of the Parties, or within a period after that meeting that is agreed by the Parties, each Party must Notify the other Party whether it accepts or rejects the draft Variation Proposal (based on the stated impact of the variations); and
 - (iv) if all Parties accept the draft Variation Proposal, the Parties must execute the Variation Proposal.
- (c) Any changes to the Fees associated with a variation to this Agreement must:
 - (i) not exceed any reasonable additional cost and the Contractor must substantiate, to AHA's satisfaction, any proposed additional resource costs; and
 - (ii) take fully into account any reduction in the cost of provision of the Subcontracted Services from efficiency improvements, increased volume or otherwise.
- (d) Any variation in this Agreement takes effect from the date on which the Parties execute a Variation Proposal or as otherwise agreed by the Parties.

26. Notices and other communications

26.1 Service of Notices

- (a) A Notice must be in written English and signed by:
 - (i) in the case of a Notice from AHA, the AHA Representative; or
 - (ii) in the case of a Notice from the Contractor, the Contractor Representative.
- (b) A Notice or other communication is properly given or served by a Party if that Party:
 - (i) delivers it by hand;
 - (ii) posts it; or
 - (iii) if the notice is in pdf or other format that is a scanned image of the original hardcopy document, including a handwritten signature, attaches the pdf or scanned image to an email stating that the attachment is a notice under this Agreement,

to the recipient's address for Notices specified in clause 26.4, marked for the attention of the person who at that time is the AHA Representative, or Contractor Representative, as appropriate.

26.2 Formal and informal communications

- (a) The Parties wish to distinguish formal and informal communications.
- (b) A formal communication is one which complies with the requirements of clause 26.1 and 26.2. An informal communication is one which does not comply with the requirements of clause 26.1 and 26.2. Examples of informal communications include:
 - (i) oral communications, whether made during meetings, discussions, over the phone or otherwise; and
 - (ii) communications sent by email unless clause 26.1(b)(iii) applies.
- (c) Formal communications will have effect as communications under or in connection with this Agreement. Informal communications will not:
 - (i) be treated as communications under or in connection with this Agreement;
 - (ii) affect the Parties' rights or obligations under or in connection with this Agreement,and do not vary this Agreement or waive rights or obligations under this Agreement and cannot be relied upon as varying this Agreement or waiving rights or obligations under this Agreement.

26.3 Deemed Receipt

A Notice or other communication is deemed to be received if:

- (a) delivered by hand, when the Party who sent the Notice or other communication holds a receipt for it, signed by a person employed by the intended recipient at the physical address for Notices;
- (b) sent by post from and to an address within Australia and correctly addressed, after six (6) Business Days;
- (c) sent by post from or to an address outside Australia and correctly addressed, after fourteen (14) Business Days;
- (d) sent by electronic mail, only in the event that the other Party acknowledges receipt by any means in person, by phone or by a message which has been generated by the intended recipient and not purely by a machine.

26.4 Address for Notices

Subject to clause 26.5(a), the AHA Representative and Contractor Representative's address for Notices are as follows:

AHA Representative:	
Name:	Chay Boss-Walker
Position:	Managing Director
Address:	By hand: Level 6, 140 Bourke Street, Melbourne, Victoria 3000 Post: Locked Bag 32005, Collins Street East, Victoria 3008
Phone:	1300 242 111
Email:	chay.boss-walker@aha.com.au

Contractor Representative:	
Name:	
Position:	
Address:	
Phone:	
Email:	

26.5 Change of Address

Each Party must Notify the other Party of any change in its address for Notices, or in the identity of the AHA Contractor Representative or Contractor Representative (as applicable), including through delegation or authorisation under clause 5.7(e).

26.6 Reasonable

- (a) Subject to this clause 26.6(a), except where expressly provided as being at the discretion of a Party, where agreement, approval, acceptance, consent, determination or similar action by either Party is required under this Agreement, that action will not be unreasonably delayed or withheld.
- (b) Each Party will act reasonably in exercising any of its discretions, determinations, approvals (including satisfaction) rights or consents under this Agreement, unless expressly provided otherwise. Discretions may be identified specifically or by 'may' statements. For clarity, if AHA has an absolute discretion, it is not required to act reasonably in exercising that discretion.

27. General

27.1 Approvals and consents

Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval, Approval, Acceptance or consent under this Agreement.

27.2 Costs of contracting

Each Party must pay its own costs of negotiating, preparing and executing this Agreement and any related agreement.

27.3 Further action

Each Party must:

- (a) do, at its own expense, everything reasonably necessary (including executing any Documents) to give full effect to this Agreement and any transaction contemplated by those Documents; and
- (b) refrain from doing anything that might hinder the performance of this Agreement.

27.4 No security

The Contractor must not, without AHA's prior written consent, give or purport to give any security interest in any of its rights to receive payment from AHA under this Agreement.

27.5 Assignment and Novation

- (a) A Party must not assign or novate its rights, benefits or obligations in whole or in part, under this Agreement without the prior written consent (by Notice) of the other Party, and this consent must not be unreasonably withheld.

- (b) The Contractor must not enter into discussions or facilitate an assignment or a novation of this Agreement without the prior written consent (by Notice) of AHA.

27.6 Waiver

- (a) A waiver of any provision of, or right under this Agreement:
 - (i) must be by Notice from the Party entitled to the benefit of that provision or right; and
 - (ii) is effective only to the extent set out in such Notice.
- (b) The fact that a Party fails to do (or delays in doing) something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of or breach of obligation by, another Party.
- (c) The Contractor may request that AHA waive some or all of the requirements under this Agreement. AHA will consider any such written request and may at its absolute discretion determine to waive any of the requirements of this Agreement in accordance with clause 27.6(a).
- (d) In granting a waiver under clause 27.6(a), AHA may impose such conditions that AHA thinks fit at its absolute discretion, and the Contractor agrees to comply with these conditions, unless the Contractor declines the waiver.

27.7 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement will continue in force.

27.8 Entire Agreement

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

27.9 Rights are Cumulative

The rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

27.10 No merger and Survival

- (a) The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.
- (b) The following clauses survive the termination and expiry of this Agreement:
 - (i) clause 10 (Confidentiality);
 - (ii) clause 11 (Privacy);
 - (iii) clause 12 (Books and records);

- (iv) clause 13 (Audit and access);
- (v) clause 14 (Data Management);
- (vi) clause 15 (Intellectual Property Rights);
- (vii) clause 17 (Indemnities);
- (viii) clause 18 (Insurance);
- (ix) clause 21 (Disengagement);
- (x) clause 22 (Knowledge transfer);
- (xi) the termination provisions in so far as they relate to rights and obligations arising on termination;
- (xii) any clauses that are expressed to or which by their nature survive termination or expiry, including warranties, limitations on liability, licensing and Intellectual Property Rights and post termination/expiry date requirements relating to final reports and payment; and
- (xiii) all clauses required to give effect to the clauses referred to in clauses 27.10(b)(i) to 27.10(b)(x).

27.11 Recovery of moneys due to AHA

Any money due or owing to AHA under this Agreement may be recovered as a debt due to AHA and set off against any payment due under this Agreement.

27.12 Contra proferentum

No rule of construction will apply in the interpretation of this Agreement to the disadvantage of a Party on the basis that that Party put forward or drafted this Agreement or any provision of this Agreement.

27.13 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one Document.

27.14 Governing Law

- (a) The Laws of Victoria apply to this Agreement. The courts of Victoria have non-exclusive jurisdiction to decide any matter arising out of this Agreement.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings under or in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

27.15 **Attorneys**

Each person who executes this Agreement on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTION

Executed as a Deed

Signed by and on behalf of **AHA Pty Ltd ABN 82 072 790 848** in accordance with section 127 of *the Corporations Act 2001* by or in the presence of:

In the presence of:

.....

Signature of Director

RICHARD JOHN STOCK

.....

Name (Print) of Director in full

.....

Date

.....

Signature of Director

CHAY THOMAS BOSS-WALKER

.....

Name (Print) of Director in full

.....

Date

Executed as a Deed

Signed Sealed and **Delivered** for and on behalf of the **Contractor** by its authorised signatory in the presence of:

.....

Signature of Authorised Signatory

.....

Signature of Witness

.....

Name (Print) of Authorised Signatory in full

.....

Name (Print) of Witness in full

.....

Date

.....

Date

Schedule 1: Dictionary

Term	Definition
Acceptance	Means acceptance by AHA of a Deliverable or Milestone in accordance with clause 5.11 of this Agreement. "Accept" and "Accepted" have corresponding meanings.
Acceptance Certificate	Means a notification by AHA to the Contractor of Acceptance of a Deliverable in accordance with Agreement. Also called "Certificate of Acceptance".
Additional Services	Means any services that are requested by AHA from time to time in accordance with this Agreement that do not, at the time of the AHA request, form part of the Subcontracted Services.
Agency	Means: (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor General or by a Minister of State of the Commonwealth, State or Territory including departments; (c) an incorporated company over which the Commonwealth, State or Territory exercises control.
Agreement	Means this agreement including any schedule or annexure to it.
AHA Confidential Information	Means information that: (a) is by its nature confidential; (b) is designated by AHA as confidential; or (c) the Contractor knows or ought to know is confidential; and includes information that relates to, or is confidential in relation to Health or any other third party including Health Material, Health Data and information comprised in or relating to any Intellectual Property Rights owned by Health; but does not include information which: (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation; or (e) has been independently developed or acquired by the Contractor as established by written evidence.
AHA Personnel	Means the officers, employees, agents, advisers or directors of AHA who are engaged in performing the Services or activities associated with the provision of the Services.

Term	Definition
AHA Representative	Means a person or persons identified as the AHA Representative in this Agreement.
ANAO or Australian National Audit Office	Means the Australian National Audit Office.
APP code	Means any code developed under the Privacy Act.
Applicable Requirements	Means those applicable requirements of Health referred to in Schedule 3-Applicable Requirements of this Agreement.
Approval	Means the act of Health or AHA under the Services Agreement or this Agreement, as applicable, approving a service, act, Document or other thing. "Approve" and "Approved" have a corresponding meaning.
Approved Subcontractor	Means a Subcontractor Approved to perform any aspect of the performance of this Agreement under clause 5.12 of this Agreement.
ASD	Means the Australian Signals Directorate. The ASD is part of the Department of Defence and supports a broad range of government policy development and decision-making regarding security issues that affect Australians and Australia's interests. ASD publishes the Australian Government Information Security Manual.
Asset Register	Means a register containing a list of any Assets, including Health Supplied Material, used by the Contractor or a Subcontractor to provide the Subcontracted Services which, at a minimum and as appropriate, includes an Asset description, Asset serial number, location, acquisition cost and acquisition date.
Assets	Means any information, Material, Equipment and/or Software.
Auditor General	Means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office.
Australian Accounting Standards	Means the financial reporting standards developed by the Australian Accounting Standards Board.
Australian Government	Means the government of the Commonwealth of Australia.
Australian Privacy Principles	Has the same meaning as in the <i>Privacy Act 1988</i> (Cth).

B

Term	Definition
Business Day	Means any day of the week other than Saturday, Sunday or a national public holiday or a public holiday in the place where the relevant Service is being performed. A national public holiday is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth Government Gazette.

C

Term	Definition
Commencement Date	Means the date the last party to do so signs this contract
Commonwealth	Means the Commonwealth of Australia.
Commonwealth Procurement Rules or CPRs	Means the Commonwealth Procurement Rules issued under the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Commonwealth Data Protection Plan or CDDP	Means the plan to be developed by AHA under the Services Agreement that sets out how Health, AHA and its Subcontractors will deal with and discharge their obligations in respect of Health Data (including Personal Information) during the provision of the Services, as added to or varied by Health in accordance with the Services Agreement.
Commonwealth Record	Has the same meaning given to it in the <i>Archives Act 1983</i> (Cth).
Community Pharmacy Programs or CPP	Means the community pharmacy programs specified in the Amended and Restated Sixth Community Pharmacy Agreement dated 1 July, 2017 between the Commonwealth and the Pharmacy Guild of Australia or any subsequent like agreement between such parties.
Confidential Information	Means AHA Confidential Information or Contractor Confidential Information.
Conflict of Interest	Means a situation in which a person has a private or personal interest that may influence, or may appear to influence, the objective exercise of that person's work duties. The private or personal interest may be: (a) a financial or business interest, or some other form of benefit or advantage; or (b) personal to the person, or may be a benefit to a relative or associate. A conflict of interest creates a reasonable appearance to outsiders that a person's objective judgment is likely to be compromised, biased or partial. Conflicts of interest include apparent and potential, as well as actual conflicts of interest. An apparent conflict of interest is a situation that may develop into an actual conflict of interest.

Term	Definition
Contractor Confidential Information	Means information that: (a) is by its nature confidential; (b) is designated by the Contractor as confidential; or (c) AHA knows or ought to know is confidential; but does not include information which: (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation; or (e) has been independently developed or acquired by AHA as established by written evidence.
Contractor Material	Means all Material (including modifications to that Material) including Existing Material in which the Contractor or any Related Body Corporate owns the Intellectual Property Rights and which is used or required to be provided as part of the Subcontracted Services or in accordance with this Agreement, but does not include New Material.
Contractor Personnel	Means the officers, employees, agents, advisers or directors of the Contractor or of its Subcontractors who are engaged in performing the Subcontracted Services or activities associated with the provision of the Subcontracted Services.
Contractor's Database	Has the meaning given in clause 15.9 of this Agreement.
Contractor Representative	Means a person or persons identified as the Contractor Representative in this Agreement.
Correctly Rendered Invoice / Correctly Rendered Tax Invoice	Means an invoice that satisfies the requirements in clause 8.2(c) and any other requirement of this Agreement and is accompanied by any supporting Documentation required by this Agreement.
Cyber Incident	Has the meaning given in clause 14.6(b) of this Agreement.

D

Term	Definition
Data	Means Health Data.
Deliverable	Means a Document or other thing, specified in Schedule 2 – Subcontracted Services and Fees or elsewhere in this Agreement for delivery to AHA by the Contractor pursuant to this Agreement.

Term	Definition
Department of Health, Disability and Ageing	Means the Commonwealth of Australia, acting through and represented by the Department of Health, Disability and Ageing (ABN 83 605 426 759) or any other Agency with responsibility for administration of the Services Agreement. “Health” and “Department” have the same meaning.
Digital Service Standard	Means the Digital Service Standard which is the responsibility of the Australian Government Digital Transformation Agency and establishes the criteria that the Australian Government digital services must meet.
Digital Transformation Agency	Means that Australian Government Digital Transformation Agency.
Disengagement	Means the transfer of all or part of the Services (including the Subcontracted Services) from AHA to Health or one (1) or more new contractors, in accordance with the Services Agreement.
Disengagement Period	Means the period for provision of the Disengagement Services specified in clause 21.1 .
Disengagement Plan	Means a plan for Disengagement developed by AHA and Approved by Health, in accordance with the Services Agreement.
Disengagement Requirements	Means Health's disengagement requirements referred to in the Services Agreement.
Disengagement Services	Means the assistance to be provided by AHA and the Contractor to Health or one (1) or more new contractor(s) in accordance with the Services Agreement and this Agreement.
Dispute	Means an issue, incident or event concerning or adversely affecting, or that is reasonably likely in the opinion of a party to concern or adversely affect, the performance of this Agreement.
Dispute Notice	Has the same meaning given to it in clause 24.1(b) of this Agreement.

Term	Definition
Documents / Documentation	Means: (a) any paper or other material on which there is writing; (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; (c) any article, material or media from which sounds, image or writings are capable of being reproduced with or without the aid of another article or device (including, by way of example and without limitation, disks, CDs, USB or other drives, recording devices, tapes, hard drives and any like device; (d) a copy of any of the things referred to in paragraphs (a) - (c) of this definition, which records, contains, sets out or refers to information; and (e) and to Document means to cause any of paragraphs (a) to (d) of this definition to occur.

E

Term	Definition
Eligible Data Breach	Has the same meaning as in the Privacy Act, and as referred to in clause 14.8 of this Agreement.
End Date	Means 30 June 2030
End User	Means all Stakeholders and End Users of the System either directly or indirectly, including without limitation: (a) Health Personnel; (b) State and Territory, Local Government Area and Local Council personnel; (c) Program participants; and (d) data providers.
Equipment	Means the Hardware, equipment, peripherals and embedded Software: (a) owned or leased by AHA or Health or the Contractor; and (b) used by either AHA (or the Contractor) or Health for or in conjunction with the delivery of the Services.
Existing Material	Means material that: (a) is in existence prior to the Commencement Date of this Agreement; or (b) is subsequently brought into existence other than as a result of the performance of obligations under this Agreement, and is embodied in or attaches to the Deliverables or is otherwise necessarily related to the functioning or operation of the Deliverables and includes Material that is a modification of Existing Material.

F

Term	Definition
Fraud Control Guidelines or Commonwealth Fraud Control Guidelines	Means the guidelines set out at http://www.ag.gov.au/Fraudcontrol/Pages/CommonwealthFraudControlGuidelines2011.asp , as amended from time to time, and referred to in Schedule 3 - Applicable Requirements of this Agreement.
Fees	Means the fees payable by AHA (from funds allocated by the Commonwealth to the applicable Program/s and made available to AHA) for the provision of the Subcontracted Services as specified Schedule 2 – Subcontracted Services and Fees .
Full Time Equivalent or FTE	Means a measurement equal to one (1) person working on a full time basis.

G

Term	Definition
Government	Means the Australian Government or the Government of any State or Territory or any local government.
GST	Has the same meaning given to it in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Act	Means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Amount	Has the meaning given in clause 9.2 of this Agreement.
GST Law	Has the same meaning given to it in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any regulations made pursuant to that Act.

H

Term	Definition
Hardware	Means the physical components of an IT System.
Health	Has the same meaning as “Department of Health, Disability and Ageing”.

Term	Definition
Health Data	Means all data and information (including Personal Information) relating to Health or an Agency or an End User and its or their respective functions (including data and information relating to Health's business operations, business assets, business programs, programs and Health Personnel), facilities, End Users, Personnel, assets or programs, in whatever form that data and information may exist and whether or not it was generated by or processed by or on behalf of Health, or is stored in any Commonwealth Record. Health Data includes all Modifications to Health Data. Health Data does not include data or information that is generated by Software or equipment as a consequence of its inherent operation and which does not allow identification of Health, its functions or any particular individual (including non-identifiable log files, Software and equipment performance data, or other system operating information).
Health Material	Means: (a) all Material existing at the Commencement Date and all material which comes into existence after the Commencement Date which is owned, leased or licensed by Health and is provided by Health for the purposes of the Services Agreement, including manuals, documents, reports, equipment, tools, methodologies, information or other material and data stored by any means; (b) any reports generated by the System or otherwise under the Services Agreement; (c) all financial records and other records relating to monies payable by Health pursuant to the Programs produced by AHA in accordance with the Services Agreement; (d) invoices under the Services Agreement; (e) any Health Data input into or generated by the System; and (f) Material developed under any project undertaken by AHA pursuant to the Services Agreement where the project documents identify that the Material will become Health Material. Health Material includes Health Data and Health Supplied Items/Health Supplied Material.
Health Personnel	Means the officers, employees, agents, advisers, consultants, contractors and subcontractors and other personnel of Health (other than AHA Personnel).
Health Portfolio	Means all Agencies within the health portfolio from time to time, including Health and the Other Health Portfolio Agencies.
Health Supplied Items	See "Health Supplied Material".
Health Supplied Material	Means Material supplied by Health for the delivery of the Services. Also referred to as Health Supplied Items.

Term	Definition
Implementation	Means the implementation of the System in accordance with the Implementation requirements and described in the Services Agreement.
Implementation Services	Means the services described in this Services Agreement relating to Implementation.
Inappropriate Person	Means any person or organisation that is listed on one or more of the following lists: (a) "Regulation 8 Consolidate List" maintained by the Australian Government Department of Foreign Affairs and Trade (http://www.dfat.gov.au/sanctions/consolidated-list.html); or (b) "Listing of Terrorist Organisations" maintained by the Australian Government (http://www.nationalsecurity.gov.au/Listedterroristorganisations/Documents/Protocol%E2%80%9494ListingterroristorganisationsundertheCriminalCode.pdf).
Indemnified Person	Means AHA, its contractors and AHA Personnel (other than the Contractor).
Information Commissioner or Australian Information Commissioner	Has the same meaning as in the <i>Australian Information Commissioner Act 2010</i> (Cth).
Information Security Manual or ISM	Means the Australian Government Information Security Manual, as amended from time to time. Note: The Australian Signals Directorate produces the Australian Government Security Manual. The manual is the standard which governs the security of government ICT systems. It complements the Protective Security Policy Framework.
Intellectual Property Rights	Means all intellectual property rights, including but not limited to: (a) rights in relation to inventions, patents, copyright, circuit layouts, registered designs, registered and unregistered trademarks (including service marks, goodwill in those marks) and business, company and domain names and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; (b) any application or right to apply for registration of any of the rights referred to in paragraph a); and (c) all rights of a similar nature to any of the rights in paragraphs a) and b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
IP Register	Means the register referred to in clause 15.8 of this Agreement.

J

Term	Definition
No Terms	

K

Term	Definition
Key Personnel	Means the key or lead Personnel of the Contractor specified as such in Schedule 2 – Subcontracted Services and Fees who are responsible for the performance of key roles or tasks under this Agreement.

L

Term	Definition
Law	Means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere including in Australia and overseas, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and equity as applicable from time to time.
Loss	Means all direct losses, liabilities, damages, fines, costs and expenses, including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

M

Term	Definition
Material	Any Software (including source code and object code), firmware, Equipment, microcode, protocol, goods, tangible property, documented methodology or process, data, documentation or other material in whatever form, including without limitation any reports, specifications, technical information, plans, charts drawings, calculations, tables, schedules, data, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions stored by any means.
Maturity Level	Means as defined under the ITILv3 (2011) maturity model consisting of five levels from Level 1 (Initial) to Level 5 (Optimisation) that define characteristics of the implementation maturity for the ITIL processes.
Milestone	Means a time or Deliverable-related event specified in Schedule 2 – Subcontracted Services and Fees or elsewhere in this Agreement. Milestones are used to measure or report progress. Fees may be linked to the completion of a Milestone.
Milestone Date	Means the date specified in this Agreement for a Subcontracted Service or Deliverable to be provided or performed by the Contractor.

Term	Definition
Modify	Means to add to, enhance, reduce, adapt, change, replace, vary or improve. Derivatives such as “Modification” and “Modified” have corresponding meanings.
Month or month	Means a calendar month. Monthly has a corresponding meaning.
Moral Rights	Means in relation to an author, the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship, and the right not to have authorship falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).

N

Term	Definition
National Archives	Means the National Archives of Australia, established under the <i>Archives Act 1983</i> (Cth).
New Material	Means Material created by the Contractor or a Related Body Corporate or the Contractor Personnel or Subcontractors on or following the Commencement Date, specifically for AHA under this Agreement in connection with the Subcontracted Services, and includes any Modifications of that Material that may be required for that purpose, including the reports, plans and documents referred to in Schedule 2 – Subcontracted Services and Fees , but does not include Material owned or licensed by the Contractor or third parties (which constitute Contractor Material or Third Party Material).
New or Changed Program Services	Has the meaning given in clause 7.1(a) of this Agreement.
New or Changed Subcontracted Services	Has the meaning given in clause 7.1(b) of this Agreement.
Notice	Means a notice under this Agreement that is sent in accordance with clause 26.1 of this Agreement. Notify and Notification have the corresponding meaning.

O

Term	Definition
Other Contractor	Means any contractor that Health engages to perform any services related to or interacting with the Services Agreement, other than AHA or its Subcontractors.
Other Health Portfolio Agency	Means any Agency within the Health Portfolio that is not currently an In-Scope Health Portfolio Agency. An Other Health Portfolio Agency may become an In-scope Health Portfolio Agency at any time during the Term of this Agreement by notice from the Department of Health, Disability and Ageing to AHA.

Term	Definition
Other Incident	Has the meaning given in clause 14.6(b) of this Agreement.

P

Term	Definition
Parliament	Means the Parliament of the Commonwealth of Australia.
Party	Means a party to this Agreement.
Personal Information	Has the same meaning given to it in the <i>Privacy Act 1988</i> (Cth).
Personnel	Means in relation to AHA, AHA Personnel; and in relation to the Contractor, Contractor Personnel, and in relation to Health, Health Personnel.
Privacy Act	Means the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	Has the same meaning given to it in the Privacy Act.
Proceedings	Means any regulatory issues, litigation, arbitration, mediation, conciliation or proceeding.
Program	Means a Community Pharmacy Program and in relation to the Subcontracted Services means the Program/ referred to in Schedule 2 – Subcontracted Services and Fees .
Program Recipient	Means a person or entity that receives Commonwealth monies for services under a Program in accordance with the terms and conditions that govern the Program (as between AHA and the Program Recipient) and may include a Service Provider.
Program Rules	Means Health's rules and guidelines applicable to the Programs, as updated from time to time. The Program Rules applying as at the date of this Agreement are as set out at www.6cpa.com.au . The terms "Program Specific Guidelines" and "Program Rules and Guidelines" have an equivalent meaning.
Program Services	Means the services for the delivery of the Programs.
Program Specific Guidelines	See the definition of Program Rules.
Protective Security Governance Guidelines	Has the same meaning given to it in the Protective Security Policy Framework.

Term	Definition
Protective Security Policy Framework (PSPF) or Commonwealth Protective Security Policy Framework	Means the framework published by the Attorney-General's Department to provide the controls for Australian Government services to protect its people, information and assets.
Protective Security Protocols	Has the same meaning given to it in the Protective Security Policy Framework.

Q

Term	Definition
No Terms	

R

Term	Definition
Recipient	Means Program Recipient.
Recipient (GST context)	Means, in the context of the GST Act, the same meaning given to it in clause 9.2 of this Agreement.
Reduced Scope	Has the same meaning given to it in clause 20.3 (a) of this Agreement.
Related Body Corporate	Means an entity which falls within the definition of a "Related Body Corporate" for the purposes of the <i>Corporations Act 2001</i> (Cth).

S

Term	Definition
Schedules	Means all or any of the schedules to this Agreement.
Security Classified Information	Has the same meaning given to it in the PSPF.
Service Provider	Means an entity other than AHA that provides Services under the Programs.
Service(s)	Means the services and any deliverables delivered or required to be delivered by AHA to Health in accordance with the Services Agreement for the administration of the Community Services Programs, including the System, Implementation Services, Program Services and the Subcontracted Services.

Term	Definition
Services Agreement	Means the Deed of Standing Offer between AHA and Health dated 4 June 2026 for the provision of Services for the Administration of Pharmacy Programs.
Software	Means any computer program or programming (including source code and object code) and includes, without limitation, modifications, any Software tools or object libraries embedded in that Software and all Materials relating to that Software and/or its design, development, modification, operation, support or maintenance (and, in the case of Third Party Software, Software includes any Materials as are made available by the third party under or in relation to the licence for that Third Party Software).
Solution	Means any plans, processes, procedures, methodologies and the System, which are used by AHA to deliver the Services (including any activities that are undertaken manually, or in an automated manner, and any activities that are undertaken by any Subcontractors).
Stakeholder(s)	Means an Agency, individual or other entity specified by Health as having a role in the Services.
Statute	Means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere including in Australia, whether made by a State, Territory, the Commonwealth, or a local government. Statutory has the corresponding meaning.
Subcontracted Services	Means the services (for one or more Programs) and any Deliverables specified in Schedule 2 – Subcontracted Services and Fees and any other services and Deliverables delivered or required to be delivered by the Contractor to AHA in accordance with this Agreement, including any agreed Additional Services.
Subcontractors	Means an entity that contracts to provide goods or services to the Contractor in order for the Contractor to meet its obligations under this Agreement. "Subcontract" has a corresponding meaning.
Supplier	Means, in the context of the GST Act, has the meaning given in clause 9.2 of this Agreement.
Suspension Notice	A Notice given in accordance with clause 19(a) of this Agreement.
System	Means the system to be delivered by AHA for the purposes of, and in accordance with the Services Agreement which is to be used to provide the Services.

T

Term	Definition
Tax	Means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a Regulatory Agency, together with any related interest, penalty, fine or other charge.
Tax Invoice	Has the same meaning given to it in the GST Act.
Term	Means the period specified in clause 2.2 of this Agreement.
Termination Event	Has the same meaning given to it in clause 20.1(a) of this Agreement.
Third Party Material	Means all Material including Third Party Software (including Modifications of or to that Material) acquired from a third party supplier other than Health Material, New Material and Contractor Material that is used by the Contractor to provide the Subcontracted Services or provided by the Contractor to, and used by, AHA under or in connection with this Agreement and, in case of Material used in connection with the System is necessary for Health to access and use the System in accordance with clause 15 of this Agreement.
Third Party Software	Means Software (including Modifications of or to that Software) that is: (a) acquired from a third party supplier; and (b) used by the Contractor in the performance of the Subcontracted Services; and (c) in the case of Software used in connection with the System, is necessary for Health to access and use in order to access and use the System.

U

Term	Definition
No Terms	

V

Term	Definition
Variation Proposal	Means a proposal to vary this Agreement as referred to in clause 25 of this Agreement.

W

Term	Definition
WGE Act	Means the <i>Workplace Gender Equality Act 2012</i> (Cth).
Whole of Government (WoG)	Means an arrangement established to benefit, or affecting or involving, one (1) or more Agencies.

Term	Definition
Whole of Government Arrangement or WoG Arrangement	Means a Whole of Government coordinated procurement system that enables or facilitates the delivery of certain goods and services to one or more Agencies.
WHS Act	Means the <i>Work Health and Safety Act 2011</i> (Cth).
WHS Laws	Means the WHS Act, any regulations made under that Act and any “corresponding WHS law” within the meaning of section 4 of the WHS Act and Regulation 6A of the Work Health and Safety Regulations 2011.
Wilful Misconduct	Means any reckless or intentional and wrongful act or failure to act which: (a) does not breach this Agreement; or (b) breaches this Agreement or evinces an intention to no longer be bound by this Agreement (including repudiation) (as relevant); in circumstances where: (c) the person who acted or failed or act either knew or should have known that their action or failure to act would result in Loss and nevertheless continued to act or fail to act notwithstanding the likely consequences; and (d) the person's action or failure to act is in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

X

Term	Definition
No Terms	

Y

Term	Definition
No Terms	

Z

Term	Definition
No Terms	

Schedule 2: Subcontracted Services and Fees

1 Program

Emergency Locum Service (**ELS**) Program

2 Objective of Service

The objective of the Emergency Locum Service (**ELS**) Program is to ensure that rural and remote communities retain access to pharmacy services at all times. The ELS provides for travel costs associated with a locum attending a rural and remote area when a pharmacist in a Community Pharmacy cannot be on duty due to an emergency or urgent situation. The ELS aims to place a locum within 24 hours of the request.

The ELS Program assists Community Pharmacies by funding up to \$2,500 (GST exclusive) to contribute towards the travel costs between the locum's home and the Community Pharmacy location.

The ELS Program is available 24 hours a day, seven (7) days a week. Emergency locum placements are for a minimum of one (1) day and a maximum of seven (7) consecutive days.

3 Description of Service

The Contractor must ensure that Contractor Personnel:

- (a) provide day to day operation of the ELS in accordance with the latest approved version of the Program Rules developed by Health and any other requirements of Health in relation to the ELS;
- (b) develop and provide application forms and guidelines to applicants for ELS where requested in both written and electronic format;
- (c) develop and maintain an ELS website that provides information on the ELS and access to contact details and ELS application forms in both written and electronic formats (links will be provided to AHA for addition to its Program websites). The website will be developed in a format and style that is consistent with the PPA website;
- (d) respond to enquiries and ELS applications received by fax, phone and website;
- (e) operate the ELS which must be accessible 24 hours per day, seven (7) days per week and include telephone access via a toll free number;
- (f) assess ELS applications received for their eligibility as per the Eligibility Criteria set out in the latest approved version of the Program Rules;
- (g) notify an ELS applicant as soon as possible (or as a maximum within 12 hours) of receipt of an ELS application;
- (h) arrange and place a locum in any rural location nationally as soon as possible and preferably within 24 hours, for a minimum of one (1) and a maximum of seven (7) consecutive days;
- (i) provide invoices to AHA for the travel costs associated with placing the locum up to a maximum of \$2,500 (GST exclusive) and the agreed placement fee;
- (j) undertake general monitoring of locum placements;
- (k) to collaborate with AHA in reviewing and improving the operation of the ELS;

(l) to provide the reports specified below.

4 Reporting

The Contractor is required to submit reporting throughout the contract period as follows:

Reports	Frequency	Due
ELS Placement Data and Narrative Reports	Quarterly	10 business days following the end of the quarterly period
Project Plan	Annually	20 business days after contract commencement and then last business day of July each year
Audited Financial Report	Annually	Last business day of July each year
Final Report	At end of contract period	Last business day of July 2030, unless a contract extension is awarded

Each report's contents and due dates are details below.

Quarterly reporting requirements

The Contractor must provide AHA with a written narrative report and a completed ELS Placement Data Template at the end of each quarter in accordance with the dates set out below.

The narrative reports are to include:

- (a) Progress report of program management and any challenges faced in previous quarter;
- (b) Detailed information on progress made in relation to meeting the milestones identified in the latest approved version of the Project Plan;
- (c) Where progress against the latest approved version of the Project Plan has been delayed or milestones not reached, an explanation of the delay and/or failure and steps taken to remedy the delay and/or failure;
- (d) Where locum support was requested but not supplied, details of why not and the location of the community in which the pharmacy was located
- (e) Average response time for filling positions.

Reporting Period	Due dates
1 January 2027 to 31 March 2027	14 April 2027
1 April 2027 to 30 June 2027	14 July 2027
1 July 2027 to 30 September 2027	14 October 2027
1 October 2028 to 31 December 2027	14 January 2028
1 January 2028 to 31 March 2028	18 April 2028
1 April 2028 to 30 June 2028	14 July 2028
1 July 2028 to 30 September 2028	13 October 2028
1 October 2028 to 31 December 2028	15 January 2029
1 January 2029 to 31 March 2029	16 April 2029

1 April 2029 to 30 June 2029	13 July 2029
1 July 2029 to 30 September 2029	12 October 2029
1 October 2029 to 31 December 2029	15 January 2030
1 January 2030 to 31 March 2030	12 April 2030
1 April 2030 to 30 June 2030	12 July 2030

Project Plan

A Project Plan for each financial year is to be delivered on or before the dates referred to below and must detail the activities, milestones, responsibilities and timeframes for the delivery of the Service in a format acceptable to AHA.

Reporting Period	Due date
1 January 2027 to 30 June 2027	20 business days after contract commencement
1 July 2027 to 30 June 2028	30 July 2027
1 July 2028 to 30 June 2029	31 July 2028
1 July 2029 to 30 June 2030	31 July 2029

Audited Financial Report

An audited end of year financial report is to be delivered on or before the dates referred to below.

Reporting Period	Due date
1 January 2027 to 30 June 2027	30 July 2027
1 July 2027 to 30 June 2028	31 July 2028
1 July 2028 to 30 June 2029	31 July 2029
1 July 2029 to 30 June 2030	31 July 2030

Final Report

A Final Report is to be delivered on the date specified below (or earlier if the Agreement is terminated). The Final Report must include but is not limited to:

- (a) The pharmacy names and location (by State and MM category) of the pharmacies that received locum support during the Project;
- (b) The total number of times locum support was requested and the number of times it was supplied – where locum support was requested but not supplied, provide details of why it did not occur and the specific location of the community in which the pharmacy was located that requested the locum service;

- (c) An externally audited detailed statement of receipts and expenditure for the entire Project carried out by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the bank account.

Reporting Period	Due date
1 January 2027 to 30 June 2030	31 July 2030

5 Funding for payment of Fees

All Fees payable by AHA pursuant to this Agreement are sourced from funds allocated to the Program by the Commonwealth and made available to AHA. Notwithstanding any other terms of this Agreement, the total amount for Fees invoiced each year shall not exceed the annual funding allocation of the Contractor under the Program.

6 Fees (Emergency Locum Services – Placement Fees and Travel Costs) and Payment Terms

AHA will pay the Contractor (upon receipt of a Correctly Rendered Invoice) a flat fee of <insert fee excluding GST> for each locum placed (or such increased fee as the parties may agree during the Term). It is acknowledged that AHA will review the fee in good faith as part of the rural pharmacy program administration.

AHA will also reimburse the Contractor, based on receipts, the travel cost associated with placing the locum, up to a maximum of \$2,500 (ex GST). Any cost above \$2,500 (ex GST) will be met by the Contractor.

Payment of the placement fee and reimbursement of travel costs will be made by AHA within 30 days of receipt of a Correctly Rendered Invoice, subject to AHA verifying that the invoice correctly outlines ELS locum placement details that have met the eligibility in the Program Rules and travel cost evidence. A Correctly Rendered Invoice is one that:

- (a) Details the ELS locum placement dates and the ELS placement location;
- (b) Sets out the name of AHA's Contract Manager;
- (c) Contains a claim for the amount of the Fees payable, including any associated GST components; and
- (d) Is a tax invoice.

7 Milestone Dates, Deliverables/Milestones and Payment Terms

AHA will pay the Contractor for completion of Milestones and delivery of Deliverables in accordance with the table and terms set out below.

The Contractor must deliver the specified Deliverables by the applicable Milestone Dates (provided that AHA will not unreasonably withhold its consent to an extension of time for delivery of a Deliverable to take account of any circumstance beyond the reasonable control of the Contractor) and AHA will assess the Deliverables as submitted by the Contractor and notify the Contractor when the Deliverables are Accepted by AHA. The Contractor will then submit a Correctly Rendered Tax Invoice for the payment of the Deliverable/s.

Milestone date	Deliverable/Milestone	Amount (Exc GST)	GST	Total (Inc GST)
20 business days after contract commencement	Project Plan for period 1 Jan – 30 Jun 2027			
14 April 2027	Quarterly report for period 1 Jan 2027 – 31 Mar 2027			
14 July 2027	Quarterly report for period 1 Apr 2027 – 30 Jun 2027			
14 October 2027	Quarterly report for period 1 Jul 2027 – 30 Sep 2027			
14 January 2028	Quarterly report for period 1 Oct 2028 – 31 Dec 2027			
18 April 2028	Quarterly report for period 1 Jan 2028– 31 Mar 2028			
14 July 2028	Quarterly report for period 1 Apr 2028 – 30 Jun 2028			
13 October 2028	Quarterly report for period 1 Jul 2028 – 30 Sep 2028			
15 January 2029	Quarterly report for period 1 Oct 2028 – 31 Dec 2028			
16 April 2029	Quarterly report for period 1 Jan 2029 – 31 Mar 2029			
13 July 2029	Quarterly report for period 1 Apr 2029 – 30 Jun 2029			
12 October 2029	Quarterly report for period 1 Jul 2029 – 30 Sep 2029			
15 January 2030	Quarterly report for period 1 Oct 2029 – 31 Dec 2029			
12 April 2030	Quarterly report for period 1 Jan 2030– 31 Mar 2030			
12 July 2030	Quarterly report for period 1 Apr 2030 – 30 Jun 2030			
TOTAL				

The due date for payment is 30 days after receipt of a Correctly Rendered Invoice. A Correctly Rendered Invoice is one that:

- (a) Identifies the name of the Program and Deliverables supplied;
- (b) Sets out the name of AHA's Contract Manager;
- (c) Contains the amount payable; and
- (d) Is a tax invoice.

8 Key Personnel

Key Personnel of the Contractor are:

Key Personnel for AHA are:

Nerida Packham – ELS Program Lead

Nerida.packham@aha.com.au

03 9663 1950

9 Contract Manager

AHA

Name: Nerida Packham

Address: Level 6, 140 Bourke Street, Melbourne 3000

Phone: 03 9663 1950

Email: nerida.packham@aha.com.au

Contractor

Name:

Address:

Phone:

Email:

Schedule 3: Applicable Requirements

1. Laws - General

- 1.1 Without limiting specific provisions of this Agreement, the Contractor must, at its own expense, in performing the Subcontracted Services:
- (a) comply with all relevant Laws, as amended or replaced from time to time including the:
 - (i) *Competition and Consumer Act 2010* (Cth);
 - (ii) *Crimes Act 1914* (Cth);
 - (iii) *Criminal Code Act 1995* (Cth);
 - (iv) *Cybercrime Act 2001* (Cth);
 - (v) *Racial Discrimination Act 1975* (Cth);
 - (vi) *Disability Discrimination Act 1992* (Cth);
 - (vii) *Workplace Gender Equality Act 2012* (Cth);
 - (viii) *Privacy Act 1988* (Cth);
 - (ix) *Public Governance, Performance and Accountability Act 2013* (Cth);
 - (x) *Sex Discrimination Act 1984* (Cth);
 - (xi) Public Governance, Performance and Accountability Rule 2014;
 - (xii) the Commonwealth Procurement Rules 2018 and the Commonwealth Grants Rules and Guidelines 2017;
 - (xiii) all applicable Laws of the Commonwealth, or of any State, Territory or local government authority; and
 - (xiv) regulations made under the Act and regulations made under the Charter of the United Nations Act 1945 (Cth);
 - (b) comply with specific policies and procedures of Health, as Notified by AHA from time to time;
 - (c) obtain and maintain all necessary permits, consents, approvals and certifications; and
 - (d) avoid causing AHA, AHA Personnel, Health or Health Personnel to contravene any Laws.

2. Work Health and Safety

- 2.1 In clauses 2.1 to 2.4 below:
- (a) 'Act' means the *Work Health and Safety Act 2011* (Cth); and
 - (b) Person Conducting a Business or Undertaking (**PCBU**) as defined by the Act means a person conducting a business or undertaking:

- (i) whether the person conducts the business or undertaking alone or with others; and
 - (ii) whether or not the business or undertaking is conducted for profit or gain.
- 2.2 The Contractor must ensure that the Subcontracted Services are provided in a manner that does not pose any avoidable health or safety risk to Contractor Personnel, to AHA Personnel, to Health Personnel or to any other person.
- 2.3 Without limiting in any way the work health and safety obligations that the Contractor has under this Agreement, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Contractor must:
 - (a) ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act or corresponding State or Territory legislation;
 - (b) ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act or corresponding State or Territory legislation; and
 - (c) Notify AHA of:
 - (i) any work related injury that causes death or serious personal injury;
 - (ii) any notifiable incident as defined at sections 35, 36 and 37 of the Act, or corresponding State or Territory legislation; and
 - (iii) each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, or the corresponding or equivalent State or Territory legislation,

within one (1) Business Day after the incident has occurred or within two (2) hours if the injury causes death.
- 2.4 At AHA's request, the Contractor must provide reasonable assistance to Health or Comcare (including giving Health, Comcare and their agents access to the Contractor's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Subcontracted Services.

3. Anti-discrimination

3.1 Workplace Gender Equality

- (a) The Contractor must, if a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* (**WGE Act**):
 - (i) comply with its obligations, if any, under the WGE Act; and
 - (ii) not enter into any subcontract with an entity named in a report tabled in the Australian Parliament by the Director of Workplace Gender Equality as a supplier that has not complied with the WGE Act.
- (b) If the Contractor is a 'relevant employer' under the WGE Act and becomes non-compliant with the WGE Act during the Term of this Agreement, the Contractor must notify the AHA Representative as soon as reasonably practical.
- (c) The Contractor must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 Months from the Commencement Date and following this, annually, to the AHA Representative.

- (d) Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Agreement.

3.2 **Disability discrimination**

The Contractor must comply with the Disability Discrimination Act 1992 (Cth) in accordance with the National Disability Strategy 2010-2020.

3.3 **Indigenous Opportunities**

- (a) It is Australian Government policy, under the Indigenous Procurement Policy, to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- (b) The Contractor must use its reasonable endeavours to increase its purchasing from Indigenous enterprises, and employment of Indigenous Australians, in the delivery of the Subcontracted Services.
- (c) Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and/or use of Indigenous suppliers in the Contractor's supply chain.
- (d) In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.
- (e) The Contractor must provide such written reports and evidence of its compliance with this clause 3.3 as required by AHA during the Term.

3.4 **General**

The Contractor must comply with such other Commonwealth, State or Territory legislation relevant to anti-discrimination as may be relevant to this Agreement.

4. **Environment**

- 4.1 The Contractor must perform its obligations under this Agreement in a way that does not place the Contractor or AHA or Health in breach of any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- 4.2 The Contractor must seek to implement any best practice environmental or green standards applicable to the Subcontracted Services and must implement any such standards which are notified to AHA by Health and in turn Notified to the Contractor.
- 4.3 The Contractor must comply with all reasonably practicable directions given by AHA in respect of work practices or use of equipment in order to eliminate or mitigate any condition contrary to published environmental standards which apply to Health.

5. **Australian Packaging Covenant**

- 5.1 The Contractor must endeavour to minimise the environmental impacts arising from the disposal of used packaging, conserve resources through better design and production processes for packaging and facilitate the re-use and recycling of used packaging materials in accordance with the principles in the Sustainable Packaging Guidelines available at <http://www.packagingcovenant.org.au>.

6. Energy Efficiency Policy

- 6.1 The Contractor must comply with the Energy Efficiency In Government Operations (EEGO) Policy, where relevant to the provision of the Services. See the Department of Environment and Energy's 'Energy Efficiency in Government Operations' website at:
<https://www.energy.gov.au/publications/energy-efficiency-government-operations-policy>.
- 6.2 If reasonably practicable, the Contractor agrees to use energy efficient products, products from recycled materials or other environmentally preferable products in its performance of this Agreement
- 6.3 The Contractor must provide information to AHA in relation to the products the Contractor uses in its performance of this Agreement, including how those products are energy efficient, made from recycled materials or are otherwise environmentally preferable upon request by AHA.

7. Illegal workers

- 7.1 The Contractor must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Agreement and must notify AHA immediately if it becomes aware of the involvement of an Illegal Worker in such work.
- 7.2 The Contractor must ensure that all subcontracts include a provision prohibiting Subcontractors engaging Illegal Workers.
- 7.3 If the Contractor becomes aware of the involvement of an Illegal Worker, the Contractor must:
- (a) promptly Notify AHA; and
 - (b) remove, or cause to be removed, any Illegal Worker from any involvement in performing its obligations under this Agreement (including if engaged by a Subcontractor) and arrange for their replacement at no cost to AHA, immediately upon becoming aware of the involvement of the Illegal Worker.
- 7.4 If requested in writing by AHA, the Contractor must provide evidence within 14 calendar days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

8. Freedom of Information access to documents

- 8.1 In clauses 8.2 to 8.5 'document' and 'Commonwealth Agreement' have the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 8.2 The Contractor acknowledges that the Services Agreement is a Commonwealth Services Agreement.
- 8.3 The *Freedom of Information Act 1982 (Cth)* enables the Australian community to have access to information in the possession of the Commonwealth Government. Where Health has received a request for access to a document created by, or in the possession of, AHA or any Subcontractor that relates to the performance of the Services Agreement (and not to the entry into the Services Agreement), Health may at any time by written Notice require the Contractor to provide the document to Health and the Contractor must, at no additional cost to Health, promptly comply with the Notice.
- 8.4 The Contractor must indicate if it believes any material provided by it should be exempt from the operations of the *Freedom of Information Act 1982 (Cth)*.
- 8.5 The Contractor must include in any subcontract relating to the performance of this Agreement, provisions that will enable the Contractor to comply with its obligations under clause 8.3.

- 8.6 Clauses 8.2 to 8.5 apply for the Term and for a period of seven (7) years after the termination or expiry of this Agreement, whichever is later.

9. Fraud

- 9.1 The Contractor must comply with the Commonwealth Fraud Control Guidelines, as amended from time to time set out at:
<http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/FraudControlFramework.aspx>.
- 9.2 The Contractor must notify AHA immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Agreement (including by the Contractor, Contractor Personnel and Subcontractors).

10. Small and Medium Enterprises (SMEs)

- 10.1 If the total Fees payable under this Agreement will exceed AU\$20 million, the Contractor must ensure that at least 20% of the Subcontracted Services (excluding Hardware) and 10% of the Hardware are provided by Small and Medium Enterprises (**SMEs**).
- 10.2 The Contractor must report to Health as required by Health in relation to its compliance with clause 10.1.

11. Anti-terrorism

- 11.1 The Contractor must comply with its obligations (if any) under Part 4 of the *Charter of United Nations Act 1945* (Cth) and the *Charter of United Nations (Dealing with Assets) Regulations 2008* (Cth).
- 11.2 The Contractor must comply with all applicable Laws dealing with the supply and/or export of goods, services and information to foreign nationals or institutions, including under the *Customs Act 1901* (Cth) and the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth).
- 11.3 The Contractor acknowledges that it is an offence to knowingly make any funds or assets available to a person or organisation on the list of persons and entities designated as terrorists, available at http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html.
- 11.4 If the Contractor holds assets or funds belonging to a person or organisation on the list of persons and entities designated as terrorists, the Contractor must immediately freeze those assets.

12. Anti-money laundering

- 12.1 The Contractor must comply with its obligations (if any) under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

13. Archiving

- 13.1 During the Term and Disengagement Period, the Contractor must:
- (a) comply with any of Health's archiving policies as notified to it from time to time.
 - (b) comply with the requirements of the *Archives Act 1983* (Cth) and any Records Disposal Authority in respect of Commonwealth Records which are in the possession or under the control of the Contractor;
 - (c) comply with any reasonable direction given by Health or the National Archives of Australia for the purpose of transferring a Commonwealth Record to the National Archives of Australia or providing the National Archives of Australia with full and free access to those records;

- (d) ensure that Health has access at all times and in any manner to Commonwealth Records whilst they are in the possession or under the control of the Contractor; and
- (e) at no additional cost, on or before the termination or expiry of the this Agreement, deliver all Commonwealth Records in the possession or under the control of the Contractor to Health or, if directed by Health, to another person specified in writing by Health.

14. Fair Work Act

- 14.1 The *Fair Work Act 2009* (Cth) (**Fair Work Act**) establishes the framework for workplace relations in Australia.
- 14.2 The Contractor must comply, and as far as practicable must ensure its Subcontractors (if any) comply, with all applicable workplace relations, work health and safety and worker's compensation Laws.
- 14.3 As far as practicable, the Contractor must ensure that all subcontracts impose obligations on Subcontractors equivalent to the obligations in this clause 14.

15. Lobbying Code of Conduct

- 15.1 The Lobbying Code of Conduct is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty. Lobbyists and Government representatives are expected to comply with the requirements of the Lobbying Code of Conduct in accordance with their spirit, intention and purpose. A copy of the Lobbying Code of Conduct is available at: http://lobbyists.pmc.gov.au/conduct_code.cfm.
- 15.2 'Government representative' for the purposes of the Lobbying Code of Conduct includes a person engaged as a contractor or consultant by an Agency whose staff are employed under the *Public Service Act 1999* (Cth).
- 15.3 In performing this Agreement the Contractor must, and must ensure that Contractor Personnel will, comply with the Lobbying Code of Conduct and the Australian Public Service Commission (APSC) Circular 2008/4, Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government where their activities fall within the scope of the Lobbying Code of Conduct.

16. Digital Service Standard

- 16.1 The Contractor must comply with the Digital Service Standard for all Services which are within scope of the Digital Service Standard, as detailed by the Australian Government Digital Transformation Agency. A copy of the Digital Service Standard is available at: <https://www.dta.gov.au/standard/>.

17. Secure Cloud Strategy

- 17.1 Health is obliged to comply with the Australian Government's position on cloud computing (Secure Cloud Strategy) (further information can be found at <https://www.dta.gov.au/what-we-do/policies-and-programs/secure-cloud/>).
- 17.2 Subject to legislative and regulatory requirements, Health is required to use cloud services for new ICT services whenever cloud services:
 - (a) are fit for purpose;
 - (b) offer the best value for money; and

- (c) provide adequate management of risk to information and ICT assets as defined by the Protective Security Policy Framework.

17.3 The Contractor must comply with the Secure Cloud Strategy.

Schedule 4: AHA Deed of Confidentiality

Deed Poll made at _____ **on** _____
By _____

[Insert name and address of person] (Confidant)

In favour of

AHA Pty Ltd (ABN 82 072 790 848) of Level 6, 140 Bourke Street, Melbourne, Victoria 3000 (**CPA Contractor**)

Recitals

- A. The CPA Contractor possesses valuable Confidential Information.
- B. The Confidant is currently in, or may in the future come into, possession of certain Confidential Information.
- C. By this Deed, the Confidant agrees to certain restrictions on the use and disclosure of that confidential information by the Confidant.

Operative provisions

1. Definitions

- 1.1 In the interpretation of this Deed, unless the contrary intention appears or the context otherwise requires or admits, the following expressions will have the following meanings:

Agreement means the subcontractor agreement entered by the CPA Contractor and the Contractor in pursuance of the Services Agreement.

Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

and unless stated otherwise, includes Commonwealth, State and Territory Agencies.

Commonwealth means the Commonwealth of Australia.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the CPA Contractor as confidential, or
- (c) the Confidant knows is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed or any confidentiality obligation; or
- (e) has been independently developed or acquired by the Confidant as established by written evidence.

Contractor means the entity described in Item 1 of the Schedule to this Deed.

CPA Contractor means AHA Pty Ltd (ABN 82 072 790 848) of Level 6, 140 Bourke Street, Melbourne, Victoria 3000.

CPA Contractor Personnel means the officers, employees, agents, advisers, directors or subcontractors (including the Contractor) of the CPA Contractor or of its subcontractors who are engaged in performing the services or activities associated with the provision of the services under the Services Agreement.

Deed means this document.

Health means the Commonwealth of Australia acting through the Department of Health, Disability and Ageing.

Health Personnel means the officers, employees, agents, advisers, consultants, contractors and subcontractors and other personnel of Health (other than CPA Contractor Personnel).

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

Notice means a notice in Writing given in accordance with this Deed.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Services Agreement means the agreement between Health and the CPA Contractor for the Provisions of Services for the Administration of Pharmacy Programs dated 4 June, 2026.

Writing means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted, or transmitted electronically.

2. Interpretation

Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the paragraph headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a paragraph number is a reference to all its sub-paragraphs;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a paragraph is a reference to a paragraph of this Deed; and
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. **Confidentiality**

3.1 **Non disclosure**

Subject to **paragraph 3.5**, the Confidant must not disclose Confidential Information to any person without the prior written consent of the CPA Contractor.

3.2 **Consent**

The CPA Contractor may grant or withhold its consent in its absolute and unfettered discretion.

3.3 **Conditions on consent**

If the CPA Contractor grants its consent, it may, subject to the Agreement, impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the CPA Contractor may require that the Confidant procure the execution of a confidentiality undertaking in these terms and conditions by the person to whom the Confidant proposes to disclose the Confidential Information.

3.4 **Complying with conditions**

If the CPA Contractor grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 **Legal and other disclosure**

The Confidant may only disclose Confidential Information:

- (a) as specified in the Agreement;
- (b) to Health, Health Personnel and CPA Contractor Personnel solely on a "need to know" basis and then only for the purpose identified in **paragraph 4**;
- (c) if the Confidant is an incorporated entity, to its Related Bodies Corporate, officers, employees and advisors solely on a "need to know" basis and then only for the purpose identified in **paragraph 4**;
- (d) to Health's and each of the State's and Territory's responsible Minister;
- (e) to the extent required by Law or by a lawful requirement of any Agency (including, without limitation, the Commonwealth Auditor-General, the Auditor General of any State or Territory and the Commonwealth Privacy Commissioner);
- (f) if it is authorised or required by Law to be disclosed, including in connection with legal proceedings; or
- (g) subject to any Law to the contrary, for governmental, reporting or public accountability reasons, including in response to a request for information by parliament or a parliamentary committee.

4. **Restriction on use**

The Confidant will use the Confidential Information provided by the CPA Contractor only for the purposes of its dealings with the CPA Contractor and, if necessary, for the purposes of the Confidant performing any part of the Agreement.

5. **Uncertainty**

In the event of uncertainty as to whether any information is Confidential Information, the information is deemed to be Confidential Information unless the CPA Contractor notifies the Confidant in Writing to the contrary.

6. **Security**

The Confidant will:

- (a) maintain proper and secure custody of all Confidential Information which is in its possession or under its control;
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information by third parties contrary to this Deed; and
- (c) immediately notify the CPA Contractor in Writing of any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information contrary to this Deed.

7. **No exclusion of Law**

This Deed must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

8. **Disclaimer**

8.1 **No warranty**

The Confidant acknowledges that the CPA Contractor does not make any representation or warranty as to the accuracy or completeness of any information which is provided to the Confidant.

8.2 **No liability**

Except as may otherwise be expressly agreed in Writing, the CPA Contractor is not liable to the Confidant in relation to the use of Confidential Information by the Confidant.

9. **Powers of the CPA Contractor**

9.1 **Delivery and destruction of documents**

- (a) The Confidant will:
- (b) promptly on the request of the CPA Contractor or a person authorised by CPA Contractor (without needing to produce the demand in Writing) deliver up to the CPA Contractor:
 - (i) all of the Confidential Information;
 - (ii) all alterations, Modifications, developments and enhancements to, copies of, extracts from or notes on, the Confidential Information in whatever form; and
 - (iii) all materials related to or in any way associated with the Confidential Information, in the Confidant's possession, power or control;
 - (iv) except to the extent that the Confidential Information has been incorporated into a Commonwealth Record within the meaning of the Archives Act 1983 (Cth) or equivalent State or Territory record; or

- (v) immediately on the request of the CPA Contractor or a person authorised by the CPA Contractor, except to the extent the Confidential Information has been incorporated into a Commonwealth Record within the meaning of the Archives Act 1983 (Cth) or equivalent State or Territory record:
- (vi) destroy the documents mentioned in **paragraph 9.1(a)**, and in the case of computer data, this must be done by a method of erasing it from the media on which it is stored so that it cannot in any way be recovered, reconstructed or reconstituted; or
- (vii) otherwise deal with the document mentioned in **paragraph 9.1(a)** as the CPA Contractor directs,
- (viii) and the Confidant will then promptly certify in Writing to the CPA Contractor that all of the documents mentioned in **paragraph 9.1(a)** have been delivered up, destroyed or dealt with as directed.

9.2 **Confidential Information beyond possession or control**

If the CPA Contractor makes a demand under this **paragraph 9**, and the Confidant has placed documents containing the Confidential Information, or is aware that documents containing the Confidential Information are, beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.

9.3 **Meaning of "documents"**

In this **paragraph 9**, "documents" includes any form of storage of information, whether visible to the eye or not.

9.4 **Legal proceedings**

The Confidant acknowledges that the CPA Contractor may take legal proceedings against the Confidant if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

10. **Waiver**

10.1 **Separate instances of waivers**

No waiver by the CPA Contractor of one breach of any obligation or provision of this Deed (expressed or implied) will operate as a waiver of another breach of the same or of any other obligation or provision of this Deed (expressed or implied).

10.2 **Consent in Writing**

None of the provisions in this Deed must be taken either at Law or in equity to have been varied, waived, discharged or released by the CPA Contractor unless by its express consent in Writing.

10.3 **Remedies cumulative**

The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by Law or any other such right or remedy.

10.4 **Variations and amendments**

No term or provision of this Deed may be amended or varied unless such amendment or variation is agreed and signed by the Confidant and the CPA Contractor.

10.5 **Applicable Law**

This Deed is governed by and is to be construed in accordance with the Laws in force in the Australian Capital Territory (ACT). The Confidant and the CPA Contractor irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the ACT in respect of all matters arising from this Deed.

11. **Notices**

11.1 **Deemed service to the Confidant**

A notice or other communication which may be given to the Confidant under this Deed will be deemed to have been duly given if it is in Writing, signed by the CPA Contractor, and is either delivered by hand, posted, sent by email in pdf or a copy transmitted by facsimile to the Confidant at the address or facsimile number (as the case may be) set out in Item 2 of the Schedule to this Deed or such other address or facsimile number as may be notified in Writing to the CPA Contractor from time to time.

11.2 **Deemed service to the CPA Contractor**

A notice or other communication which may be given to or served on the CPA Contractor under this Deed will be deemed to have been duly given or served if it is in Writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or a copy transmitted by facsimile to the CPA Contractor at the address or facsimile number (as the case may be) set out in Item 3 of the Schedule to this Deed or such other address or facsimile number as may be notified in Writing to the Confidant from time to time.

12. **Survival of obligations**

The obligations in this Deed are perpetual.

Item 1 Contractor

Name: [insert]

ABN : [insert]

Item 2 Confidant

Name: [insert]

Contact: [insert]

Physical Address: [insert]

Postal Address: [insert]

Phone: [insert]

Email: [insert]

Item 3 CPA Contractor

Name: AHA Pty Ltd

Contact: Chay Boss-Walker, Director

Physical Address: Level 6, 140 Bourke Street, Melbourne, Victoria 3000

Postal Address: Locked Bag 32005, Collins Street East, Victoria 3008
Phone: 1300 242 111
Email: Chay.Boss-Walker@aha.com.au **Executed as a deed poll.**

:

Signed, sealed and delivered by the
CONFIDANT:

In the presence of:

Signature of Confidant

Signature of witness

Name

Name

Schedule 5: Health Deed of Confidentiality and Privacy

Deed Poll made at _____ on _____

By _____

[Insert name and address of person] (Confidant)

In favour of _____

Commonwealth of Australia represented by the **Department of Health, Disability and Ageing**
ABN 83 605 426 759 of Scarborough House, Atlantic Street, Woden Town Centre, ACT (**Health**)

Recitals

- A. Health possesses valuable Confidential Information.
- B. The Confidant is currently in, or may in the future come into, possession of certain Confidential Information.
- C. By this Deed, the Confidant agrees to certain restrictions on the use and disclosure of that Confidential Information by the Confidant.

Operative provisions

1. Definitions

In the interpretation of this Deed, unless the contrary intention appears or the context otherwise requires or admits, the following expressions will have the following meanings:

Agreement means the subcontractor agreement between the CPA Contractor and the Contractor in pursuance of the Services Agreement.

Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of law,

and unless stated otherwise, includes Commonwealth, State and Territory Agencies.

Commonwealth means the Commonwealth of Australia.

Commonwealth Record has the meaning in the *Archives Act 1983* (Cth).

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by Health as confidential; or
- (c) the Confidant knows or ought to know is confidential;

and includes to the extent that it is confidential:

- (d) (information comprised in or relating to any Intellectual Property Rights owned by Health, a State or Territory;
- (e) information relating to the internal management and structure of Health, a State or Territory; and
- (f) information relating to other contractors or suppliers to Health, or its customers;
- (g) information relating to Health Data,

but does not include information which:

- (h) is or becomes public knowledge other than by breach of this Deed or any confidentiality obligation; or
- (i) has been independently developed or acquired by the Confidant as established by written evidence.

Contractor means the entity described in Item 2 of the Schedule to this Deed.

CPA Contractor means AHA Pty Ltd ABN 82 072 790 848.

CPA Contractor Personnel means the officers, employees, agents, advisers, directors or subcontractors (including the Contractor) of the CPA Contractor or of its subcontractors who are engaged in performing the services or activities associated with the provision of the services under the Services Agreement.

Deed means this document.

End User means all stakeholders and users of the Services either directly or indirectly, including without limitation:

- (a) Health Personnel;
- (b) Healthcare Professionals;
- (c) members of the pharmacy community, including Credentialed Pharmacists; and
- (d) software developers of pharmacy IT systems.

Health means the Commonwealth of Australia acting through the Department of Health, Disability and Ageing.

Health Data means all data and information (including Personal Information) relating to Health or an Agency or an End User and its or their respective functions (including data and information relating to Health's business operations, business assets, business programs, programs and its personnel), facilities, End Users, personnel, assets or programs, in whatever form that data and information may exist and whether or not it was generated by or processed by or on behalf of Health, or is stored in any Commonwealth Record. Health Data does not include data or information that is generated by software or equipment as a consequence of its inherent operation and which does not allow identification of Health, its functions or any particular individual (including non-identifiable log files, software and equipment performance data, or other system operating information).

Health Personnel means the officers, employees, agents, advisers, consultants, contractors and subcontractors and other personnel of Health (other than CPA Contractor Personnel).

Intellectual Property Rights or **IPR** includes business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered and unregistered designs, semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

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

Personal Information has the meaning in the *Privacy Act 1988* (Cth).

Notice means notice in Writing given in accordance with this Deed.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Services Agreement means the agreement between Health and the CPA Contractor for the Provision of Services for the Administration of Pharmacy Programs dated 4 June, 2026.

Writing means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted, or transmitted electronically.

2. **Interpretation**

Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the paragraph headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a paragraph number is a reference to all its sub-paragraphs;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a paragraph is a reference to a paragraph of this Deed; and
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. **Confidentiality**

3.1 **Non disclosure**

Subject to **paragraph 3.5**, the Confidant must not disclose Confidential Information or Personal Information to any person without the prior written consent of Health.

3.2 **Consent**

Health may grant or withhold its consent in its absolute and unfettered discretion.

3.3 **Conditions on consent**

If Health grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, Health may require that the Confidant procure the execution of a confidentiality undertaking in these terms and conditions by the person to whom the Confidant proposes to disclose the Confidential Information or Personal Information.

3.4 **Complying with conditions**

If Health grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 **Legal disclosure**

The Confidant may only disclose Confidential Information and Personal Information:

- (a) to the extent required by Law or by a lawful requirement of any Agency having authority over the Confidant;
- (b) subject to any Law to the contrary, if required in connection with legal proceedings;
- (c) subject to any Law to the contrary, for governmental, reporting or public accountability reasons, including a request for information by parliament or a parliamentary committee;
- (d) to the extent necessary to obtain professional advice in relation to the Contractor's rights and obligations under the Agreement;
- (e) to its officers or employees to the extent reasonably necessary to exercise its rights or to perform its obligations under the Agreement; or
- (f) to a Related Body Corporate of the Services Provider for the purpose of the performance of this Services Agreement.

4. **Restriction on use**

The Confidant will use the Confidential Information and Personal Information provided by Health only for the purposes of its dealings with Health and, if necessary, for the purposes of the Confidant performing any part of the Agreement.

5. **Uncertainty**

In the event of uncertainty as to whether any information is Confidential Information, the information is deemed to be Confidential Information unless Health notifies the Confidant in Writing to the contrary.

6. **Security**

The Confidant will:

- (a) maintain proper and secure custody of all Confidential Information and Personal Information which is in its possession or under its control;
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information or Personal Information by third parties contrary to this Deed;
- (c) immediately notify Health in Writing of any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information contrary to this Deed; and

- (d) give Health all reasonable assistance in connection with any action or proceeding which Health may institute against any person relating to any unauthorised use, copying or disclosure of the Confidential Information or Personal Information, and with any investigation Health may initiate into any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information.

7. **Disclaimer**

7.1 **No warranty**

The Confidant acknowledges that Health does not make any representation or warranty as to the accuracy or completeness of any information which is provided to the Confidant.

7.2 **No liability**

Except as may otherwise be expressly agreed in Writing, Health is not liable to the Confidant in relation to the use of Confidential Information or Personal Information by the Confidant.

8. **Powers of Health**

8.1 **Delivery and destruction of documents**

The Confidant will:

- (a) immediately on the request of Health or a person authorised by Health (without needing to produce the demand in Writing) deliver up to Health:
 - (i) all of the Confidential Information and Personal Information;
 - (ii) all alterations, Modifications, developments and enhancements to, copies of, extracts from or notes on, the Confidential Information and Personal Information in whatever form; and
 - (iii) all materials related to or in any way associated with the Confidential Information and Personal Information, in the Confidant's possession, power or control; or
- (b) immediately on the request of Health or a person authorised by Health:
 - (i) destroy the documents mentioned in **paragraph 8.1(a)**, and in the case of computer data, this must be done by a method of erasing it from the media on which it is stored so that it cannot in any way be recovered, reconstructed or reconstituted; or
 - (ii) otherwise deal with the document mentioned in **paragraph 8.1(a)** as Health directs,

and the Confidant will then promptly certify in Writing to Health that all of the documents mentioned in **paragraph 8.1(a)** have been delivered up, destroyed or dealt with as directed.

8.2 **Confidential Information and Personal Information beyond possession or control**

If Health makes a demand under this **paragraph 8**, and the Confidant has placed documents containing the Confidential Information or Personal Information, or is aware that documents containing the Confidential Information or Personal Information are, beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents

containing the Confidential Information or Personal Information, and the identity of the person in whose custody or control they lie.

8.3 **Meaning of "documents"**

In this **paragraph 8**, "documents" includes any form of storage of information, whether visible to the eye or not.

8.4 **Legal proceedings**

The Confidant acknowledges that Health may take legal proceedings against the Confidant if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

9. **Criminal liability**

9.1 **Criminal offence**

The Confidant acknowledges the provisions of Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including imprisonment.

9.2 **Other criminal offences**

The Confidant acknowledges that:

- (a) section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes, for the purpose of section 70 of that Act, a person who "performs services for or on behalf of the Commonwealth";
- (b) the publication or communication by a Commonwealth officer of any fact or document which has come to its knowledge or into the person's possession or custody by virtue of the person's being a Commonwealth officer (other than to a person to whom the Commonwealth officer is authorised to publish or disclose the fact or document) may be an offence under section 70 or 79 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two (2) (section 70) to seven (7) (section 79) years imprisonment; and
- (c) it is an offence under Division 137 of the *Criminal Code 1995* (Cth) to knowingly give false and misleading information (in a material particular) to the Commonwealth or its officers or agents.

10. **No exclusion of Law**

This Deed must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information or protect the Personal Information.

11. **Waiver**

11.1 **Separate instances of waivers**

No waiver by Health of one breach of any obligation or provision of this Deed (expressed or implied) will operate as a waiver of another breach of the same or of any other obligation or provision of this Deed (expressed or implied).

11.2 **Consent in Writing**

None of the provisions in this Deed must be taken either at Law or in equity to have been varied, waived, discharged or released by Health unless by its express consent in Writing.

12. Remedies cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by Law or any other such right or remedy.

13. Variations and amendments

No term or provision of this Deed may be amended or varied unless such amendment or variation is in Writing and signed by the Confidant and Health.

14. Applicable Law

This Deed is governed by and is to be construed in accordance with the Laws in force in the Australian Capital Territory (ACT). The Confidant and Health irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the ACT in respect of all matters arising from this Deed.

15. Notices

15.1 Deemed service to the Confidant

A Notice or other communication which may be given to the Confidant under this Deed will be deemed to have been duly given if it is in Writing, signed by Health, and is either delivered by hand, posted, sent by email in pdf or a copy transmitted by facsimile to the Confidant at the address or facsimile number (as the case may be) set out in Item 3 of the Schedule to this Deed or such other address or facsimile number as may be notified in Writing to Health from time to time.

15.2 Deemed service to Health

A Notice or other communication which may be given to or served on Health under this Deed will be deemed to have been duly given or served if it is in Writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or a copy transmitted by facsimile to Health at the address or facsimile number (as the case may be) set out in Item 1 of the Schedule to this Deed or such other address or facsimile number as may be notified in Writing to the Confidant from time to time.

16. Survival of obligations

The obligations in this Deed are perpetual.

Schedule

Item 1

Health

Contact: [insert]

Physical Address: [insert]

Postal Address: [insert]

Phone: [insert]

Email: [insert]

Item 2

Contractor:

Name: [insert]

ABN: [insert]

Item 3

Confidant

Name: [insert]

Contact: [insert]

Physical Address: [insert]

Postal Address: [insert]

Phone: [insert]

Email: [insert]

EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED by the **CONFIDANT**:

In the presence of:

Signature of Confidant

Signature of witness

Name

Name