

## **HPC STANDARD TERMS AND CONDITIONS – SERVICES CONTRACT**

### **1. Definitions and interpretation**

#### **1.1 Definitions**

In these Standard Terms and Conditions and the Contract, the following terms have the meanings set out below:

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed.

**Claim** includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at law or in equity, including for payment of money (including damages) or for an extension of time, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability, breach or for restitution.

**Clinical Services** means any aspect of the Services which is of a clinical nature, including any diagnosis, advice or treatment in respect of the health or wellbeing of any person.

**Clinician** means any Personnel that provide any Clinical Services in connection with this Contract.

**Commencement Date** is defined in the Contract Specifics.

**Commonwealth** means the Commonwealth of Australia as represented by its departments including the Commonwealth Department of Health.

**Confidential Information** means all information of whatever description which is designated by HPC as confidential or which a Party knows or ought to know is confidential.

**Contract Material** means any Material created by the Provider on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract.

**Contract Specifics** means the document named "Contract Specifics" forming part of the Contract, but not including the Schedules to that document.

**Contract Price** means fees payable in accordance with clause 15 and Schedule B.

**Deliverable Date** means any fixed date to be met by the Provider in performing any of its obligations under this Contract, as specified in Schedule E or as extended in accordance with this Contract.

**Deliverables** means any Services Timetable or other item or element of the Services to be supplied by the Provider to HPC under this Contract.

**End User** means an entity identified in the Contract or notified to the Provider by HPC to whom HPC provides goods and/or services comprising, or derived from, in whole or in part, the Services.

**End Date** is defined in the Contract Specifics

**General Practitioner or GP** means a "medical practitioner" as defined in Section 3 of the Health Insurance Act 1973 (Cth) including any amendment or re-enactment of the same or any legislation passed in substitution and whose practice involves the provision of primary, continuing and comprehensive whole patient care to individuals, families and their community.

**General Practice** means the provision of primary continuing comprehensive whole-patient medical care to individuals, families and their communities.

**GST** means a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and not otherwise defined in the Contract and has the same meaning given to it in that Act

**HPC** as defined in the Contract Specifics.

**HPC Material** means any Material provided to the Provider by HPC.

**HPC Representations** means any representations (including by silence) made by HPC to the Provider in respect of the scope or nature of the Services or any matters the subject of this Contract.

**Intellectual Property Rights** or **IPR** means all intellectual property rights, including any patent, registered design, trademark or name, copyright or other protected right, whether or not such rights are registered or capable of being registered.

**Jurisdiction** means the State of New South Wales.

**Law** means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the Jurisdiction or local or other government in force in the Jurisdiction, irrespective of where enacted; and
- (b) the common law and the principles of equity as applied from time to time in the Jurisdiction.

**Liabilities** means damages, Claims, losses, liabilities, costs and expenses of any kind.

**Losses** means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a Party).

**Material** includes software, firmware, documented methodology or process, property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

**Notice** has the meaning given in clause 25.

**Party** means a party to the Contract and **Parties** means both of them.

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

**Personnel** means any natural person who is an employee, officer, agent or professional adviser of a Party or, in the case of the Provider, of a subcontractor.

**Police Check** means a formal inquiry made to the relevant police authority in each State or Territory to obtain details of an individual's criminal convictions or findings of guilt in each State or Territory and in all non-Australian jurisdictions in which the relevant person is known to have resided.

**Provider** is defined in the Contract Specifics.

**Provider Material** means Material used by the Provider for the purpose of performing the Services and which has been created before the Commencement Date (or created after the Commencement Date) but not for the purpose, or as a result, of performing the Services.

**Provider Representative** is defined in the Contract Specifics.

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

**Site** means any location used by the Provider in performing the contract.

**Special Conditions** means the special conditions as set out in Schedule F (Special Conditions).

**Services** means the services described in Schedule A and includes any Deliverables.

**Standard Funding Agreement** means the standard funding agreement (SFA) between the Commonwealth and HPC for delivery of various activities including Partners in Recover, headspace and Care Coordination.

**Tax Invoice** means an invoice or other document including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which the liability to pay any GST is imposed, claimed, levied or assessed, which must be held by a person to be able to claim input tax credits.

**Tender** means the Provider's offer or counter-offer in writing to perform the Services whether described as a "tender" or "proposal" or otherwise.

**Term** is defined in the Contract Specifics.

**Variation** means any change to the Services, including any addition, increase, decrease, omission or deletion in, to or from the Services.

**Vulnerable Person** means an individual aged under 18 years or any individual who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by any reason, including age, illness, trauma or disability, pregnancy, the influence, or part or existing use, of alcohol, drugs or substance use or any other reason.

## 1.2 Interpretation:

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by *including* or *for example*.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a clause or appendix is a reference to a clause of, or appendix to, these Standard Terms and Conditions.
- (h) A reference to a schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Provider will perform any act or provide any thing at its cost, this means the Provider will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract.

## **2. Evidence of Contract and precedence of documents**

### **2.1 Contract**

#### **2.2 The Contract consists of the following documents:**

- (a) Contract Specifics;
- (b) Schedule F (Special Conditions) (if any);
- (c) Schedule D (HPC Specific Terms) (if any);
- (d) these Standard Terms and Conditions;
- (e) Schedule A (Services);
- (f) Schedule B (Contract Price);
- (g) Schedule E (Services Timetable) (if applicable); and
- (h) any other Schedules,

but the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Contract itself, form part of the Contract unless HPC expressly so agrees in writing.

#### **2.3 Precedence of Contract documents**

- (a) To the extent of any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2.
- (b) If there is any conflict or inconsistency between a Tax Invoice and the Contract, the Contract will prevail to the extent of that conflict or inconsistency.

## **3. Term of Contract**

This Contract begins on the Commencement Date and will remain in force unless terminated earlier in accordance with the Contract, for the Term.

## **4. Performance of Services**

- (a) The Provider must carry out the Services:
  - (i) with due care and skill; and
  - (ii) in accordance with the Contract and with any reasonable direction from the HPC Representative pursuant to the provisions of the Contract.
- (b) HPC may, acting reasonably, direct the Provider to ensure all Personnel perform all or specified aspects of the Services.
- (c) If it becomes evident to a Party that there is a delay with the performance of the Services, that Party must promptly notify the other Party in writing with details of the possible delay and the cause. HPC may, at any time, by Notice to the Provider, extend the time for carrying out the Services or any Deliverable Date for any reason. HPC is not required to exercise its discretion under this clause 4 for the benefit of the Provider, other than where the delay has been caused or contributed to by HPC or any agent, officer, employee or contractor of HPC (other than the Provider), in which case, HPC must exercise the discretion for the benefit of the Provider.

**5. Variations to the Services**

- (a) HPC may direct the Provider in writing to vary the Services.
- (b) The Provider must not effect a Variation unless that Variation is directed by HPC in writing and the Provider will have no Claim against HPC if it does effect a purported Variation that is not so directed.
- (c) HPC will adjust the fee in response to any Variation directed under clause 5 (a) acting reasonably.

**6. Probity checks**

- (a) The Provider must provide all information and assistance required for a Police Check and any other check or investigation required by Law or government policy in respect of Vulnerable Persons.
- (b) When so instructed by HPC, the Provider will undertake Police Checks and any other check or investigation required by Law or government policy in respect of any of its Personnel working with Vulnerable Persons. The Provider agrees to provide verified results of any Police Check (or other check) to HNECC.
- (c) The Provider is responsible for all costs associated with compliance with this clause 6.

**7. Subcontracting**

- (a) The Provider must not subcontract any aspect of the Services without the prior written approval of HPC. Such approval may be subject to conditions.
- (b) Notwithstanding any approval given by HPC, the Provider will be liable to HPC for all acts and omissions of any subcontractor (including its Personnel) as if those acts and omissions were those of the Provider itself.
- (c) The Provider is responsible and will remain liable to HPC for the performance of the Services by its subcontractor.
- (d) HPC (acting reasonably) may, following consultation with the Provider, require the Provider to remove any Personnel or subcontractors from performing any Services.

**8. Performance assessment**

- (a) Without limiting any other rights of HPC, if HPC considers that all or part of the Services do not meet the Contract, HPC may issue a Notice on the Provider.
- (b) If HPC issues a Notice under clause 8 (a), the Provider must carry out the following actions within five (5) Business Days of receipt of the Notice:
  - (i) immediately take all necessary steps to ensure that the Services are promptly corrected,
  - (ii) give Notice to HPC when the Services have been corrected, and
  - (iii) allow HPC to re assess all or part of the Services against the performance criteria.
- (c) If any part of the Services does not meet the Contract on two or more occasions, HPC may terminate the Contract in accordance with clause 19.

**9. Intellectual Property Rights**

- (a) This clause 9 does not affect the ownership of the Intellectual Property Rights in any HPC Material or Provider Material.
- (b) All Intellectual Property Rights in all Contract Material vest in HPC upon creation.
- (c) To the extent that:

- (i) HPC needs to use any of the Provider Material to receive the full benefit of the Services, the Provider grants to or must obtain for HPC a perpetual, irrevocable, non-exclusive, world-wide, royalty-free licence (including the right to sub-licence) to use, reproduce, adapt, modify, distribute, communicate, exploit and create derivative works from that Material; and
  - (ii) where the Provider needs to use any of HPC Material or Contract Material for the purposes of performing its obligations under this Contract, HPC grants to the Provider, subject to any further directions by HPC, a non-exclusive, non-transferable, royalty-free licence to use the Contract Material and HPC Material solely for the purposes of providing the Services and for the term of this Contract.
- (d) The Provider warrants that HPC's use of the Contract Material and the Provider Material (the Warranted Material) will not infringe the Intellectual Property Rights of any person and it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 9. HPC agrees, for the avoidance of doubt, that the Warranted Material excludes any HPC Material.

#### **10. Delivery of Contract Material and Deliverables**

On the expiry of this Contract, termination of this Contract under clause 19 or upon request of HPC, the Provider must deliver to HPC all HPC Material and all Confidential Information promptly and at the Provider's expense.

#### **11. Warranties and Indemnities**

- (a) The Provider represents and warrants that:
- (i) it has the right to enter into this Contract; and
  - (ii) it has all rights, title, licences, interests and property necessary to lawfully perform the Services in this Contract.
- (b) The Provider acknowledges that HPC is entering into this Contract in reliance on the warranties and representations in clause 11 (a).
- (c) The Provider must at all times indemnify, hold harmless and defend HPC, its employees, directors, officers and agents from and against all Claims and Losses arising directly or indirectly from:
- (i) any infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by HPC, or its sub-licensees within the scope of HPC's Intellectual Property Rights and licences under this Contract, in relation to any part of the Services;
  - (ii) any actual, likely or threatened breach of any obligations under clause 13 or otherwise relating to Confidential Information by the Provider, its subcontractor or its Personnel;
  - (iii) any wilful, misleading and deceptive conduct by the Provider, its subcontractor's and/ or Personnel;
  - (iv) any actual, likely or threatened breach of clause 22;
  - (v) any act or omission of the Provider, its subcontractors or Personnel which results in any death, personal injury or damage to property personal or otherwise; or
  - (vi) any material breach of this Contract by the Provider, its subcontractors and/ or Personnel.
- (d) The Provider and HPC agree that each indemnity or promise provided by the Provider under clause 11 (c) to a Party other than HPC (Indemnified Party) is held on trust by HPC for the benefit of that Indemnified Party, and that the consent of an Indemnified Party is not required for any amendment to, or waiver of rights under this Contract.

## 12. Confidentiality

- (a) Without limiting clause 11 and except as otherwise required by Law, the Provider shall treat as confidential all Confidential Information and must not directly or indirectly use any Confidential Information of HPC or any Related Body Corporate of HPC for any purposes other than providing the Services under this Contract. The Provider must not disclose such Confidential Information to any person without HPC's prior written consent and must otherwise comply with HPC's reasonable directions in respect of Confidential Information. The Provider must also enter into any confidentiality or conflict of interest undertakings required by the Commonwealth.
- (b) The Provider acknowledges that damages would not be a sufficient remedy for breach of clause 12 (a) and agrees that HPC is entitled to interim, interlocutory or permanent injunctions to prevent any breach of Confidential Information.

## 13. Protection of Personal Information

If the Provider obtains any Personal Information in connection with this Contract, the Provider must comply with the *Privacy Act 1988* (Cth), the Australian Privacy Principles established under that Act, the *Personally Controlled Electronic Health Records Act 2012* (Cth), any other applicable Law relating to privacy and HPC's reasonable directions in relation to the protection of Personal Information.

The Provider must also meet the requirements of *The Privacy Amendment (Notifiable Data Breaches) Act 2017* (NDB Act) established a Notifiable Data Breaches (NDB) scheme requiring organisations covered by the Act to notify any individuals likely to be at risk of serious harm by a data breach. Notification of a suspected breach is to be reported to the Office of the Australian Information Commissioner and HPC as soon as practicable after becoming aware of the notifiable data breach (and no later than 30 days).

## 14. Provider's insurance

### 14.1 General insurance requirements

- (a) The Provider is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in this clause 14 in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.
- (b) The Provider must provide HPC certificates of currency for each policy of insurance required under this Contract.

### 14.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than AUD\$20,000,000 for each and every claim unless otherwise agreed between the Parties.
- (b) The insurance outlined in clause 14.2 (a) must, unless prohibited by law, be endorsed to:
  - (i) insure HPC and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the Parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such Party;
  - (iii) waive all express or implied rights of subrogation against HPC and its Personnel arising out of the performance of the Contract;
  - (iv) cover "goods in the physical and legal control of the Provider" for an amount not less than the value of the "goods" held off the Site; and

- (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

#### **14.3 Workers' Compensation and Employer's Liability Insurances**

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Provider or any person deemed to be an employee of the Provider.
- (b) The insurance outlined in clause 14.3 (a) must, unless prohibited by law, be endorsed to:
  - (i) indemnify HPC against any liability which it may incur to the Provider's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law; and
  - (ii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in clause 14.3 (a) must, unless prohibited by law, waive all express or implied rights of subrogation

#### **14.4 Professional Indemnity Insurance**

If the performance of the Contract includes or is related to the provision of professional advice or services, the Provider must effect and maintain throughout the Term and for a period of not less than 7 years after termination of the Contract or completion of the Provider's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or Services provided by the Provider under the Contract. Such insurance must provide cover to an amount of not less than AUD\$10,000,000 for each and every claim unless otherwise agreed between the Parties.

#### **14.5 Notification under Provider's policy**

If the Provider becomes aware of an event which may give rise to a claim involving HPC under any policy of insurance effected by the Provider as required by this clause 14, the Provider must notify HPC and must ensure that HPC is kept fully informed of subsequent action or developments concerning the claim.

#### **14.6 Sub-contractors' insurance**

The Provider must ensure that its sub-contractors have the benefit of or effect and maintain insurances similar to the Provider insurances required to be effected by the Provider.

#### **14.7 Insurance claims and payment of insurance excess**

- (a) The Provider will be responsible for the payment of any excess or deductible relating to the insurances effected by the Provider and the Provider will not be entitled to recover from HPC any excess or deductible so paid by the Provider.
- (b) The Provider will be responsible for the payment of any excess or deductible relating to the insurances effected by the Provider where HPC makes a claim under such policy, to the extent that HPC determines that the Provider or any of its Personnel were responsible for the loss or damage.

#### **14.8 Survival of Clause**

This clause 14 will survive the expiry or earlier termination of the Contract.

### **15. Payment**

#### **15.1 Tax Invoices**



- (a) The Provider must, unless otherwise agreed with HPC, render a Tax Invoice to HPC in relation to the provision of the Services within seven (7) days from the end of each month during the period in which the Services were provided and calculated by reference to the prices, fees or other amounts specified in Schedule B (Contract Price).
- (b) Tax Invoices must be in a form acceptable to HPC and must contain the following information:
  - (i) the Contract number which the Tax Invoice relates;
  - (ii) a brief description of the Services provided in the period covered by the Tax Invoice; and
  - (iii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by the Provider.

## **15.2 Payment of Tax Invoices**

Subject to clause 15.3 HPC must pay to the Provider the amount shown on the Tax Invoice within 30 days following receipt of the Tax Invoice by HPC.

## **15.3 Disputed Tax Invoices**

If HPC disputes any amount shown on a Tax Invoice, it must notify the Provider within 21 days of receipt of the Tax Invoice and must pay any amounts not in dispute in accordance with this clause 15, provided that the payment by HPC of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of HPC's liability to make that payment.

## **15.4 Errors or exceptions in invoicing**

Without limiting clause 15.3, if the Provider discovers or is advised of any errors or exceptions relating to its invoicing for the Services, the Provider and HPC will jointly review the nature of the errors or exceptions, and the Provider must, if appropriate, take prompt corrective action and adjust the relevant Tax Invoice or refund overpayments.

## **16. Goods and Services Tax**

When any consideration (whether expressed in money or otherwise) becomes due in respect of a taxable Services by the Provider, the Provider will provide HPC with a Tax Invoice for the Services to which the payment relates and any other documentation required under the GST Law or reasonably required by HPC.

## **17. Provider's information, accounts and records**

### **17.1 Provision of information**

The Provider must in relation to the performance of this Contract or any review or evaluation of the Services conducted by HPC:

- (a) liaise with and provide HPC with any information that it reasonably requires, including information regarding the provision of the Services and the Provider's ability to provide the Services and its financial and non-financial viability; and
- (b) comply with all of HPC's reasonable requests, directions and monitoring requirements.

### **17.2 Provider to maintain accounts and records**

The Provider must:

- (a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and

- (b) retain, and ensure that all of its Personnel retain, any of the items referred to in clause 17.2 (a) for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

### **17.3 Provider to provide access**

- (a) In addition to the rights set out in clause 17.1, the Provider and its Personnel must permit HPC to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
  - (i) the Contract Price, including any amendment to the Contract Price;
  - (ii) the existence (or otherwise) of any GST; or
  - (iii) any other amount payable to, or claimed by, the Provider pursuant to the Contract.
- (b) HPC may make and retain copies of any of the items referred to in clause 17.3 (a).
- (c) HPC may exercise its rights under clause 17.3, on reasonable prior written notice to the Provider, and, at HPC's cost.

## **18. Health, safety and environment**

### **18.1 Application of this clause**

This clause 18 applies to the extent the Provider or any of its Personnel are required to be on, or near the vicinity of, any premises owned, occupied or managed by HPC ("**HPC premises**") for the purposes of providing the Services.

### **18.2 Provider acknowledgement**

The Provider acknowledges that there is a direct relationship between the Provider's health, safety and environmental performance and the success of HPC's business.

### **18.3 Compliance with health, safety and environment**

- (a) The Provider agrees to comply, and to ensure that its Personnel comply, with:
  - (i) HPC's health, safety and environmental policies and associated standards applicable from time to time (a copy of which can be provided on request);
  - (ii) Without limiting clause 26, all relevant health, safety and environmental legislation and Laws in force from time to time; and
  - (iii) The health, safety and environmental conditions set out in this clause 18.

### **18.4 HPC inductions**

HPC will provide the necessary induction and training relevant to health, safety and environmental standards to allow the Provider to comply with clause 18.3 (a)(i).

### **18.5 Provider to remain liable**

Nothing in this clause 18 limits or removes any obligation or duty imposed on the Provider or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

### **18.6 Removal from HPC premises**

- (a) Notwithstanding any other term of the Contract, in the event of a breach of this clause 18, HPC may:

- (i) Require the Provider, the Provider's Personnel and/ or any other person to leave any HPC premises, immediately; and
- (ii) Require the Provider and/or any of its Personnel to remove any material or substance from HPC's premises at the Provider's cost,

and the Provider must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all personnel and the environment.

## 19. Termination

- (a) A Party may terminate this Contract at any time by Notice to the other Party (**Defaulting Party**) if any of the following apply:
  - (i) the Defaulting Party breaches any provision of this Contract, the breach is capable of remedy and the Defaulting Party does not remedy that breach within five (5) Business Days after receipt of Notice from the other Party requiring it to be remedied;
  - (ii) the Defaulting Party breaches a material provision of, or breaches a warranty provided under, this Contract and the breach is not capable of remedy; or
  - (iii) where the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth), commits an act of bankruptcy, or is subject to any event or circumstance which, in the reasonable opinion of the other Party to this Contract, is likely materially and adversely to affect the ability of the Defaulting Party to perform all or any of its obligations under or otherwise to comply with this Contract.
- (b) HPC may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than thirty (30) Business Days written Notice to the Provider.
- (c) The Provider may terminate this Contract at any time by giving not less than thirty (30) Business Days written notice to HPC.
- (d) If this Contract is terminated under clauses 19 (a), 19 (b), 19(c) or 8(c), HPC is liable only for fees or payments under clause 15 for Services rendered before termination.
- (e) Where the Provider has received fees for Services not yet provided, that portion of the fees will be a debt due and payable by the Provider to HPC on termination of this Contract.

## 20. Dispute resolution

- (a) A Party claiming that a dispute has arisen under this Contract must notify the other Party or Parties to the dispute giving details of the dispute (**Notification**).
- (b) On receipt of a Notification each Party must negotiate in good faith to resolve the dispute and, if necessary, must, involve the Chief Executive Officers or other senior officers of any of the Parties directly in those negotiations.
- (c) If the dispute is not resolved under clause 20 (b) within 14 days of the date of the Notification (or a longer period agreed between the Parties), the Parties must refer the dispute for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the Mediation Rules of the ACDC. Mediation must take place within the Jurisdiction.
- (d) If the dispute is not resolved under clause 20 (c) within 60 days after referral to mediation (or a longer period agreed between the Parties) any Party may initiate proceedings in a court within the Jurisdiction.

## 21. Conflict of interest

### 21.1 Warranty

The Provider warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Services by the Provider and its Personnel under the Contract.

## **21.2 Conflicts of interest**

The Provider must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Services by the Provider and its Personnel under the Contract, without the prior written consent of HPC.

## **21.3 Indemnity**

Without limiting clause 11, the Provider indemnifies HPC and each End User must keep HPC and each End User indemnified in respect of any Liabilities incurred or sustained by HPC or an End User as a result of any breach by the Provider of the warranties contained in clause 21.1 or the undertakings contained in clause 21.2.

## **22. Commonwealth requirements**

- (a) Notwithstanding anything else in this Contract, the Provider:
  - (i) acknowledges that HPC is bound by obligations to the Commonwealth under a Standard Funding Agreement and that the Provider's acts or omissions may cause HPC to breach those obligations,
  - (ii) acknowledges that the Provider may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976 (Cth)* and subject to investigation by the Ombudsman under that Act;
  - (iii) must comply with all reasonable directions of HPC, and otherwise provide all assistance and do all things necessary for HPC to comply with the Standard Funding Agreement, and
  - (iv) must ensure that any subcontractor approved under this Contract is engaged under a subcontract that contains all the relevant terms of this Contract as reasonably directed by HPC.
- (b) The Provider must allow the Auditor-General, any person appointed under Commonwealth legislation to perform information management, privacy or freedom of information acts, the Commonwealth Ombudsman and persons authorised in writing by the Commonwealth to:
  - (i) access premises at which any Material is stored or at which the Services are undertaken,
  - (ii) interview its Personnel, and
  - (iii) inspect and copy any Material.
- (c) The Provider:
  - (i) must provide any report, or assistance in preparing any report, as directed by HPC to comply with HNECC Funding Agreement; and
  - (ii) must not publish any publication or otherwise make any public communication in relation to the Services without the prior written approval of HPC.

## **23. Clinical Services**

- (a) The Provider acknowledges that the acts or omissions of it or its Personnel in connection with Clinical Services may cause HPC to suffer significant loss, including as a result of claims by third Parties

- (b) In recognition of the acknowledgments under clause 23 (a), and without limiting any other obligation of the Provider under this Contract, the Provider agrees to be bound by the obligations in respect of Clinical Services set out in Schedule A, if any.

## **24. Waiver**

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

## **25. Notices**

### **25.1 Form of Notices**

Unless otherwise specified in the Contract, any Notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of the Representative for the Party to whom the Notice is addressed;
- (c) where given by HPC, be signed or authorised by either HPC Representative, a director or company secretary of HPC, or a duly authorised representative of HPC;
- (d) where given by the Provider, be signed or authorised by either the Provider Representative, a director or company secretary of the Provider, or a duly authorised representative of the Provider; and
- (e) be delivered by prepaid post, by hand, or electronically to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

### **25.2 Notices deemed given**

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country);
- (c) if sent by facsimile, on the date send-back confirmation of its receipt by the addressee's facsimile is received by the sender; or,
- (d) if sent electronically:
  - (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
  - (ii) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

## 26. Laws

### 26.1 Compliance with Laws

During the Term, the Provider must:

- (a) comply with all applicable legislation, Laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Services, at its cost:
  - (i) obtain all necessary notices;
  - (ii) give all necessary notices;
  - (iii) pay all necessary fees, deposits and taxes,

and, if requested by HPC, must provide evidence of the matters referred to in this clause 26.1.

### 26.2 Working with Children

Where the Provider is required to perform Services involving any person or persons under the age of 18 years, the Provider must ensure that prior to any Services being performed on behalf of HPC, the Provider must provide a copy of the Provider's clearance from the Office of the Children's Guardian to HPC Representative.

### 26.3 Consequence of breach

Notwithstanding any other clause of these Standard Terms and Conditions or Term of the Contract, in the event of any breach of clause 25 or this clause 26, HPC may, by written notice to the Provider:

- (a) require the Provider to suspend the Services immediately;
- (b) require the Provider, the Provider's Personnel, and/or any other person to leave HPC's premises immediately; and/ or
- (c) require the Provider and/or any of its Personnel to remove any Material or substance from HPC's at the Provider's cost,

and the Provider must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

## 27. General

- (a) The Provider acknowledges and agrees that:
  - (i) it is a non-exclusive provider of services and HPC may engage third Parties to provide services similar to the Services;
  - (ii) it has not been named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
  - (iii) nothing in this Contract is intended to create a partnership as between the Provider and HPC;
  - (iv) it must not represent itself as an officer, employee, partner or agent of the Commonwealth or HPC;
  - (v) notwithstanding clause 27 (a)(iv), it must comply with the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth); and
  - (vi) it may be subject to investigation by the Commonwealth Ombudsman and must bear any costs it incurs in relation to any such investigation.

- (b) Neither Party to this Contract may assign or otherwise deal with any part of it save with the prior written consent of the other Party.
- (c) If anything in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force.
- (d) This Contract may be executed in counterparts. All executed counterparts constitute one document.
- (e) This Contract is the entire Contract and understanding between the Parties on everything connected with the subject matter of this Contract and supersedes any prior Contract or understanding connected with that subject matter.
- (f) Where HPC determines that an amendment to this Contract is necessary for compliance with the Standard Funding Agreement (as amended), HPC will in good faith:
  - (i) consult the Provider regarding that amendment;
  - (ii) adjust the Contract Price in response to the amendment; and
  - (iii) provide the Provider the amended form of this Contract,and the Provider will be deemed to have agreed to such amendment to this Contract.
- (g) The Provider acknowledges and agrees that:
  - (i) it has not placed any reliance on the completeness, accuracy or adequacy of any of HPC Material or HPC Representations;
  - (ii) it has entered into this Contract based on its own investigations, interpretations, deductions, information and determinations;
  - (iii) HPC Material and HPC Representations do not form part of this Contract; and
  - (iv) to the extent permitted by Law, HPC is not liable to the Provider upon any Claim with respect to HPC Material or HPC Representations.
- (h) Each Party must bear its own costs arising out of:
  - (i) The negotiation, preparation and execution of the Contract; and
  - (ii) except as expressly provided otherwise in this Contract, any transaction contemplated by the Contract.
- (i) The Law of the Jurisdiction governs this Contract and the Parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction and any courts of appeal from those courts.
- (j) The obligations of the Provider under clauses 7, 9, 11, 12, 13 and 14 will survive the expiry or termination of the Contract.