



Australian Government

Department of Health

**Australian Government Hearing
Services Program**

Service Provider Contract

Agreement

Australian Government Department of Health

Australian Government Hearing Services Program

Service Provider Contract

1 July 2015 – 30 June 2018

Agreement – Terms and Conditions

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Part 1 – Services

1 Interpretation

1.1 In this Contract, unless otherwise specified

- (a) all terms defined in the Act have the meaning given to them in the Act when used in this Contract, including
 - (i) "Accreditation Scheme"
 - (ii) "Contracted Service Provider"
 - (iii) "Voucher" and
 - (iv) "Voucher-holder"
- (b) all terms defined in the Rules of Conduct have the meaning given to them in the Rules of Conduct when used in this Contract, including
 - (i) "Practitioner Professional Body"
 - (ii) "Provisional Audiologist"
 - (iii) "Provisional Audiometrist"
 - (iv) "Qualified Practitioner"
 - (v) "Qualified Practitioner Number"
 - (vi) "Service Provider Personnel" and
 - (vii) "Students"
- (c) all terms defined in the Standards have the meaning given to them in the Standards when used in this Contract and
- (d) the following terms have the following meanings

"Act" means the *Hearing Services Administration Act 1997* (Cth) and any regulations, instruments (including rules and determinations) made under or for the purposes of the Act, as amended or replaced from time to time

"Appointed Supplier" means a supplier appointed by the Commonwealth who is a party to a Deed of Standing Offer

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

"Claim Form" means the claim for payment form and form of tax invoice issued by the Commonwealth from time to time which must be used by the Service Provider to claim the payment of Scheduled Fees in accordance with this Contract

"Client" means a Voucher-holder

"Clinical Personnel" means a Qualified Practitioner, Provisional Audiometrist, Provisional Audiologist, or Student engaged by the Service Provider to provide Services under this Contract

"Commencement Date" means 1 July 2015

"Commonwealth's Contact Officer" means the contact officer nominated by the Commonwealth from time to time on its website (www.hearingservices.gov.au), or replacement website address determined by the Commonwealth from time to time)

"Commonwealth's Contact Point" means the email inbox nominated by the Commonwealth to which service providers are to direct correspondence

"Conditions of Accreditation" means the following

- (a) conditions of accreditation as prescribed in section 18 of the *Hearing Services Administration Act 1997* (Cth)

- (b) conditions specified in the instrument of accreditation in relation to the Service Provider pursuant to section 16 of the *Hearing Services Administration Act 1997* (Cth) and
- (c) conditions imposed on the Service Provider under the Accreditation Scheme

“Confidential Information” means information that

- (a) is by its nature confidential
 - (b) is designated by the Commonwealth as confidential or
 - (c) the Service Provider 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 Contract or by any other unlawful means
 - (e) is in the possession of the Service Provider without restriction in relation to disclosure before the date of receipt from the Commonwealth or
 - (f) has been independently developed or acquired by the Service Provider

“Conflict” means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Service Provider (or the Service Provider Clinical Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Service Provider in performing the Services fairly and independently

“Contract” means this contract between the Service Provider and the Commonwealth comprising

- (a) these terms and conditions and
- (b) the Conditions of Accreditation

Note Under subsection 20 (3) of the Hearing Services Administration Act 1997 (Cth), any Conditions of Accreditation form part of this Contract.

“Corporate Change” in relation to a partnership, a corporation who is a partner in a partnership, a trust, a joint venture, a corporation or any other entity (**“Entity”**), means a change in

- (a) the Entity's directors, secretary or other person (by whatever name called and whether or not a director) who is concerned in, or takes part in, the management of the Entity (including chairperson, secretary and chief executive)
- (b) the partners of an Entity which is a partnership and which has less than 10 partners
- (c) the identity of the person (natural or incorporated) who has the ability to cast or control the casting of more than 50 percent of the maximum number of votes that might be cast at any general meeting (or equivalent) of the Entity or
- (d) the identity of the person (natural or incorporated) who holds more than 50 percent of the issued ordinary share capital, the equity, or other ownership interest, in the Entity

“Date of Service” in relation to any particular aspect of the Services means that date as defined in the Schedule of Service Items

“Deed of Standing Offer” means any deed between the Commonwealth and a supplier under which the supplier has agreed to provide Supplies to the Service Provider

“Device” means a device included in the Schedule of Approved Devices

“DHS” means the Commonwealth Department of Human Services or such other Commonwealth agency which fulfils the same functions from time to time

“Eligibility Criteria” means the document of that name published by the Commonwealth on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time) as varied by the Commonwealth from time to time

“Freedom of Information Commissioner” means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the ‘freedom of information functions’ as defined in that Act

“GST” means the goods and services tax

"Hearing Rehabilitation Outcomes" means the document of that name, being the Outcomes document as defined in the Rules of Conduct, published by the Commonwealth on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time) as varied from time to time

"Hearing Services Rights and Responsibilities" means the document of that name published by the Commonwealth on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time) as varied by the Commonwealth from time to time

"Information Commissioner" means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'information functions' as defined in that Act

"Insolvency Event" means

- (a) the Service Provider disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business
- (b) the Service Provider ceases to carry on business
- (c) the Service Provider ceases to be able to pay its debts as they become due
- (d) proceedings are initiated with a view to obtaining an order for the winding up of the Service Provider, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Service Provider
- (e) the Service Provider applies to come under, the Service Provider receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Service Provider under, or the Service Provider otherwise comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations
- (f) where the Service Provider is a natural person, the Service Provider is declared bankrupt or assigns his or her estate for the benefit of creditors
- (g) where the Service Provider is a partnership, any step is taken to dissolve that partnership or
- (h) anything analogous to an event referred to in paragraph (d), (e), (f) or (g) occurs in relation to the Service Provider

"Non-Clinical Personnel" means Service Provider Personnel who are not Clinical Personnel

"Office" means the Office of Hearing Services within the Department of Health

"Ombudsman" means the office established under the *Ombudsman Act 1976* (Cth) and includes any other person that may, from time to time, perform the functions of that office

"Online Portal" means the Hearing Services Online Portal

"Party" means the Service Provider or the Commonwealth

"Permanent Site" means a site notified to the Commonwealth as a permanent site under clause 10 or a "Permanent Site" operated by the Service Provider under the Previous Contract immediately before expiry of the Previous Contract

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

"Previous Contract" means the contract (if any) made pursuant to section 20 of the *Hearing Services Administration Act 1997* (Cth) between the Service Provider and a delegate of the Minister for Health on behalf of the Commonwealth in force on 30 June 2015

"Privacy Commissioner" means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'privacy functions' as defined in that Act

"Records" means any records, information, data or documents including

- (a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them and
- (b) any hard drive, USB flash drive, disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device

about Clients which the Service Provider creates or maintains for the purposes of the Rules of Conduct, this Contract or any other contract between the Service Provider and the Commonwealth made pursuant to section 20 of the *Hearing Services Administration Act 1997* (Cth) (whether stored or recorded by means of a computer, or not)

"Remote Site" means a site notified to the Commonwealth as a remote site under clause 10 or a "Remote Site" operated by the Service Provider under the Previous Contract immediately before expiry of the Previous Contract

"Rules of Conduct" means the rules of conduct formulated by the Minister under section 17 of the *Hearing Services Administration Act 1997* (Cth), as amended or replaced from time to time

"Schedule of Approved Devices" means the document of that name, being the list of devices approved for the purpose of hearing rehabilitation published by the Commonwealth on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time) as varied by the Commonwealth from time to time

"Schedule of Fees" means the document of that name, being the schedule of fees for the Services published by the Commonwealth on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time) as varied by the Commonwealth from time to time in accordance with clause 36.2

"Schedule of Service Items" means the document of that name, as varied from time to time by the Commonwealth in accordance with clause 36.2 and published by the Commonwealth on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time)

"Scheduled Fees" means the prices prescribed by the Commonwealth from time to time for Services set out in the Schedule of Fees

"Service Provider Number" means the individual identification number allocated by the Commonwealth to the Service Provider

"Services" means hearing services as defined in the Act

"Site" means a Permanent Site, Visiting Site or Remote Site

"Standards" means the following documents as amended or replaced from time to time

- (a) the Hearing Rehabilitation Outcomes
- (b) the Schedule of Service Items
- (c) the Schedule of Fees
- (d) the Eligibility Criteria and
- (e) any new standard relating to this Contract issued by the Commonwealth under clause 4.4

"Supplies" means the Devices and associated services (or any part thereof) supplied under a Deed of Standing Offer. **"Supplies"** includes **"Warranty Services"** and **"Support Services"**

"Support Services" means the support services for Devices referred to in the Deed of Standing Offer

"Term" means the period referred to in clause 2

"Visiting Site" means a site notified to the Commonwealth as a visiting site under clause 10 or a "Visiting Site" operated by the Service Provider under the Previous Contract immediately before expiry of the Previous Contract

"Voucher Rules" means the rules formulated by the Minister under section 11 of the *Hearing Services Administration Act 1997* (Cth), as amended or replaced from time to time

"Warranty Services" means the warranty services for Devices referred to in the Deed of Standing Offer and

"Working Days" means all days except Saturday, Sunday and days that are declared as public holidays in either the Australian Capital Territory or the State or Territory where the Service Provider has its principal place of business.

1.2 In this Contract, unless the contrary intention appears

- (a) the singular includes the plural and vice versa, and a gender includes other genders
- (b) another grammatical form of a defined word or expression has a corresponding meaning
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- (f) the meaning of general words is not limited by specific examples introduced by **"including"**, **"for example"** or similar expressions
- (g) a Party may, in its discretion, give conditionally or unconditionally or withhold any acceptance, approval or consent under this Contract and
- (h) headings are for ease of reference only and do not affect interpretation.

2 Term of Contract

2.1 This Contract will commence on the Commencement Date and will remain in force until

- (a) this Contract is terminated under clause 25, 26 or 27 or
- (b) this Contract expires on 30 June 2018

whichever occurs first.

3 Scope of Contract

3.1 This Contract sets out the terms and conditions under which the Service Provider, as an accredited service provider, is a contracted service provider within the meaning of section 20 of the Hearing Services Administration Act 1997 (Cth).

4 Acknowledgement by Service Provider

4.1 The Service Provider acknowledges and agrees that

- (a) this Contract is entered into under section 20 of the *Hearing Services Administration Act 1997* (Cth)
- (b) the Service Provider has read and understands, and at all times agrees to comply with, the Act and this Contract
- (c) the Service Provider is an eligible hearing service provider for the purposes of subsection 7(1) of the *Privacy Act 1988* (Cth)
- (d) the Commonwealth has made no representation, warranty or guarantee that any or any number of Clients will seek Services from the Service Provider
- (e) the Commonwealth may enter into agreements under section 20 of the *Hearing Services Administration Act 1997* (Cth) with other Contracted Service Providers
- (f) intellectual property in all Records, and the property in any copy of the Records (in the form of a document, article or removable medium), vests or will vest in the Commonwealth
- (g) all Records and any copies of the Records are Commonwealth records for the purposes of section 3 of the *Archives Act 1983* (Cth)

- (h) the Service Provider must comply with all requests of the Commonwealth in relation to Records, including access to Records.
- 4.2 The Service Provider must retain Records for at least seven (7) years from the date the Record is created or, if the Record is subsequently amended, from the date of the last amendment.
- 4.3 The Service Provider acknowledges that the Commonwealth Parliament may at any time amend or repeal any of the relevant Commonwealth legislation to which this Contract is subject. In the event of any such legislative change during the Term of this Contract, the Service Provider acknowledges that the terms and conditions of this Contract will take effect subject to the prevailing legislation in force at the time.
- 4.4 The Service Provider acknowledges and agrees that the Standards may be amended, and new standards relating to this Contract may be issued, at any time by the Commonwealth
- (a) following consultation with such professional, industry and consumer groups which the Commonwealth at its discretion decides to consult or
 - (b) otherwise in accordance with this Contract or the Act.
- 4.5 The Service Provider agrees to comply with the Standards as amended by the Commonwealth from time to time.
- 4.6 The Commonwealth will give written notice to the Service Provider of any new standard issued by the Commonwealth or amendments to any Standard within five (5) Working Days after issue or amendment.

5 Provision of Services

- 5.1 The Service Provider must
- (a) provide Services to Clients in accordance with the Act (including the Rules of Conduct), this Contract and Standards at all times
 - (b) provide Services to Clients in compliance with all applicable Commonwealth and State or Territory laws, under clauses 37, 39 and 40
 - (c) ensure that all Service Provider Personnel hold the appropriate professional qualifications
 - (d) ensure that all Clinical Personnel have a current membership with a relevant Practitioner Professional Body
 - (e) provide Services to a high standard in accordance with professional standards of conduct for hearing service delivery published by the relevant Practitioner Professional Bodies and
 - (f) ensure that Services to Clients are provided in a safe and appropriate manner and environment.
- 5.2 In performing the Services the Service Provider must take all reasonable steps to ensure that no injury or damage is caused to persons or to property arising out of or in connection with the provision of the Services by the Service Provider or Service Provider Personnel.
- 5.3 The Commonwealth may at any time request the Service Provider to remove any of the Service Provider Personnel from work in respect of the provision of Services to Clients. The Service Provider must promptly arrange for the removal of such Service Provider Personnel.
- 5.4 No actions of the Commonwealth under this Contract are to be construed as the direct provision of Services.

6 Transitional Matters

- 6.1 Entry into this Contract does not constitute a waiver of any breach of the Previous Contract.
- 6.2 For the avoidance of doubt, despite clause 2 of the Previous Contract, the Previous Contract expired on 30 June 2015.

- 6.3 However, clauses 4.1(f), 4.1(g), 4.1(h), 4.2, 13.10, 13.12, 14, 15, 16, 18, 19, 21, 22, 23, 25, 26 and 31 of the Previous Contract survive the expiry of the Previous Contract.
- 6.4 The Service Provider acknowledges and agrees that
- (a) for the avoidance of doubt, the Service Provider must not claim payment under both this Contract and the Previous Contract for the same Service and
 - (b) despite the expiry of the Previous Contract, the Commonwealth remains entitled to recover from the Service Provider any amount owing in accordance with the Previous Contract, including by requiring the Service Provider to reimburse the Commonwealth in accordance with clauses 14.5 and 15 of the Previous Contract.
- 6.5 Where the Service Provider commenced Services under the Previous Contract, it must complete those Services and
- (a) where the Date of Service for any Services commenced under the Previous Contract falls before the commencement of this Contract, the Service Provider must provide the Services in accordance with the terms and conditions of, and standards applicable to, the Previous Contract
 - (b) where the Date of Service for any Services commenced under the Previous Contract falls within the Term, the Service Provider must provide the Services in accordance with the terms and conditions of, and Standards applicable to, this Contract and
 - (c) where the Date of Service for any Services commenced under the Previous Contract falls before the commencement of this Contract and the Client requires further Services as a direct consequence of the Services to which the Date of Service relates, the Service Provider must provide the further Services in accordance with the terms and conditions of, and Standards applicable to, this Contract, except to the extent the Commonwealth notifies the Service Provider that it must provide the further Services in accordance with the terms and conditions of, and Standards applicable to, the Previous Contract.

7 Service Provider Warranties

- 7.1 The Service Provider warrants that
- (a) it will only employ Service Provider Personnel with appropriate professional qualifications, skills and experience
 - (b) it will ensure that the Services meet their purpose, are complete and are performed in a manner that achieves all Standards included in or referred to in this Contract and
 - (c) the Site or Sites at which it will provide Services will provide an appropriate and safe environment for the provision of Services.
- 7.2 The Service Provider warrants that
- (a) all information that has been, or will be, provided to the Commonwealth, is or will be, correct, complete and not misleading in any respect
 - (b) it has the power and authority to enter into this Contract
 - (c) the person whose signature on behalf of the Service Provider appears below is duly authorised to execute this Contract on behalf of the Service Provider
 - (d) it has not breached any terms of the Previous Contract or any other contract between the Service Provider and the Commonwealth made pursuant to section 20 of the *Hearing Services Administration Act 1997* (Cth)
 - (e) if the Service Provider is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract and
 - (f) the Service Provider's signing, delivery and performance of this Contract does not constitute
 - (i) a violation of any judgement, order or decree
 - (ii) a material default under any contract which relates in any way to the performance of obligations under this Contract by which it or any of its assets are bound or

- (iii) an event that would, with notice or lapse of time, or both, constitute such a default
 - (g) it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence, actual or threatened, which could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract and
 - (h) to the best of its knowledge, after making diligent inquiry, at the date of signing this Contract no Conflict exists or is likely to arise in the performance of obligations under this Contract by the Service Provider or the Service Provider Clinical Personnel, or if a Conflict does exist that Conflict has been disclosed to the Commonwealth in writing prior to the date of signing this Contract.
- 7.3 The Service Provider warrants that it will promptly inform the Commonwealth of any breach or suspected breach of the Act (including the Rules of Conduct) or this Contract.
- 7.4 The Service Provider warrants that
- (a) it has given careful, prudent and comprehensive consideration to the work health and safety implications of the work to be performed by the Service Provider and Service Provider Personnel under this Contract
 - (b) the proposed method of performance of that work complies with, and includes a system for identifying and managing work health and safety risks which complies with the WHS Legislation and any relevant Approved Code of Practice as defined in clause 40.5 and
 - (c) it has provided all relevant information to the Commonwealth for the Commonwealth to inform itself of its obligations under the WHS Legislation as defined in clause 40.5.
- 7.5 The Service Provider warrants that
- (a) the Service Provider will not use the Service Provider Number in making claims for payment for Services unless the Services were provided by Clinical Personnel in accordance with this Contract and
 - (b) the Service Provider will not allow a person who is not the Service Provider (or Service Provider Personnel acting on behalf of the Service Provider) to use the Service Provider Number.
- 7.6 The Service Provider acknowledges that the Commonwealth, in entering into this Contract, is relying on the warranties and representations contained in this Contract and the representations referred to in Recitals C and D.

8 Device Supply Arrangements

- 8.1 The Service Provider may at any time seek the provision of Supplies from an Appointed Supplier.
- 8.2 The Service Provider acknowledges that if the Service Provider places an order with an Appointed Supplier for Supplies, a contract between the Appointed Supplier and the Service Provider for the purchase of the Supplies is to be formed as set out in clause 4.2 of the Deed of Standing Offer.

9 Schedule of Approved Devices

- 9.1 The Commonwealth will update the Schedule of Approved Devices periodically.
- 9.2 The Service Provider agrees that it will only provide Clients with Devices that have been included by the Commonwealth in the Schedule of Approved Devices.
- 9.3 The Service Provider may consult with the Commonwealth where the Service Provider believes the requirement in clause 9.2 cannot be met for a Client due to that Client's exceptional circumstances.

10 Sites

- 10.1 The Service Provider must notify the Commonwealth through the Online Portal when it intends to open a Site to provide Services to Clients or when it intends to cease to provide Services at a Site. The notice must specify whether the Site is a Permanent Site, Remote Site or Visiting Site.
- 10.2 The Service Provider must update its details on the Online Portal if there is a change of any of the details of the Sites as provided to the Commonwealth and entered on the Online Portal.
- 10.3 The Service Provider must ensure that all Sites provide a safe and appropriate environment for the provision of Services to Clients.
- 10.4 The Commonwealth will
- (a) issue an identification number for each Site and
 - (b) maintain a list of Sites on its website (www.hearingservices.gov.au, or replacement website address determined by the Commonwealth from time to time).
- 10.5 The Service Provider must ensure that all Sites have appropriate equipment and facilities for providing Services to Clients, including audiometric testing equipment for assessment, fitting and rehabilitation.
- 10.6 The Service Provider must ensure that, at each of its Sites, the current Hearing Services Rights and Responsibilities are displayed.
- 10.7 The Service Provider acknowledges that the Commonwealth may request the Service Provider at any time to certify in writing, and provide evidence, that a Site satisfies the requirements applicable to the Site as set out in this clause 10. The Service Provider must submit the certification and evidence to the Commonwealth within ten (10) Working Days after the request.

11 Payments to the Service Provider

- 11.1 The Service Provider must not make claims for payment of Scheduled Fees under this Contract unless the Service Provider complies with this Contract (including the Schedule of Service Items) in making such claims.
- 11.2 The Service Provider must submit a completed Claim Form to DHS in order to receive payment for Services that the Service Provider has provided to Clients. All Claim Forms must be submitted electronically to DHS unless a Claim Form is lodged in accordance with clause 11.7.
- 11.3 Where a Client relocates from the Service Provider to another Contracted Service Provider, the Service Provider must submit to DHS all outstanding Claim Forms in relation to that Client within four weeks (28 days) of receiving a request for the Records in relation to the Client from the other Contracted Service Provider.
- 11.4 The Service Provider must at all times, maintain Records that support and justify all claims for payment made.
- 11.5 The Service Provider must not submit a Claim Form to DHS unless
- (a) the Client or the Commonwealth provided to the Service Provider a Voucher that is valid in accordance with the Voucher Rules, in relation to the Services appearing upon the Claim Form and
 - (b) the Client who received the Services appearing upon the Claim Form has certified in writing either that the Client received those Services or that the Client has entered into a maintenance agreement with the Service Provider.
- 11.6 Where a Service Provider cannot obtain a Client's signature due to exceptional circumstances, the Commonwealth may accept the signature of the Client's representative as satisfying clause 11.5(b) if
- (a) the relationship between the Client and representative is specified on the Claim Form and

- (b) the relationship between the Client and representative is noted in the Records in relation to the Client.

11.7 Where

- (a) the Standards direct the Service Provider to submit a Claim Form in a manner different to that in clause 11.2 or
- (b) the Commonwealth otherwise directs the Service Provider to submit a Claim Form in a manner different to that in clause 11.2,
the Service Provider must submit the Claim Form in the manner directed.

11.8 The Commonwealth must not pay the Service Provider unless the Service Provider has submitted a Claim Form for a fee amount owing in accordance with clause 11.2 or 11.7 and unless

- (a) the Claim Form is correctly completed and signed (noting this may be done by electronic means)
- (b) the Claim Form shows the Qualified Practitioner Number of the Qualified Practitioner who provided Services, or supervised Services provided in accordance with the Rules of Conduct, to the Client who is the subject of the Claim Form
- (c) the Services appearing on the Claim Form correspond to an item in the Schedule of Service Items
- (d) the fee amount owing is equal to the corresponding item in the Schedule of Fees for the particular Service provided to the Client and
- (e) the fee amount owing is paid to an account that the Service Provider has established in its name.

11.9 For avoidance of doubt, the Commonwealth is not required to pay the Service Provider for Services in relation to a person if the Service Provider does not confirm before providing the Services that the person is a Voucher-holder and that any Services required by the person have not already been provided under the Voucher.

11.10 The Commonwealth is not required to pay the Service Provider for any amount owing that appears on a Claim Form which the Commonwealth receives more than thirty days (30) after the expiration or termination of this Contract.

11.11 The Service Provider must ensure that business systems are implemented at Sites to ensure that a Qualified Practitioner does not make a claim for payment under this Contract unless the Qualified Practitioner is, or is acting on behalf of, the Service Provider.

11.12 Without limiting clause 4.2, the Service Provider must retain all original Claim Forms submitted to the Commonwealth or DHS for a period of seven (7) years. This requirement may be satisfied by electronic storage of all original Claim Forms. For the avoidance of doubt, the Records in relation to a Client include all Claim Forms submitted to DHS with respect to Services provided to that Client.

12 Reimbursement by Service Provider

12.1 Where the Service Provider has received payment from the Commonwealth for Services that were not provided in accordance with the Act (including the Rules of Conduct), this Contract or the Standards, the Service Provider will be liable to reimburse the Commonwealth the amount of the payment.

12.2 Any reimbursement under this clause 12 must be made by the Service Provider within thirty (30) days of a request by the Commonwealth.

12.3 If the Service Provider does not make a reimbursement in accordance with this clause 12, the amount will become a debt due and payable to the Commonwealth and may be deducted from any amounts due to a Service Provider under this Contract.

13 Taxes, Duties and Government Charges

- 13.1 Except as provided by this clause 13, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract will be borne by the Service Provider.
- 13.2 The Scheduled Fees payable to the Service Provider under this Contract ("**the Original Scheduled Fees Payable**") include an amount when applicable to cover the liability of the Service Provider for GST on any supplies made under this Contract which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("**the GST Act**").
- 13.3 The Service Provider agrees that the Original Scheduled Fee Payable will be reduced where there is a reduction in or removal of taxes, duties or charges which impacts on the costs to the Service Provider in performing the Services, so that the benefit of that reduction or removal is passed on to the Commonwealth. If a reduction to the Original Scheduled Fee Payable is made under this clause 13.3, the reduced amount will become the Original Scheduled Fee Payable for the purposes of this Contract.
- 13.4 In relation to taxable supplies made under this Contract, the Service Provider agrees to issue the Commonwealth with a tax invoice in accordance with the GST Act.

Part 2 – Contract Administration

14 Liaison

- 14.1 If the Service Provider wants to discuss any aspect of the Services or this Contract with the Commonwealth, it must do so by contacting the Commonwealth's Contact Officer or the Commonwealth's Contact Point.
- 14.2 The Service Provider will liaise with and report to the Commonwealth as reasonably required by the Commonwealth during the Term.
- 14.3 The Service Provider will provide the Office with an email address by which it can be contacted and agrees to receive information from the Commonwealth electronically. It is the Service Provider's responsibility to ensure that the email address is current.
- 14.4 The Service Provider may nominate in writing from time to time an authorised representative who has authority to receive and sign notices and written communications for the Service Provider under this Contract and accept any request or direction in relation to the Services provided under this Contract.

15 Audit

- 15.1 Audit activities may be conducted of
- (a) the Service Provider's compliance with its obligations under the Act and this Contract (including the Standards)
 - (b) the Service Provider's practices and procedures as they relate to this Contract
 - (c) the compliance of the Records with the Service Provider's obligations under this Contract and
 - (d) any other matters determined by the Commonwealth to be relevant to the performance of the Service Provider's obligations under this Contract.
- 15.2 The Service Provider agrees that it will complete and provide to the Commonwealth the Service Provider's annual Compliance Self Assessment Tool (SAT), by the date specified by the Commonwealth.
- 15.3 The Service Provider must participate in audit activities as required by the Commonwealth at the frequency and in relation to the matters specified by the Commonwealth (including on an ad

hoc basis if requested by the Commonwealth) for the purpose of ensuring that this Contract is being properly performed and administered.

- 15.4 The Commonwealth may appoint an independent person to assist in the audit activities.
- 15.5 The Service Provider must participate promptly and cooperatively in any audit activities conducted by the Commonwealth or its nominee. In particular, the Service Provider must
- (a) provide, and ensure that each of its Service Provider Personnel provide, all reasonable assistance to the Commonwealth and its nominees and
 - (b) arrange for the Commonwealth to interview Service Provider Personnel.
- 15.6 Except for those circumstances in which notice is not practicable or appropriate (e.g. caused by a regulatory request with shorter notice or investigation of fraud or serious breach of contract), and without limiting any other right, recourse or remedy of the Commonwealth, the Service Provider will be given reasonable notice of an audit activity to take place at a Site.
- 15.7 Except as provided at clause 15.4, each Party must bear its own costs of any audit activities.
- 15.8 The requirement for, and participation in audit activities, does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with this Contract.
- 15.9 Without limiting any other rights or remedies the Commonwealth may have arising out of or in connection with this Contract, the Commonwealth must use reasonable endeavours to ensure that audit activities do not unreasonably delay or disrupt in any material respect the Service Provider's performance of its obligations under this Contract.
- 15.10 The Service Provider must promptly take, without cost to the Commonwealth, corrective action to rectify any error, non-compliance or inaccuracy identified in any activity auditing the way the Service Provider has supplied any Services, claimed any fees or undertaken any activities under this Contract.

16 Access to Sites and Records

- 16.1 For the purpose of clause 15 and this clause 16, the Service Provider must ensure that the Commonwealth and its nominees, or the Auditor-General, the Commonwealth Ombudsman, the Information Commissioner, the Privacy Commissioner or the Freedom of Information Commissioner or any of their delegates, are granted access as required by the Commonwealth to
- (a) the Sites and any other premises that the Service Provider occupies, possesses or controls and
 - (b) working documents and any other documents, data, records, accounts and other financial material or non-financial material (including Claim Forms, diaries and appointment schedules and Records) relevant to the performance of this Contract, the Previous Contract or any other contract between the Service Provider and the Commonwealth made pursuant to section 20 of the *Hearing Services Administration Act 1997* (Cth), however and wherever stored or located, under the Service Provider's or the Service Provider Personnel's custody, possession or control for inspection, copying and or temporary possession.
- 16.2 The Commonwealth or its nominee may request that any documents referred to in clause 16.1(b) be forwarded to it prior to, during or after any audit activity conducted at a Site or prior to, during or after any file review or other audit activity conducted away from a Site. The Service Provider must comply with a request to forward documents by providing those documents to the Commonwealth within seven (7) Working Days of the request.
- 16.3 The Commonwealth will return original Records obtained under clause 16.2 to the Service Provider as soon as practicable.

- 16.4 In the case of documents or Records (however stored) the Service Provider must make available on request at no cost to the Commonwealth such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- 16.5 The Service Provider must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in clauses 15 and this clause 16 with respect to the subcontractor's premises, data, records, accounts, financial material and information and those of its employees, agents or subcontractors.
- 16.6 Without limiting any of its other obligations under this Contract, the Service Provider must, at its cost, ensure that it keeps full and complete Records and that data, information and Records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under clause 15 and this clause 16.
- 16.7 In the exercise of the general rights granted under this clause 16, the Commonwealth must use reasonable endeavours not to interfere unreasonably with the Service Provider's performance under this Contract in any material respect.
- 16.8 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or any of their delegates. The rights of the Commonwealth under this Contract are in addition to any other power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or any of their delegates.
- 16.9 This clause 16 applies for the Term and for a period of 7 years from the date of its expiration or termination.

17 Service Provider Access to Records

- 17.1 The Commonwealth will give the Service Provider reasonable access to any Records held by the Commonwealth under this Contract
- (a) if the Service Provider gives the Commonwealth thirty (30) days' notice in writing requesting such access and
 - (b) where the Service Provider requires temporary possession of any original Records, it has given evidence satisfactory to the Commonwealth that it is reasonably necessary for it to have possession of these Records.
- 17.2 Access to Records under this clause 17 entitles the Service Provider to
- (a) inspect, copy and take temporary possession of the Records and
 - (b) use the Records,
- only for the purpose of providing Services to the Client to whom the Records relate.
- 17.3 The Commonwealth's obligations under clause 17.1 are subject at all times to the Act, the *Privacy Act 1988* (Cth), and the consent of the relevant Client.
- 17.4 All original Records provided by the Commonwealth to the Service Provider under this clause 17 must be returned immediately to the Commonwealth after the reason for possession being granted to the Service Provider has passed or upon written demand.

18 Freedom of Information

- 18.1 The Service Provider acknowledges that it may be a 'contracted service provider' within the meaning of the *Freedom of Information Act 1982* (Cth) ("**FOI Act**").
- 18.2 Without limiting any other provision of this Contract, where the Commonwealth receives a request under the FOI Act for access to a document that

- (a) is created by, or is in the possession of, the Service Provider or any subcontractor and
- (b) relates to the performance of this Contract,
the Service Provider must provide the document to the Commonwealth on request, within the time specified by the Commonwealth.

18.3 The Service Provider must ensure that any subcontract entered into under clause 21 for the purposes of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Service Provider has under this clause 18, including the requirement in relation to subcontracts.

Part 3 – Information Privacy and Confidentiality

19 Confidential Information

- 19.1 Subject to clause 18.2, the Service Provider must not disclose Records without prior approval in writing from the Commonwealth.
- 19.2 Subject to its privacy obligations (including under clause 20, clause 37 and clause 39), the Service Provider may only disclose Records and Confidential Information to a person who has a need to know the information for the purposes of the Service Provider performing the Services.
- 19.3 The Commonwealth may at any time by notice in writing to the Service Provider require the Service Provider to give, and to arrange for Service Provider Personnel to give, written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Records.
- 19.4 If the Service Provider receives a request under clause 19.3 it must promptly arrange for all such undertakings to be given.
- 19.5 The Service Provider must not, and must ensure that Service Provider Personnel do not, take Records or allow Records to be taken outside of Australia, without the Commonwealth's prior written consent.
- 19.6 The obligations on the Service Provider under this clause 19 will not be taken to have been breached where the information referred to is required by law to be disclosed.
- 19.7 The Commonwealth gives no undertaking to treat the Service Provider's information, or this Contract, as confidential.
- 19.8 Nothing in this clause 19 derogates from any obligation which the Service Provider may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

20 Protection of Personal Information

- 20.1 This clause applies only where the Service Provider deals with Personal Information when, and for the purpose of, providing the Services under this Contract.
- 20.2 In this clause, the terms
- (a) agency
 - (b) contracted service provider
 - (c) registered APP code ("**RAC**") and
 - (d) Australian Privacy Principle ("**APP**"),
 - (e) have the same meaning as they have in the *Privacy Act 1988* ("**Privacy Act**") and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

- 20.3 The Service Provider acknowledges that it may be treated as a 'contracted service provider' under the Privacy Act and agrees in respect of the provision of the Services under this Contract
- (a) to use or disclose Personal Information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract
 - (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an APP
 - (c) to notify individuals whose Personal Information the Service Provider holds, that complaints about acts or practices of the Service Provider may be investigated by the Privacy Commissioner who has power to award compensation against the Service Provider in appropriate circumstances
 - (d) comply with the obligations contained in the APPs that apply to the Service Provider
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC, whichever is applicable to the Service Provider, unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the APP or RAC, whichever is applicable to the Service Provider
 - (f) to comply with any request under section 95C of the Privacy Act
 - (g) to immediately notify the Commonwealth if the Service Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Service Provider or any subcontractor
 - (h) to 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 20 and
 - (i) to ensure that any officers, employees or agents of the Service Provider who are required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Service Provider set out in this clause 20.
- 20.4 The Service Provider agrees to ensure that any subcontract entered into under clause 21 for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Service Provider has under this clause 20, including the requirement in relation to subcontracts.
- 20.5 The Commonwealth may at any time require the Service Provider to give, and to arrange for Service Provider Personnel to give, undertakings in writing in a form required by the Commonwealth, relating to the non-disclosure of Personal Information.
- 20.6 If the Service Provider receives a request under clause 20.5, it agrees to promptly arrange for all such undertakings to be given.
- 20.7 The Service Provider agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth, which arises directly or indirectly from a breach of any of the obligations of the Service Provider under this clause, or a subcontractor under the subcontract provisions referred to in clause 20.4.
- 20.8 The Service Provider's obligations under this clause are in addition to and do not restrict, any obligations it may have under the Privacy Act 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 Service Provider but for the application of this clause.

Part 4 – Subcontracting

21 Subcontracting

- 21.1 The Service Provider may subcontract the whole or any part of the Services or performance of this Contract.

- 21.2 If the Service Provider subcontracts the whole or any part of the Services or performance of this Contract, it must ensure that the subcontractor complies with all requirements of the Act, this Contract and the Standards.
- 21.3 The Service Provider is responsible for the performance of the Services and this Contract notwithstanding that the Service Provider has subcontracted the whole or any part of the Services or performance of this Contract.

Part 5 – Indemnity and Insurance

22 Indemnity

- 22.1 The Service Provider must at all times indemnify the Commonwealth, its officers, employees and agents ("**Those Indemnified**") from and against all loss, liability, damages, costs and expenses (including legal costs and expenses on a solicitor and own client basis) incurred by any of Those Indemnified where such loss, liability, damage, cost and expense was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission, or breach of this Contract, by the Service Provider or its Service Provider Personnel in providing the Services or otherwise in connection with this Contract.
- 22.2 The Service Provider agrees that the Commonwealth may enforce the indemnity in favour of Those Indemnified for the benefit of each of such persons in the name of the Commonwealth or of such persons.
- 22.3 The right of the Commonwealth to be indemnified under this clause 22
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law and
 - (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 22.4 The Service Provider's indemnity in this clause 22 will be reduced to the extent that the loss, cost, expense or liability is directly caused by the Commonwealth, its officers, employees or contractors (except the Service Provider), as substantiated by the Service Provider.

23 Insurance

- 23.1 The Service Provider must, at its own expense, effect and maintain for the Term (and in the case of professional indemnity insurance, for at least seven (7) years after the expiry or termination of this Contract) with an insurance company
- (a) public liability insurance for no less than \$10 million per claim
 - (b) workers' compensation insurance as required by law and
 - (c) professional indemnity insurance for no less than \$1 million per claim.
- 23.2 The Service Provider must ensure that each Clinical Personnel who is a Qualified Practitioner is separately covered by a professional indemnity insurance policy in the amount specified in clause 23.1(c).
- 23.3 The Service Provider must, if requested by the Commonwealth, provide evidence that is acceptable to the Commonwealth of the insurance and its currency within ten (10) Working Days of the request.

Part 6 – Breach and Termination

24 Suspension of Services

- 24.1 Without limiting any other rights or remedies the Commonwealth may have arising out of or in connection with this Contract, if

- (a) the Commonwealth suspects, acting reasonably, that the Service Provider has breached this Contract when providing Services to Clients or
 - (b) an Insolvency Event occurs,
the Commonwealth may, at any time and in its discretion, by notice setting out the Commonwealth's reasons ("**Suspension Notice**"), direct the Service Provider to stop providing all or a specified part of the Services to Clients, with effect from the date of the Suspension Notice or a later date specified in the Suspension Notice.
- 24.2 If the Commonwealth gives the Service Provider a Suspension Notice, the Service Provider must stop providing Services to Clients as set out in the Suspension Notice until the Commonwealth notifies the Service Provider that it is satisfied, based on its own enquiries or information provided by the Service Provider, that
- (a) if the Suspension Notice is given under clause 24.1(a), there was no breach or
 - (b) if the Suspension Notice is given under clause 24.1(b), the Insolvency Event will not have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract.
- 24.3 The Commonwealth will not be liable to pay compensation or damages in respect of a suspension under this clause 24.

25 Termination by Act

- 25.1 For the avoidance of doubt, the cancellation or surrender of the Service Provider's accreditation immediately terminates this Contract without the need for the Commonwealth to give further notice to the Service Provider and without giving the Service Provider any entitlement to compensation or damages.

Note Refer to subsection 20(4) of the Hearing Services Administration Act 1997 (Cth).

26 Termination by Either Party on 30 Days' Notice

- 26.1 Either Party may terminate this Contract by giving thirty (30) days written notice of its intention to terminate this Contract on a particular date and if such notice is given this Contract will terminate with effect on and from that date.
- 26.2 Without limiting clause 26.1, an example of when the Commonwealth may terminate this Contract under clause 26.1 may be as the result of legislative change.
- 26.3 If this Contract is so terminated under this clause 26, the Commonwealth will be liable only for payments under the payment provisions of this Contract for Services provided before the effective date of termination.
- 26.4 The Service Provider must claim payment for provision of Services provided to Clients prior to the termination of this Contract within thirty (30) days of the date of the termination.
- 26.5 The Commonwealth will not be liable to pay compensation or damages in respect of a termination under this clause 26.
- 26.6 The Service Provider must not perform an assessment Service for any Client after the Service Provider or the Commonwealth has given notice of termination of this Contract under this clause 26, unless the Commonwealth has given written permission for such an assessment to proceed.

27 Termination for Default

- 27.1 Where the Service Provider fails to satisfy any of its obligations under this Contract or the Previous Contract, including any Condition of Accreditation, the Commonwealth may
- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Contract immediately
 - (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days) and

- (c) if the failure is not remedied in accordance with a notice given under clause 27.1(b), by further notice, terminate this Contract immediately.
- 27.2 The Commonwealth may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if the Service Provider
- (a) experiences an Insolvency Event
 - (b) undergoes a Corporate Change or
 - (c) breaches a warranty listed in clause 7.
- 27.3 This clause 27 does not limit any other rights or remedies the Commonwealth may have arising out of or in connection with this Contract.

28 Consequences Upon Termination

- 28.1 Upon termination of this Contract
- (a) the Service Provider is not entitled to claim any Scheduled Fee under this Contract except for any Scheduled Fee which may be payable to the Service Provider for Services where those Services
 - (i) were provided prior to the termination of this Contract and
 - (ii) were completed in accordance with this Contract
 - (b) the Service Provider must, upon request, provide to the Commonwealth the Records and all copies of them
 - (c) the Service Provider must ensure that any references to being contracted by the Commonwealth to provide Services do not appear in its advertisements, marketing material and other documents and
 - (d) the Service Provider must repay or reimburse any amounts due under clause 12.
- 28.2 Termination of this Contract does not affect any accrued rights or remedies of a Party.

Part 7 – General

29 Disclosure of Information

- 29.1 It is a condition of this Contract that
- (a) the Service Provider has disclosed in writing to the Commonwealth prior to the Commencement Date
 - (i) any litigation, arbitration, mediation, conciliation or proceeding whatsoever including any investigations ("Proceedings"), that are taking place, pending or threatened, against the Service Provider or
 - (ii) any matters relating to the commercial, technical or financial capacity of the Service Provider or of any subcontractor proposed to be engaged or currently engaged in respect of this Contract including the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Service Provider,being Proceedings or matters that could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract and
 - (b) the Service Provider will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened including matters of the kind described in clause 29.1(a) during the Term which could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract.
- 29.2 The Service Provider must notify the Commonwealth as soon as practicable if an Insolvency Event occurs.

- 29.3 The Service Provider acknowledges that the Commonwealth may make enquiries of and exchange information with Practitioner Professional Bodies regarding the Service Provider's Qualified Practitioners, Provisional Audiologists and Provisional Audiometrists.

30 Disclosure of Preferred Provider Relationships

- 30.1 The Service Provider must disclose, in a manner to be determined by the Service Provider, any preferred provider relationship with an Approved Supplier or manufacturer, to a Client.
- 30.2 A 'preferred provider relationship' is one where the Service Provider receives a benefit (pecuniary or non pecuniary) that is related to the Service Provider's purchase of a Device from an Approved Supplier or manufacturer.

31 Negation of Employment, Partnership And Agency

- 31.1 The Service Provider must not represent itself, and must ensure that its Service Provider Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 31.2 The Service Provider will not by virtue of this Contract be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth.

32 Assignment or Novation

- 32.1 The Service Provider must not assign its rights, or any part of its rights, under this Contract, or novate this Contract, without the prior consent in writing of the Commonwealth. The Commonwealth reserves the right to audit the Service Provider before agreeing to an assignment of rights or novation of this Contract. The Service Provider must seek the Commonwealth's consent to assignment or novation at least twenty (20) Working Days before the proposed date of effect of an assignment or novation.
- 32.2 The Commonwealth may in its absolute discretion refuse to give its consent to a proposed assignment or novation, or in giving its consent impose such conditions as it thinks fit.

33 Notification of Corporate Change

- 33.1 The Service Provider must notify the Commonwealth
- (a) as soon as practicable prior to the expected date of implementation of any Corporate Change, and provide confirmation within five (5) Working Days after the Corporate Change has taken effect or
 - (b) if it is not practicable to provide notice prior to any Corporate Change, as soon as practicable or within five (5) Working Days after the Corporate Change has taken effect, whichever is sooner.

34 Entire Contract

- 34.1 Subject to the Act, this Contract constitutes the entire agreement between the Parties and supersedes prior agreements and all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of this Contract.

35 Waiver

- 35.1 A waiver by a Party to this Contract in respect of a breach of a provision of this Contract by the other Party will not be deemed to be a waiver in respect of any other breach, and the failure of a Party to enforce at any time any of the provisions of this Contract will in no way be interpreted as a waiver of such provision.

36 Variation

- 36.1 No variation of this Contract is binding unless it is agreed in writing between the Parties.
- 36.2 The Commonwealth may, from time to time and at its discretion, vary the Schedule of Service Items and the Schedule of Fees without the agreement of the Service Provider by giving notice to the Service Provider. Before giving notice, the Commonwealth will consult with such professional, industry and consumer groups which the Commonwealth at its discretion decides to consult.
- 36.3 The Commonwealth will not be liable for any additional work undertaken or expenditure incurred by the Service Provider pursuant to a variation to this Contract unless such variation has been effected in accordance with this Contract and the additional expenditure has been agreed to by the Commonwealth.
- 36.4 The Commonwealth may initiate a proposed variation of this Contract by issuing a formal request to the Service Provider containing details of the proposed variation and if required, specify the period of time by which the Service Provider is to indicate whether they accept the proposed variation.
- 36.5 The Service Provider must, within the time specified by the Commonwealth under clause 36.4 or within a reasonable time if no time is specified, indicate in writing whether it wishes to accept or reject the Commonwealth's proposed variation.
- 36.6 If the Service Provider accepts the Commonwealth's proposed variation under clause 36.5, the Commonwealth will prepare a formal variation to this Contract.
- 36.7 If the Service Provider rejects the Commonwealth's proposed variation under clause 36.5, the Commonwealth may terminate this Contract with no penalty in accordance with clause 26.

37 Applicable Law

- 37.1 This Contract will be governed by the laws for the time being in force in the Australian Capital Territory and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
- 37.2 The Service Provider must ensure that the work done under this Contract complies with the laws from time to time in force in the State or Territory in which work associated with the Services, or any part thereof, is to be performed.
- 37.3 To avoid doubt, the Service Provider must ensure that it complies with work health and safety laws applicable in the State or Territory in which work associated with the Services, or any part thereof, is to be performed.

38 Cumulative Remedies

- 38.1 Except as expressly provided otherwise in this Contract, a right, power, remedy, entitlement or privilege given or granted to the Commonwealth under this Contract is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege given or granted to the Commonwealth under this Contract, under the Act, at law or in equity.

39 Compliance with Commonwealth Laws

- 39.1 The Service Provider acknowledges that the Service Provider and any subcontractor may be considered a 'Commonwealth service provider' under the *Ombudsman Act 1976* (Cth) and that it may be subject to investigation by the Commonwealth Ombudsman under that Act.
- 39.2 The Service Provider acknowledges that the Service Provider and any subcontractor may be considered a 'contracted service provider' under the *Public Interest Disclosure Act 2013* (Cth), that any Service Provider Personnel may be considered a 'public official' under that Act and that conduct engaged in by the Service Provider or any subcontractor in connection with entering into, or giving effect to this Contract, may be 'disclosable conduct' under that Act.

- 39.3 The Service Provider acknowledges and agrees that it will bear the cost of any investigation of its activities by the Commonwealth Ombudsman in connection with the subject matter of this Contract.
- 39.4 The Service Provider agrees, in carrying out this Contract, to comply with all relevant legislation of the Commonwealth (including but not limited to the *Crimes Act 1914*, *Criminal Code Act 1995*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, *Workplace Gender Equality Act 2012*, *Age Discrimination Act 2004*, *Ombudsman Act 1976*, *Privacy Act 1988*, *Freedom of Information Act 1982*, *Public Interest Disclosure Act 2013*, *Archives Act 1983*, *Work Health and Safety Act 2011* and *Auditor-General Act 1997*).
- 39.5 The Service Provider acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence.
- 39.6 Subject to clauses 19 and 20, no right or obligation in this Contract is to be read or understood as limiting the Service Provider's rights to enter into public debate or criticism of the Commonwealth, its agencies, officers, employees or agents.

40 Work Health and Safety

- 40.1 In carrying out this Contract, the Service Provider must ensure that the Services are performed in a safe manner, including
- (a) by complying with, and ensuring the Service Provider Personnel comply with, and representing and warranting that the Service Provider will, and ensuring that the Service Provider Personnel will at all times comply with all WHS Legislation and any relevant Approved Code of Practice relating to work health and safety
 - (b) where the health and safety of any person may be affected by the performance of the Services, the Service Provider must consult, cooperate and coordinate with the Commonwealth and any other relevant duty holders and Service Provider Personnel in relation to health and safety issues and
 - (c) ensuring that any subcontract entered into under clause 21 in relation to the Services imposes obligations on subcontractors equivalent to the obligations the Service Provider has under this clause 40.
- 40.2 The Service Provider must not and must ensure the Service Provider Personnel do not, without limiting the Service Provider's obligations under this Contract or at law, place the Commonwealth in breach of the Commonwealth's obligations under the WHS Legislation.
- 40.3 The Service Provider must ensure the Commonwealth is sufficiently informed to discharge its WHS Legislation obligations, by, including but not limited to
- (a) the Service Provider providing a full and comprehensive response to any form of request for information by the Commonwealth, including any assurance, regarding any matter related to WHS Legislation in relation to the Services and
 - (b) informing the Commonwealth immediately of any Relevant Matter referred to in clause 40.5.
- 40.4 To the extent permitted by law, the Commonwealth is not liable to the Service Provider or the Service Provider Personnel for any loss in connection with work health and safety whilst performing the Service.
- 40.5 For the purposes of this clause 40

"Approved Code of Practice" means a practical guide to achieving the standards of health, safety and welfare that is approved pursuant to section 274 of the WHS Legislation

"WHS Legislation" means the *Work Health and Safety Act 2011* (Cth), any regulations made under that Act and any "corresponding WHS law" within the meaning of section 4 of that Act and regulation 6A of the *Work Health and Safety Regulations 2011* (Cth)

“Regulator”, “Notifiable Incident”, “Inspector” and “WHS Entry Permit Holder” have the meaning given in the WHS Legislation and

“Relevant Matter” includes

- (a) Notifiable Incidents (being an incident which is notifiable under the WHS Legislation) or injury which occurs during the provision of the Services or is in connection with the Services
- (b) entry by a WHS Entry Permit Holder or Inspector to any Site or place where Services are performed and any notices and communications by the WHS Entry Permit Holder or Inspector with respect to a suspected contravention of the WHS Legislation
- (c) proceedings against the Service Provider by the Regulator, or a decision, request, notice or communication made by the Regulator or agent of the Regulator to the Service Provider or the Service Provider Personnel under the WHS Legislation with respect to the Services
- (d) notices, communications and undertakings given by the Service Provider or Service Provider Personnel to the Regulator or agent of the Regulator and
- (e) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Legislation to do so, due to unsafe work.

41 Dispute Resolution

41.1 The Parties agree that any dispute arising during the Term of this Contract will be dealt with as follows

- (a) first, the Party claiming that there is a dispute will send to the other a written notice setting out the nature of the dispute
- (b) secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution
- (c) thirdly, the Parties have ten (10) Working Days from the receipt of the notice in clause 41.1(a) to reach a resolution or agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure and
- (d) lastly, if
 - (i) there is no resolution or agreement or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within ten (10) Working Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the ten (10) Working Daysthen either Party may commence legal proceedings.

41.2 Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Commonwealth not to do so) continue to perform the Services.

41.3 This clause

- (a) does not apply to action by the Commonwealth under or purportedly under clause 26 or clause 27 and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

42 Survival

42.1 Clauses 4.1(f), 4.1(g), 4.1(h), 4.2, 11.10, 11.12, 12, 13, 15, 16, 18, 19, 20, 22, 23 and 28 survive the expiry or termination of this Contract, together with any provision of this Contract which expressly or by implication from its nature is intended to survive the expiry or termination of this Contract.

43 Notices

43.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as being duly given if it is

- (a) left at that other Party's address
- (b) sent by pre-paid mail to that other Party's address
- (c) transmitted by facsimile to that other Party's address or
- (d) emailed to that other Party's email address and with receipt of email acknowledged by the other Party.

43.2 A notice required or permitted to be given by the Commonwealth to the Service Provider under this Contract is treated as being in writing and duly given if it is emailed to the email address set out in clause 43.4 or, if the Service Provider has notified the Commonwealth of another email address for notices under this Contract, that email address.

43.3 A notice given to a Party in accordance with clause 43.1 will be treated as having been duly given and received

- (a) when delivered (if left at that Party's address)
- (b) on the third Working Day after posting (if sent by pre-paid mail)
- (c) on the Working Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation has been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise) or
- (d) on the Working Day of email receipt acknowledgement.

43.4 For the purposes of this clause 43, the address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party

The Commonwealth

To	Office of Hearing Services Department of Health Mail Drop Point 113 GPO Box 9848 CANBERRA CITY ACT 2601
Facsimile	(02) 6289 5443
Email	hearing@health.gov.au
Attention	National Manager

The Service Provider

Address

Email Address

Telephone

Facsimile

Attention

44 Trust Representations and Warranties

- 44.1 This clause applies if the Service Provider is a trustee of a trust.
- 44.2 In this clause “**Trust**” means the trust that is specified on the signatory page of this Contract and of which the Service Provider is trustee.
- 44.3 The Service Provider carries out its obligations under this contract in the Service Provider's capacity as trustee of the Trust and, except for matters the Service Provider has disclosed to the Commonwealth and that the Commonwealth has accepted in writing, the Service Provider makes the representations and warranties set out in this clause 44.
- 44.4 The Service Provider represents and warrants that
- (a) it has the right to be indemnified out of, and has a lien over, the assets of the Trust for all liabilities incurred by it under this Contract
 - (b) this right has not been limited in any way, and the Service Provider has no liability which may be set off against this right of indemnity
 - (c) the assets of the Trust are sufficient to satisfy this right of indemnity and all other obligations and liabilities in respect of which the Service Provider has a right to be indemnified out of those assets and
 - (d) the Commonwealth has the benefit of the Service Provider's rights of indemnity against, and lien over, the assets of the Trust, and has recourse to the assets of the Trust to satisfy the Service Provider's liabilities arising in connection with this Contract and the carrying out of the Services.
- 44.5 The Service Provider represents and warrants that
- (a) it is the sole trustee of the Trust and no meeting has been called to remove the Service Provider as the trustee
 - (b) the Trust has not been terminated and no beneficiary is presently entitled to any of the Trust's assets
 - (c) the constituent documents of the Trust, including the Trust's deed of trust, comply with all applicable laws and
 - (d) no property of the Trust has been resettled or set aside or transferred to any other trust.
- 44.6 The Service Provider represents and warrants that it has entered into this Contract, and will enter into the transactions contemplated by it, for the proper administration of the Trust and for the benefit of all of the Trust's beneficiaries.
- 44.7 Throughout the Term of this Contract, the Service Provider must
- (a) maintain complete and correct records in relation to the Trust

- (b) not vest, distribute or advance any property of the Trust (other than income) that is required for the performance of this Contract
- (c) not resettle, set aside or transfer any property of the Trust that is required for the performance of this Contract unless the Commonwealth agrees otherwise in writing
- (d) not amend or revoke any of the terms of the Trust unless the Commonwealth agrees otherwise in writing
- (e) not do anything, or permit or omit anything, which breaches the Trust or which would permit the Service Provider to be removed as trustee of the Trust and
- (f) keep the assets of the Trust separate from other property and not do anything which results in the assets of the Trust being mixed with other property.

44.8 The Service Provider acknowledges and agrees that, in respect of any liability to the Commonwealth arising under this Contract, including the indemnity under clause 22, the Service Provider is liable in its own capacity and as trustee of the Trust.

45 Method of Execution

45.1 A manually signed copy of this Contract, or a copy of this Contract signed by electronic means that in either case is delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

46 Further Action

46.1 Each Party must promptly do and require its employees, subcontractors and agents to promptly do any further acts to give effect to the provisions of this Contract, including executing and delivering all further documents required by law or requested by the other Party.

Executed as an Agreement

Signed for and on behalf of the Commonwealth of Australia acting through the Department of Health ABN 83 605 426 759

By

(Name of delegate of the Minister)

(Signature of delegate)

In the presence of

(Name of Witness)

(Signature of Witness)

On

(Date)

Signed by Service Provider where Service Provider is an

Individual

By

(Name of delegate of the Minister)

(Signature of delegate)

In the presence of

(Name of Witness)

On

(Date)

(Signature of delegate)

(Signature of Witness)

Signed by Service Provider where Service Provider is a

Partnership

Signed by

(Name of Partner)

(Signature of Partner)

For and on behalf of the partners carrying on business as

By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of the Partnership.

(Name of Partnership)

(ABN)

In the presence of

(Name of Witness)

(Signature of Witness)

On

(Date)

Signed by Service Provider where Service Provider is a**Company****Executed by**

(Name of Service Provider)

(ABN/ACN)

in accordance with section 127 of the
Corporations Act 2001 (Cth)

(Name of Director / Sole Director) -
please delete as appropriate

(Signature of Director / Sole Director)
please delete as appropriate

(Name of Director/Company Secretary/
Sole Company Secretary
please delete as appropriate)

(Signature of Director/Company Secretary/
Sole Company Secretary
please delete as appropriate)

In the presence of

(Name of witness)

(Signature of witness)

On

(Date)

Where Service Provider is a Trustee – Company – Multiple Directors

Signed for and on behalf of [.....] (*insert name of Trustee*),

trustee for [.....] (*insert name of Trust*),

ABN [.....] (*insert number*) in accordance with the requirements of section 127 of the *Corporations Act 2001* on

(Date)

By

(Name of Director)

(Signature of Director)

and

(Name of Director / Company Secretary)

(Signature of Director / Company Secretary)

In the presence of

(Name of Witness)

(Signature of Witness)

Where Service Provider is a Trustee – Company – with Sole Director

Signed for and on behalf of [.....] (*insert name of Trustee*),

trustee for [.....] (*insert name of Trust*),

ABN [.....] in accordance with the requirements of section 127 of the Corporations Act 2001 on

(Date)

by authority of its sole director and secretary

(Name of Sole Director and Secretary)

(Signature of Sole Director and Secretary)

in the presence of

(Name of Witness)

(Signature of Witness)

Where Service Provider is a Trustee – Other Authority

SIGNED for and on behalf of [.....] (*insert name of Trust*),

ABN [.....] , on

(Date)

by

(Name of Signatory)

(Signature)

who warrants that they have authority to bind the Trust in this regard, in the presence of

(Name of witness)

(Signature of witness)