



Australian Government
Department of Health

DRAFT SERVICES AGREEMENT

**FOR THE PROVISION AND MANAGEMENT
OF THE NATIONAL CANCER SCREENING
REGISTER**

between

Commonwealth of Australia represented by and acting through the
Department of Health

ABN 83 605 426 759 (Health)

and

[Insert Service Provider name and ABN]

Table of Contents

PART 1 - INTERPRETATION AND TERM.....	7
1. Definitions and Interpretation.....	7
2. Term	8
PART 2 - OUTCOMES BASED SERVICES AGREEMENT	10
3. Overview	10
4. Whole of Government (WoG) Arrangements	10
5. Other Agency Contracts ('Piggy-backing' clause)	12
PART 3 - IMPLEMENTATION	14
6. Implementation - General.....	14
7. Implementation Services	14
8. Other Activities	16
9. Policies and Procedures Manual.....	17
PART 4 - TRANSITION	19
10. Transition - General	19
11. Transition Services.....	19
PART 5 - PROVISION OF REGISTER ICT SERVICES TO MEET THE OUTCOMES	22
12. Register ICT Services	22
PART 6 - PROVISION OF OPERATOR SERVICES TO MEET THE OUTCOMES	23
13. Operator Services	23
PART 7 - GENERAL SERVICE PROVISION REQUIREMENTS.....	24
14. General.....	24
15. Provision of Services in Australia	24
16. Exceptions.....	24
17. Required Consents	25
18. Risk Management	25
19. Education and Training	25
20. Stakeholder Management Support	25
21. Resource Management	25
22. Recipients of Services	25
23. Technical Documentation	27
24. Policies and Procedures Manual.....	28
25. Acceptance of Services and Deliverables provided by the Service Provider	28
26. Additional Services	30
27. Project Services	31
28. Change Management.....	33
29. Health Assistance	33
30. Health Supplied Items (HSI).....	34
31. Asset Register	35

32.	Third Party Items	35
PART 8 - RELATIONSHIPS AND MANAGEMENT OF THE SERVICES AGREEMENT		36
33.	Relationships	36
34.	Directions by Health	36
35.	Cooperation with States and Territories and Other Service Providers.....	37
36.	Subcontractors	38
37.	Personnel.....	40
38.	Key Personnel	41
39.	Representatives	42
40.	E-commerce	43
41.	Reporting	43
42.	Services Agreement Review	43
PART 9 - PAYMENTS AND PERFORMANCE		44
43.	Charges, Payment and Invoicing	44
44.	Performance Management.....	45
45.	Periodic Reviews	47
46.	Reductions in Charges - At Risk Amounts	47
47.	Liquidated Damages.....	48
48.	Excusable Events	49
49.	Reduction in Charges.....	53
50.	Set Off	53
51.	Competitive Pricing	53
52.	Benchmarking	54
53.	Taxes	54
54.	GST.....	54
55.	Cost Investigation.....	55
PART 10 - SECURITY INTERESTS.....		57
56.	PPSA	57
PART 11 - INFORMATION MANAGEMENT AND ACCESS.....		59
57.	Books and records	59
58.	Audit and access	60
59.	Data Management	62
60.	Supply Chain Integrity and Security	66
61.	Confidentiality	67
62.	Disclosures under laws of a foreign country.....	70
63.	Privacy	70
PART 12 - INTELLECTUAL PROPERTY		74
64.	Intellectual Property Rights	74
65.	Escrow Agreement	79
PART 13 - WARRANTIES AND INDEMNITIES.....		80

66.	Disclaimer	80
67.	Warranties	81
68.	Guarantees	85
69.	Insurance	87
70.	Liability	90
71.	Indemnities	92
PART 14 - SUSPENSION AND TERMINATION		97
72.	Step In	97
73.	Suspension of Services	101
74.	Persistent Breach	101
75.	Frequent Breaches	102
76.	Termination and Reduction in Scope	103
PART 15 - DISENGAGEMENT REQUIREMENTS		109
77.	Disengagement	109
78.	Knowledge transfer	110
PART 16 - GENERAL TERMS		112
79.	Standards and Codes	112
80.	Language and measurement	112
81.	Dispute Resolution	112
82.	Variations to the Services Agreement	113
83.	Conflict of Interest	114
84.	Laws and Government Policy	115
85.	Notices and other communications	124
86.	General	126
Schedule 1: Overview and Outcomes		132
Schedule 2: Solution and Service Requirements		133
Schedule 3: Management and Governance		134
Schedule 4: Pricing Framework		135
Schedule 5: Service Level Framework		136
Schedule 6: Implementation and Transition Requirements		137
Schedule 7: Disengagement Requirements		138
Schedule 8: Glossary		139
Schedule 9: Health Deed of Confidentiality and Privacy		140
Schedule 10: Service Provider Deed of Confidentiality		149
Schedule 11: Health Supplied Items		157
Schedule 12: Performance Guarantee		158
Schedule 13: Financial Undertaking		164
Schedule 14: Confidential Information		166
Schedule 15: Escrow Agreement		167
Schedule 16: Key Contract Side Deed		168

Deed of Agreement for the provision and management of the National Cancer Screening Register (Services Agreement)

PARTIES

The **Commonwealth of Australia** as represented by the **Department of Health** (ABN 83 605 426 759) of Scarborough House, Atlantic Street, Woden Town Centre, Australian Capital Territory (**Health**)

and

[Insert name, ABN and address of Service Provider] (**Service Provider**)

AGREED TERMS

BACKGROUND

- A. Health requires a contract for the provision of Services to manage and facilitate Commonwealth, State and Territory based cancer screening programs and a service provider who will meet the Outcomes in the provision of those Services. The Service Provider will be responsible for the provision of the services on a fully managed basis, including the provision of:
 - i. an ICT capability to deliver the National Cancer Screening Register (**Register**);
 - ii. ICT Services to maintain and support the Register (**Register ICT Services**); and
 - iii. the operational and support services required to deliver the Commonwealth, State and Territory based cancer screening programs (**Operator Services**).
- B. The Outcomes are designed to ensure that Health receives the Services necessary for it to effectively and efficiently perform its portfolio responsibilities. In summary, the Outcomes are that:
 - i. Services are accessible, reliable and Available (Outcome 1);
 - ii. End Users are satisfied with the Services (Outcome 2);
 - iii. quality Data (Outcome 3);
 - iv. there is demonstrated improvement in the value of the Services (Outcome 4); and
 - v. the relationship between Health, the States and Territories, key Stakeholders and Other Service Providers is strategic and based on trust (Outcome 5).
- C. Health requires the Service Provider to provide:
 - i. the Register and Register ICT Services for all in-scope National Cancer Screening Programs;
 - ii. the Operator Services for the National Bowel Cancer Screening Program;
 - iii. at the discretion of each State and Territory government, the Operator Services for the National Cervical Screening Program; and
 - iv. capability and capacity to support other cancer screening initiatives as required by Health from time to time.

- D. Although this Services Agreement, including its Schedules, describes some minimum requirements for the Services, the Service Provider will be given flexibility and autonomy to determine how to best perform the Services in order to deliver the Outcomes having regard to the Key Requirements. Because of this flexibility and autonomy:
- i. the Service Provider is expected to deliver the Services in a manner that is efficient, highly responsive, technologically contemporary, cost effective and offers ongoing increased value to Health (including so as to be responsive to and consistent with current and future whole-of-government arrangements);
 - ii. the Services and Service Levels focus on meeting business needs and providing ongoing assurance to Health that its business priorities can be achieved;
 - iii. Health only pays for what it consumes rather than on a provisioned basis (subject to any exceptions where an alternative pricing mechanism is better suited to Health's requirements); and
 - iv. the Service Provider accepts that its performance will be measured both quantitatively and qualitatively.
- E. Health has conducted a Request for Tender (**RFT**) process for the provision of the Services, and the Service Provider was successful in that RFT process.
- F. The Service Provider has fully informed itself on all aspects of the Services and the Outcomes that must be met, and has agreed to provide them in accordance with the terms and conditions contained in this Services Agreement.
- G. Health has agreed to engage the Service Provider to provide the required Services on the terms and conditions of this Services Agreement.

PART 1 - INTERPRETATION AND TERM

1. Definitions and Interpretation

1.1 Definitions

- 1.1.1 In this Services Agreement, unless the contrary intention is expressed, the definitions in **Schedule 8 - Glossary** apply.

1.2 Precedence

- 1.2.1 Except as expressly specified otherwise in this Services Agreement, in the event of any inconsistency between:
- (a) clauses 1 to 86 of this Services Agreement;
 - (b) **Schedule 8 - Glossary**;
 - (c) **Schedule 1 – Overview and Outcomes**;
 - (d) **Schedule 5 – Service Level Framework**;
 - (e) **Schedule 4 – Pricing Framework**;
 - (f) the Statement of Requirement;
 - (g) the other Schedules; and
 - (h) any Document referred to or incorporated by reference,
- the clause or Document that is referenced earlier in this clause will prevail to the extent of any inconsistency with Documents referenced lower in this clause.

1.3 Rules for interpreting the Services Agreement

- 1.3.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Services Agreement, except where the context makes it clear that a rule is not intended to apply.
- 1.3.2 A reference to:
- (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a Document or agreement, or a provision of a Document or agreement, is to that Document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a Party to the Services Agreement or to any other Document or agreement includes a permitted substitute or a permitted assign of that Party;
 - (d) a person includes any type of entity or body or persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in Law of the person; and
 - (e) anything (including a right, obligation or concept) includes each part of it, provided that nothing in this clause 1.3.2(e) implies that performance of part of an obligation constitutes performance of that obligation.

- 1.3.3 A singular word includes the plural, and vice versa.
- 1.3.4 A word which suggests one (1) gender includes other genders.
- 1.3.5 A reference to the background, a recital, clause, schedule or appendix is to the background, a recital, clause, schedule or appendix (as amended from time to time) of or to this Services Agreement.
- 1.3.6 If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- 1.3.7 The word "**agreement**" includes an undertaking or other binding arrangement or understanding in writing.
- 1.3.8 The words "**subsidiary**", "**holding company**" and "**Related Body Corporate**" have the same meanings as in the *Corporations Act 2001* (Cth).
- 1.3.9 A reference to monetary units is to units of Australian currency.
- 1.3.10 A reference to time for Delivery is to Australian Eastern Standard Time or Australian Easter Summer Time as appropriate.
- 1.3.11 A reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry, including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.
- 1.3.12 A Document will be incorporated into and form part of this Services Agreement if the Parties sign the Document, and it is referred to in this Services Agreement, or the Parties expressly intend it to form part of this Services Agreement, and a reference to such a Document is to that document as amended from time to time in accordance with the provisions of this Services Agreement.
- 1.3.13 Where a term is defined in this Services Agreement, another part of speech or grammatical form of that term has a corresponding meaning.
- 1.3.14 If the day on or by which a person must do something under this Services Agreement is not a Business Day, the person must do it on or by the next Business Day.

2. Term

- 2.1.1 This Services Agreement begins on the Commencement Date and continues for a period of 4 years from [insert] (**Initial Term**) unless terminated in accordance with clause 76 or extended in accordance with this clause 2.
- 2.1.2 The Initial Term may be extended for further period(s) of:
 - (a) one year each; or
 - (b) multiple years,
up to a maximum of an additional 6 years, on the terms and conditions then in effect, by Health giving written Notice to the Service Provider. Such Notice must be provided:
 - (c) at least 20 Business Days before the end of the then current Term; or
 - (d) within another period agreed in writing between the Parties.
- 2.1.3 Any extension exercised in accordance with clause 2.1.2 takes effect from the end of the then current Term.

- 2.1.4 For the avoidance of doubt, any perpetual licences granted under this Services Agreement continue beyond the expiry or early termination of this Services Agreement.

2.2 No expectation of extension

- 2.2.1 The Service Provider acknowledges and agrees that despite:

- (a) the extension option in clause 2.1.2;
- (b) any representations made by Health, expressly or implicitly; or
- (c) the performance by the Service Provider of its obligations in the Services Agreement,

the Service Provider is not entitled to expect that the Term will be extended or that the Service Provider will be offered any right to extend or negotiate for any extension of the Term.

PART 2 - OUTCOMES BASED SERVICES AGREEMENT

3. Overview

- 3.1.1 **Schedule 1 - Overview and Outcomes** provides a high level overview of Health's requirements for the Services, and a description of the outcomes-based contracting approach it requires for the delivery of these requirements.
- 3.1.2 The Service Provider must perform the Services so as to deliver the Outcomes and meet the other requirements set out in **Schedule 1 - Overview and Outcomes**, including the:
- (a) opportunities for change identified;
 - (b) objectives with respect to the National Cervical Screening Program;
 - (c) objectives with respect to the National Bowel Cancer Screening Program;
 - (d) scope of the National Cancer Screening Project and project delivery phases;
 - (e) basis for performance measurement and payment; and
 - (f) Key Requirements.
- 3.1.3 The Parties acknowledge and agree that:
- (a) although this Services Agreement describes certain Services, tasks and obligations that must be performed by, or met by, the Service Provider, it is not intended for this Services Agreement to describe every service, function or responsibility that is within the scope of the Service Provider's obligations to meet the Outcomes and perform the Services;
 - (b) the Service Provider has, subject to this Services Agreement, the ability to determine how it will perform the Services to meet the Outcomes and perform the Services; and
 - (c) the Service Provider may use its experience, resources and expertise to determine how to best perform the Services in order to meet the Outcomes (subject to any Key Requirements as set out in this Services Agreement).
- 3.1.4 The Parties acknowledge and agree that it is critical to Health that Health, the Service Provider, Other Service Providers and key Stakeholders establish and maintain a collaborative and strategic relationship based on trust.

4. Whole of Government (WoG) Arrangements

4.1 Service Provider acknowledgement

- 4.1.1 The Service Provider acknowledges that the Commonwealth has, and will continue to, set up WoG Arrangements that enable or facilitate the provision of certain goods and services to one or more Agencies.
- 4.1.2 The Service Provider acknowledges and agrees that:
- (a) part or all of the Services under this Services Agreement may fall within the scope of a WoG Arrangement; and

- (b) if part or all of the Services fall within the scope of a WoG Arrangement, Health, in its discretion, may exercise any option available to it under this clause 4 or otherwise, as required to deliver value for money to the Commonwealth.

4.2 Incorporating terms from WoG Arrangement

4.2.1 The Parties agree that if:

- (a) during the Term the Commonwealth has entered, or enters, into a WoG Arrangement with the Service Provider for services that are similar to the Services;
- (b) Health, in its absolute discretion, considers that the terms and conditions under which the Services are provided to it should be those which would be provided to it by the Service Provider under an agreement made pursuant to the WoG Arrangement; and
- (c) Health Notifies the Service Provider that it requires some or all of the Services to be provided under the WoG Arrangement,

then:

- (d) this Services Agreement will be amended in accordance with the Notice given in clause 4.2.1(c), to take effect as the date of the Notice (or as otherwise agreed by the Parties) so that:
 - (i) to the extent of any inconsistency between the terms of this Services Agreement and the terms of the WoG Arrangement that Health requires the Services to be provided under, the terms of this Services Agreement will be replaced with the terms of the WoG Arrangement; and
 - (ii) to the extent that there is no inconsistency, the terms of this Services Agreement will continue.

4.2.2 The Notice referred to in clause 4.2.1(c) may provide that this Services Agreement will only be changed to replace all amounts payable by Health for the Services with the amounts that would be payable under the applicable WoG Arrangement.

4.2.3 If Charges are reduced in accordance with this clause 4:

- (a) the Charges will be reduced to reflect the Charges in the WoG Arrangement on a like-for-like basis, so that the categories of Charges in this Services Agreement (and their components if specified) are reduced to reflect the amounts for the same categories (or their components if specified) in the WoG Arrangement;
- (b) discounts applicable to a WoG Arrangement for categories of products and services will apply to the same categories of products and services in this Services Agreement; and
- (c) any additional discounts specified in the WoG Arrangement will apply from the date of the WoG Notice (in addition to discounts referred to in clause 4.2.3(b)).

4.2.4 The Parties acknowledge and agree that a WoG Arrangement may include standing offers under which goods and services are offered to Agencies.

4.3 Acquiring services from the WoG Arrangement

4.3.1 The Parties agree that if:

- (a) during the Term there exists, or the Commonwealth implements, a WoG Arrangement in respect of good or services similar to or included in the Services;
 - (b) Health, in its absolute discretion, decides to obtain the Services from another service provider on the panel of a WoG Arrangement rather than under this Services Agreement; and
 - (c) Health Notifies the Service Provider that the Services under this Services Agreement are no longer required from the Service Provider,
- then:
- (d) this Services Agreement will be amended to reflect the Notice given in clause 4.3.1(c), so that:
 - (i) the services to be provided by a service provider on the panel of a WoG Arrangement will be removed from the Services to be provided by the Service Provider; and
 - (ii) this Services Agreement will be amended to reflect the change in the scope of the Services to be provided by the Service Provider under this Services Agreement (including any relevant adjustments in the Charges).

4.3.2 The Notice referred to in clause 4.3.1(c) must include details of the Services to be provided to Health under the WoG Arrangement, rather than under this Services Agreement.

4.3.3 Clause 76.3.1 applies to any amendment to this Services Agreement under this clause 4 as a result of a WoG Arrangement.

4.4 Variation process

4.4.1 Health will prepare the necessary Documentation to reflect any amendment to this Services Agreement effected by any Notice given under this clause 4 and forward that Documentation to the Service Provider.

4.5 Subcontractors

4.5.1 The Service Provider must ensure that each Subcontract includes a clause substantially in the same terms as this clause 4 which allows:

- (a) Health to take advantage of any WoG Arrangement to which any of the Subcontractors are a party; and
- (b) the Service Provider to reduce the scope of the Subcontract in the event that Health exercises its rights in this clause 4 to reduce the scope of this Services Agreement in order to transfer part of the Services to a WoG Arrangement.

5. Other Agency Contracts ('Piggy-backing' clause)

5.1.1 The Service Provider acknowledges that the Services provided under this Services Agreement may be of value to other Agencies.

- 5.1.2 The Service Provider offers to provide the Services, or any part of the Services, to any Agency in accordance with clause 5.1.3 and clause 5.1.4.
- 5.1.3 An Agency that requires Services, or any part of the Services, of the type supplied under this Services Agreement may request a quotation for the specified Services from the Service Provider. If such a request is made, the Service Provider must negotiate in good faith with that Agency the terms of a separate contract with provisions that are equal to, or are no less favourable than, those set out in this Services Agreement.
- 5.1.4 Each contract agreed and executed in accordance with clause 5.1.3 will create a separate contract between the Service Provider and the relevant Agency (or the Commonwealth, State or Territory as represented by that Agency, if applicable) for the supply by the Service Provider of the required Services, or any part of the Services, to the Agency. Health will have no involvement in, and will not be a party to, any such contract.
- 5.1.5 This clause 5 does not limit the scope of any rights granted to Health, or obligations of the Service Provider, in accordance with this Services Agreement for the provision of Services.

PART 3 - IMPLEMENTATION

6. Implementation - General

- 6.1.1 On and from the Commencement Date, the Service Provider must do all things necessary to provide the Implementation Services for Implementation of the Register in accordance with **Schedule 6 –Implementation and Transition Requirements, Schedule 2 - Attachment B - Register ICT Service Requirements** and the Implementation Documentation, so that the Register is ready for operation in the Production Environment by the Go Live Date.
- 6.1.2 Implementation comprises the following phases, as detailed in **Schedule 6 – Implementation and Transition Requirements**:
- (a) Phase 1A - Design;
 - (b) Phase 1B - Build;
 - (c) Phase 1C - Testing; and
 - (d) Phase 1D - Production Readiness.
- 6.1.3 The Service Provider must provide and comply with the minimum Implementation Documentation as set out in **Schedule 6 –Implementation and Transition Requirements**.
- 6.1.4 The Service Provider must develop a Master Project Management Plan in consultation with Health in accordance with **Schedule 6 –Implementation and Transition Requirements**. The Service Provider must maintain the Master Project Management Plan for the Term of the Services Agreement.

7. Implementation Services

7.1 General

- 7.1.1 The Service Provider must provide the Implementation Services set out in **Schedule 2 - Attachment B - Register ICT Service Requirements**, to design, build, test and implement the Register including the:
- (a) Planning Services;
 - (b) Design Services;
 - (c) Build Services;
 - (d) Testing Services; and
 - (e) Deployment Services.
- 7.1.2 The Service Provider must comply with all requirements for the conduct of Acceptance Testing during the Implementation Period, as set out in **Schedule 2 - Attachment B - Register ICT Service Requirements, Schedule 6 – Implementation and Transition Requirements** and clause 25, to determine whether the Service Provider has met the Acceptance Criteria.
- 7.1.3 If the Service Provider has not met all Acceptance Criteria, the Service Provider must do all things necessary (at no cost to Health) to rectify any problem and the Acceptance Tests must be repeated.

7.2 Planning Services

- 7.2.1 The Service Provider must provide the Implementation planning services in accordance with **Schedule 2 - Attachment B - Register ICT Service Requirements**.

7.3 Design Services

- 7.3.1 The Service Provider must provide the Design Services in accordance with **Schedule 2 - Attachment B - Register ICT Service Requirements**.
- 7.3.2 The Service Provider must develop a Solution Architecture for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 2 - Attachment B - Register ICT Service Requirements**.
- 7.3.3 The Service Provider must finalise the Solution Architecture within [20] Business Days after the Commencement Date. Once the Solution Architecture is Accepted by Health, the Service Provider must comply with the Solution Architecture and the requirements in **Schedule 2 - Attachment B - Register ICT Service Requirements**.
- 7.3.4 The Solution Architecture must be consistent with and address the design and architecture requirements specified in **Schedule 2 - Attachment E - High Level Design**.
- 7.3.5 The Register must be built, deployed and tested in accordance with the Accepted Solution Architecture.

7.4 Build Services

- 7.4.1 The Service Provider must provide the Build Services in accordance with **Schedule 2 - Attachment B - Register ICT Service Requirements**, which includes:
- (a) Infrastructure Build Services;
 - (b) Configuration Services;
 - (c) Development Services, where required; and
 - (d) Integration Services.
- 7.4.2 The Build Services includes those Services required for the build of the Register, and the capabilities for the Call Centre Services and Mailhouse Management Services.
- 7.4.3 Without limiting the requirements in the Statement of Requirement, the Service Provider must:
- (a) develop the Developed Software and deliver, install and implement all relevant Software in accordance with any relevant Milestone Dates and otherwise in accordance with the Statement of Requirement; and
 - (b) ensure that the Software, when installed and implemented, and for so long as it is maintained under this Services Agreement, provides the functions and meets the performance and other requirements of the Statement of Requirement and relevant Documentation.
- 7.4.4 Without limiting any other rights of Health, the Service Provider will promptly rectify any Defect in the Register that occurs as a result of the integration Services during the first 90 days after Acceptance of the Register and provision of the integration Services.

7.5 Testing Services

- 7.5.1 The Service Provider must develop, maintain and manage a Test Plan for Acceptance of the Register in accordance with the Implementation Plan and **Schedule 2 - Attachment B - Register ICT Service Requirements**.
- 7.5.2 Once the Test Plan is Accepted by Health, the Service Provider must comply with the Test Plan, and deliver the test services in accordance with the Test Plan and **Schedule 2 - Attachment B - Register ICT Service Requirements**.

7.6 Deployment Services

- 7.6.1 The Service Provider must develop, maintain and manage a Deployment Plan in accordance with **Schedule 2 - Attachment B - Register ICT Service Requirements**.

8. Other Activities

8.1 Project Management

- 8.1.1 The Service Provider must develop and maintain a detailed work breakdown structure (WBS) outlining core streams of work, proposed Milestones, sub-activities at a level of detail showing an accurate and time-based allocation of resources, monitoring processes and strategies for managing dependencies in accordance with **Schedule 6 – Implementation and Transition Requirements** and **Schedule 2 - Attachment B - Register ICT Service Requirements**.

8.2 Resource Management

- 8.2.1 The Service Provider must develop a Resource Plan for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 6 – Implementation and Transition Requirements**.
- 8.2.2 The Service Provider must finalise the Resource Plan within [20] Business Days after the Commencement Date.
- 8.2.3 Once the Resource Plan is Accepted by Health, the Service Provider must comply with and maintain the Resource Management Plan (including any updates or amendments approved by Health).

8.3 Risk Management Plan

- 8.3.1 The Service Provider must develop a Risk Management Plan for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 6 – Implementation and Transition Requirements**.
- 8.3.2 The Service Provider must finalise the Risk Management Plan within [20] Business Days after the Commencement Date.
- 8.3.3 The Service Provider must attend the Risk Management workshops as required under **Schedule 6 – Implementation and Transition Requirements**.

8.4 Quality Management

- 8.4.1 The Service Provider must develop a Quality Management Plan for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 6 – Implementation and Transition Requirements**.
- 8.4.2 The Service Provider must finalise the Quality Management Plan within [20] Business Days after the Commencement Date.

- 8.4.3 On and from the Commencement Date, the Service Provider must do all things necessary to apply appropriate quality management practices to its Implementation of the Register, Transition and provision of the Services in accordance with **Schedule 6 – Implementation and Transition Requirements**, including to cooperate with any quality assurance reviews as required. Once the Quality Management Plan is Accepted by Health, the Service Provider must comply with the Quality Management Plan (including any updates or amendments approved by Health).

8.5 Education and Training Plan

- 8.5.1 The Service Provider must develop an Education and Training Plan for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 6 – Implementation and Transition Requirements**.
- 8.5.2 The Service Provider must finalise the Education and Training Plan within [20] Business Days after the Commencement Date.
- 8.5.3 Once the Education and Training Plan is Accepted by Health, the Service Provider must comply with and maintain the Education and Training Plan (including any updates or amendments approved by Health).

9. Policies and Procedures Manual

- 9.1.1 During the Implementation Period, and in accordance with any timeframe specified in the Implementation Plan, the Service Provider must develop and maintain the Policies and Procedures Manual for Acceptance by Health, that includes the procedures described in **Schedule 6 - Implementation and Transition Requirements** and:
- (a) describes how the Parties will work together and how the Services are to be performed and delivered. This includes details of Service methodology developed for Health;
 - (b) is of a nature and form, and in terms which comply with these Services Agreement requirements for the Policies and Procedures Manual and is acceptable to the Health Representative;
 - (c) clearly defines the Service Provider's roles and responsibilities in relation to each Other Service Provider and Health Personnel;
 - (d) specifies the timeframes for delivery of the Services;
 - (e) sets out how the Service Provider, Other Service Providers, the States and Territories and Health Personnel will work together in connection with this Services Agreement; and
 - (f) is able to be utilised by Health without reference to Service Provider Materials or to third party materials that are not also provided to Health - that is, the Policies and Procedures Manual is effective and able to be used by Health without the need to refer to other Material that Health does not have or have a license to use perpetually.
- 9.1.2 Provision of the Policies and Procedures Manual is an Implementation Deliverable.

9.2 Commonwealth Data Protection Plan

- 9.2.1 The Service Provider must develop a Commonwealth Data Protection Plan (**CDPP**) that sets out how the Service Provider and Health will deal with and discharge their obligations in respect of Health Data (including Personal Information) during the provision of the Services.

9.2.2 The CDPP must:

- (a) be consistent with the requirements of this Services Agreement;
- (b) be consistent with the requirements of the *Privacy Act 1988* (Cth) and clause 63;
- (c) specifically deal with minimising cybercrime risks;
- (d) be consistent with the Protective Security Policy Framework (**PSPF**), the Information Security Manual (**ISM**) and any other applicable Health policy relating to security or the protection of data as amended or replaced from time to time; and
- (e) set out the steps and processes that Health and the Service Provider must follow to protect the Health Data and other relevant information from any unauthorised access, misuse, damage, destruction, loss, alteration or corruption.

9.2.3 Within ☒ Business Days after the Commencement Date, the Service Provider must finalise the Commonwealth Data Protection Plan and deliver it to Health for Acceptance. Once Accepted, the CDPP forms part of this Services Agreement and each Party must comply with it unless Health gives written approval otherwise.

PART 4 - TRANSITION

10. Transition - General

- 10.1.1 On and from the Commencement Date, the Service Provider must do all things necessary to provide the Transition Services for Transition to the Register in accordance with **Schedule 6 –Implementation and Transition Requirements** and the relevant Transition Documentation.
- 10.1.2 Transition comprises the following phases, as detailed in **Schedule 6 – Implementation and Transition Requirements**:
 - (a) Phase 2A - Planning and preparation; and
 - (b) Phase 2B - Program Transition.
- 10.1.3 Phase 2B - Program Transition includes Transition of the National Bowel Cancer Screening Program and Transition of the National Cervical Screening Program from the existing registers to the Register.
- 10.1.4 The Service Provider must develop a Transition Plan for each program to be transitioned for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 6 – Implementation and Transition Requirements**.
- 10.1.5 The Service Provider must finalise the Transition Plan for the National Bowel Cancer Screening Program register within [20] Business Days after the Commencement Date. Once the Transition Plan is Accepted by Health, the Service Provider must comply with the Transition Plan (including any updates or amendments approved by Health).
- 10.1.6 The Service Provider must provide and comply with the minimum Transition Documentation as set out in **Schedule 6 – Implementation and Transition Requirements**.
- 10.1.7 The Service Provider must provide Health with the Transition progress reports and arrange progress meetings as required under **Schedule 6 – Implementation and Transition Requirements**.
- 10.1.8 During the Transition Period, the National Cervical Screening Program registers will be Transitioned to the Register. The Service Provider must develop a Transition Plan for the Transition of each State and Territory register to the Register.

11. Transition Services

11.1 General

- 11.1.1 The Service Provider must provide the Transition Services set out in **Schedule 2 - Attachment A - Operator Service Requirements** and **Schedule 6 – Implementation and Transition Requirements**, to Transition the National Bowel Cancer Screening Program and Transition of the National Cervical Screening Program from the existing registers to the Register.
- 11.1.2 The Service Provider must comply with all requirements for the conduct of Acceptance Testing during the Transition Period, as set out in **Schedule 6 – Implementation and Transition Requirements** and clause 25, to determine whether the Service Provider has met the Acceptance Criteria.

- 11.1.3 If the Service Provider has not met all Acceptance Criteria, the Service Provider must do all things necessary (at no cost to Health) to rectify any problem and the Acceptance Tests must be repeated.

11.2 Data Cleansing

- 11.2.1 If the Solution Architecture requires that data cleansing is to be performed by the Service Provider, the Service Provider must process the Health Data and make modifications to the Health Data by:
- (a) eliminating records that are clearly duplicates;
 - (b) correcting obvious misspellings and errors;
 - (c) ensuring that there are consistent descriptions, punctuation and syntax; and
 - (d) resolving any other obvious inaccuracy, omission or inconsistency issues,
- to meet the level of accuracy and consistency stated in the Solution Architecture.

11.3 Data Migration

- 11.3.1 The Service Provider must perform the data conversion and migration Services described in the Data Migration Plan, **Schedule 2 - Attachment B - Register ICT Service Requirements** and **Schedule 2 - Attachment C - Functional Requirements**.
- 11.3.2 For data conversion and migration, the Data Migration Plan may include the following stages:
- (a) assessment and definition of the:
 - (i) the Incumbent Service Provider's existing system;
 - (ii) Health Data migration goals;
 - (iii) required Deliverables; and
 - (iv) complexity of the project, End User experience and requirements;
 - (b) development of a data conversion and migration strategy that is appropriate for Health's needs and End Users covering all appropriate planning and timetabling issues associated with the data conversion and migration including:
 - (i) identification of the Services to be performed;
 - (ii) identification and procurement of any necessary products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) staging of the project;
 - (v) whether a data warehouse will be used as a staging mechanism in the migration of data;
 - (vi) development of a Milestones; and
 - (vii) implementation of the Services;

- (c) preparation/pre-migration which may include recovering data, designing extraction and functional specifications, and developing contingency arrangements should the migration of the Health Data not be successful;
 - (d) procurement or design and development of relevant software and systems to effect the data conversion and migration;
 - (e) migration including installation of the migrated data including (as applicable) development of associated Documentation and training of users; and
 - (f) testing and Acceptance of the migrated data in accordance with clause 25.
- 11.3.3 Once the Service Provider receives the Health Data, thereafter the Service Provider is responsible for backing up any Health Data on which it has performed any Services.
- 11.3.4 Where the data migration and deployment Services are to be performed using Third Party Software, software tools, object libraries, other items or methodologies owned by the Service Provider or any other party, the Service Provider must use reasonable endeavours to provide Health with an overview of the Third Party Software, software tools, object libraries, other items or methodologies that are used by the Service Provider.

11.4 Stakeholder Management Support

- 11.4.1 The Service Provider must develop a Stakeholder Management Plan for Health's Acceptance, addressing at a minimum the requirements set out in **Schedule 6 – Implementation and Transition Requirements**.
- 11.4.2 The Service Provider must finalise the Stakeholder Management Plan within [20] Business Days after the Commencement Date.

11.5 Exceptions

- 11.5.1 The Service Provider is not responsible for any errors or omissions that are contained in the Health Data that the Service Provider is not required to correct under the Services.
- 11.5.2 Nothing in this Services Agreement requires the Service Provider to verify the Health Data against the independent original source of the data (e.g. correcting the spelling of a person's name does not require the Service Provider to contact the person to ascertain the correct spelling), unless stated otherwise under this Services Agreement.

PART 5 - PROVISION OF REGISTER ICT SERVICES TO MEET THE OUTCOMES

12. Register ICT Services

- 12.1.1 The Service Provider must do all things necessary to deliver the Outcomes through the provision of the Register ICT Services and must provide the Register ICT Services to maintain and support the Register in accordance with **Schedule 2 - Attachment B - Register ICT Service Requirements** including provision of:
- (a) Infrastructure Services;
 - (b) Software Support Services;
 - (c) IT Service Desk Services;
 - (d) IT Service Management Services;
 - (e) IT Application Lifecycle Services;
 - (f) Continual Service Improvement (CSI); and
 - (g) Additional Services and Project Services.
- 12.1.2 In providing the Register ICT Services, the Service Provider must deliver the Functional Requirements and Non-Functional Requirements set out in **Schedule 2 - Attachment C - Functional Requirements** and **Schedule 2 Attachment D - Non-Functional Requirements**.
- 12.1.3 The Service Provider must:
- (a) ensure that the Register ICT Services (including their overall design, compatibility, interoperability, integration and operation) meet the Outcomes and the other requirements of this Services Agreement at all times;
 - (b) ensure the suitability of all Register ICT Services including any conclusions, recommendations, advice, assumptions or interpretations made by the Service Provider in relation to the Register ICT Services;
 - (c) resolve any incompatibility, integration, interoperability or other design issue that may arise during the performance of the Register ICT Services; and
 - (d) manage any proposed Changes to the Register in accordance with clause 28.
- 12.1.4 The Service Provider must refresh Equipment and Software in the Register throughout the Term as required to meet the Performance Standards and deliver the Outcomes. The Service Provider must provide evidence to Health that it is meeting its responsibilities in this regard as required by Health and as part of any audit conducted under clause 58.

PART 6 - PROVISION OF OPERATOR SERVICES TO MEET THE OUTCOMES

13. Operator Services

- 13.1.1 The Service Provider must do all things necessary to deliver the Outcomes through the provision of the Operator Services and must provide the Operator Services to operate and support the Register in accordance with **Schedule 2 - Attachment A - Operator Service Requirements** including provision of:
- (a) Call Centre Services;
 - (b) Manual Processing Services;
 - (c) Training;
 - (d) Web Content Management Services;
 - (e) Mailhouse Management Services;
 - (f) Reporting Services;
 - (g) Participant Recruitment Services;
 - (h) Program Participation Management Services;
 - (i) Screening Management Services;
 - (j) Screening Assessment Management Services;
 - (k) Screening Diagnosis Management Services;
 - (l) Outcome Management Services;
 - (m) Ongoing Review and Assessment Services;
 - (n) Continuous Improvement; and
 - (o) Additional Services and Project Services.
- 13.1.2 The Service Provider must ensure that the Operator Services are functioning in accordance with the Functional Requirements and Non-Functional Requirements set out in **Schedule 2 - Attachment C - Functional Requirements** and **Schedule 2 Attachment D - Non-Functional Requirements**.
- 13.1.3 The Service Provider must provide and maintain the Operations Manual in accordance with **Schedule 2 - Attachment A - Operator Requirements**.

PART 7 - GENERAL SERVICE PROVISION REQUIREMENTS

14. General

- 14.1.1 The Service Provider acknowledges that it is responsible for providing all goods and services necessary to meet the Outcomes (subject to this Services Agreement), and that the Service Provider must do all things reasonably necessary to ensure that Health is not required to expend significant resources in discussing the scope of the Services with the Service Provider.
- 14.1.2 Except as otherwise expressly provided in this Services Agreement, the Service Provider must provide all accommodation, Personnel, Equipment, Hardware, Software, storage, Network Services, Data Centre facilities and other resources necessary to meet the Outcomes and provide the Services.
- 14.1.3 If incidental services or functions are required for the proper performance of the Services, they will be taken to be included in the scope of the Services.
- 14.1.4 Without limiting its other obligations and liabilities under this Services Agreement, the Service Provider must correct at its cost any failure to comply with its obligations to provide the Services in accordance with this Services Agreement as soon as practicable after becoming aware of the failure.

15. Provision of Services in Australia

- 15.1.1 The Service Provider must perform all of the Services in Australia, unless otherwise agreed by Health in writing at least 6 Months prior to the proposed performance of the relevant Services outside Australia.

16. Exceptions

- 16.1.1 The Service Provider is not liable for any breach of this Services Agreement which arises as the result of:
 - (a) modifications to the Health Data that were effected or attempted by a person other than the Service Provider;
 - (b) the unlawful or negligent act or omission of Health, its officers, employees or agents (except the Service Provider);
 - (c) any material failure of Health to comply with its obligations under this Services Agreement;
 - (d) the wilful concealment or wilful non-disclosure after the Commencement Date by Health, or Health Personnel of any information or material relevant to the provision of the Register and Services. To avoid doubt, the non-disclosure of government internal policy development or Cabinet decisions is not wilful concealment or wilful non-disclosure;
 - (e) any Harmful Code, denial of service attack or other malicious act that adversely affects the Health Data (except to the extent that the Harmful Code, attack or malicious act is caused by the negligence or malicious act by the Service Provider or Service Provider Personnel, or due to failure of the Service Provider to implement Harmful Code protection); or
 - (f) an Excusable Event.

17. Required Consents

- 17.1.1 The Service Provider must obtain all required consents and approvals as may be necessary for the Service Provider to complete Implementation and Transition and perform all of the Services in accordance with this Services Agreement so as to allow the Service Provider to deliver all of the Outcomes.
- 17.1.2 Unless expressly stated in **Schedule 4 - Pricing Framework**, the Service Provider must pay any fees (including transfer, right to use, access or upgrade fees) that may be required to obtain a required consent or approval. If any required consent or approval is not obtained, the Service Provider must determine and adopt, subject to the requirements of this Services Agreement, alternative approaches that are necessary and sufficient to meet the Outcomes and provide the Services without that required consent.

18. Risk Management

- 18.1.1 On and from the Commencement Date, the Service Provider must do all things necessary to apply appropriate Risk Management practices to its delivery of the Register and the Services during the Term of this Services Agreement and any Disengagement Period.
- 18.1.2 Once the Risk Management Plan is Accepted by Health in accordance with clause 8.3 and **Schedule 6 – Implementation and Transition Requirements**, the Service Provider must comply with the Risk Management Plan (including any updates or amendments approved by Health) for the Term.

19. Education and Training

- 19.1.1 Once the Education and Training Plan is Accepted by Health in accordance with clause 8.5 and **Schedule 6 – Implementation and Transition Requirements**, the Service Provider must comply with and maintain the Education and Training Plan (including any updates or amendments approved by Health) for the Term.

20. Stakeholder Management Support

- 20.1.1 On and from the Commencement Date, the Service Provider must work with and support Health, the States and Territories, Stakeholders and Other Service Providers in all Stakeholder engagement activities that are required to deliver the Register and the Services. Once the Stakeholder Management Plan is Accepted by Health in accordance with clause 11.4 and **Schedule 6 – Implementation and Transition Requirements**, the Service Provider must comply with the Stakeholder Management Plan (including any updates or amendments approved by Health) for the Term.

21. Resource Management

- 21.1.1 Once the Resource Plan is Accepted by Health in accordance with clause 8.2 and **Schedule 6 – Implementation and Transition Requirements**, the Service Provider must maintain and comply with the Resource Plan for the Term of the Services Agreement.

22. Recipients of Services

22.1 General

- 22.1.1 The Service Provider must provide the Services to the End Users.

22.2 Changes to Health or Portfolio Agencies

22.2.1 The Service Provider acknowledges and agrees that:

- (a) the size, scope or operations of Health may change during the Term, including because of:
 - (i) amalgamation with other Agencies;
 - (ii) a restructure of Health by the Commonwealth;
 - (iii) all or part of Health becoming part of any other Agency;
 - (iv) a change in the functions that Health is required to perform;
 - (v) Health performing functions for other entities, including the provision of services to those entities; or
 - (vi) Health or any other Agency or part of Health or any other Agency being privatised; and
- (b) similarly, the number, size, scope or operations of the In-Scope Health Portfolio Agencies may also change during the Term.

22.2.2 If Health Notifies the Service Provider of:

- (a) a change to the size, scope or operations of Health;
- (b) the addition of a new National Cancer Screening Program to the Register;
- (c) a change to the number, size, scope or operations of the In-scope Health Portfolio Agencies; or
- (d) additional Other Health Portfolio Agencies or End Users to whom the Services must be provided by the Service Provider,

then the Service Provider must provide the Services in accordance with the changed arrangements on the terms of this Services Agreement.

22.2.3 To the extent the flexibility in clauses 22.2.1 and 22.2.2 is not already built into this Services Agreement (e.g. covered by the variables in the Charges), the Service Provider may propose an amendment to this Services Agreement to take into account any such changed arrangements. Any amendments must:

- (a) equitably reflect the changes; and
- (b) be consistent with the existing cost, resource, pricing and Outcomes focus of this Services Agreement.

22.3 Service Provider to continue to provide Services for transferred operations

22.3.1 If any part of the operations or business of Health or an In-scope Health Portfolio Agency is transferred to another Agency or a separate entity:

- (a) the Service Provider must, if and as requested by Health, continue to provide the Services for the transferred operations or business to that new Agency or other entity on the terms of this Services Agreement (including so as to continue to meet the Outcomes) for the remainder of the Term;

- (b) if necessary, the Service Provider and the new Agency or other entity will enter into a new agreement on substantially the same terms as this Services Agreement (the amount of Charges payable under any such new agreement must reflect the scope of the transferred operations or business as a result of the transfer to a new entity or other Agency);
- (c) the Charges under this Services Agreement will be changed to reflect the reduced scope of the Services provided to Health or the In-Scope Health Portfolio Agency; and
- (d) Health may remove the affected Services from the scope of this Services Agreement in accordance with clause 76.3.1 to 76.3.8, except that no claim for Unavoidable Losses can be made by the Service Provider because the Services are transferred.

22.4 Effect of changes on Outcomes

- 22.4.1 If any changes under this clause 22 impact upon the ability of the Service Provider to meet the Outcomes, the Parties will discuss those impacts in good faith and may amend this Services Agreement in accordance with clause 82 as required to ensure the Service Provider continues to meet the Outcomes. If the Service Provider seeks any amendment to this Services Agreement, it must do so within 3 Months from the date the impact upon the ability of the Service Provider to meet the Outcomes is known.

22.5 No effect on variable Charges

- 22.5.1 Nothing in this clause 22 limits any process set out in this Services Agreement for determining variable Charges payable by Health (including any Charges which are based on the number of units of resources that are consumed by Health in a given period).

23. Technical Documentation

- 23.1.1 The Service Provider must provide Health with up to date technical and operator Documentation containing sufficient information to enable Health to make full use of the Register at all times and to exercise its rights under this Services Agreement. The Documentation must be provided in accordance with the Statement of Requirement.
- 23.1.2 The Service Provider must provide Documentation to End Users as required to enable End Users to gain access to the Register in accordance with the Statement of Requirement.
- 23.1.3 The Documentation must at all times:
- (a) be current and accurate and consistent with the Statement of Requirement and the Outcomes;
 - (b) adequately explain key terms and symbols; and
 - (c) be in English.
- 23.1.4 The Services include providing all necessary amendments, revisions and updates of the Documentation.
- 23.1.5 The Service Provider must amend or substitute the Documentation promptly as required by Health or the Statement of Requirement.

24. Policies and Procedures Manual

- 24.1.1 The Service Provider must comply with the Policies and Procedures Manual during the Term in the delivery of the Register and the Services.
- 24.1.2 The Service Provider must update the Policies and Procedures Manual regularly as material changes occur, and as agreed by the Parties, and at least on a quarterly basis.
- 24.1.3 The Service Provider acknowledges and agrees that up to date copies of the Policies and Procedures Manual will be made available electronically to:
 - (a) Health; and
 - (b) Other Service Providers, if required by Health.
- 24.1.4 The Service Provider acknowledges and agrees that neither the content of nor adherence to any Policies and Procedures Manual will limit or affect any of Health's rights or the Service Provider's obligations under or in connection with this Services Agreement.
- 24.1.5 The Service Provider must not implement any variations made to the approved Policies and Procedures Manual unless Health has Accepted the variation.

25. Acceptance of Services and Deliverables provided by the Service Provider

25.1 General

- 25.1.1 The Service Provider must submit Implementation, Transition and Project Services and Deliverables to Health for Acceptance:
 - (a) where this Services Agreement indicates they are subject to Acceptance or Acceptance Testing; or
 - (b) otherwise, as required by Health.
- 25.1.2 The process for Acceptance of Services and Deliverables is:
 - (a) the Service Provider must carry out the Acceptance Testing as specified in the Statement of Requirement or as reasonably directed by Health, and in accordance with the relevant Acceptance Test Plan;
 - (b) if required by Health, the Service Provider must allow Health or its authorised representatives to observe the performance of the Acceptance Testing or other tests conducted by the Service Provider;
 - (c) the Service Provider agrees that Health, or any Health representative at the request of Health, may also carry out the Acceptance Testing or any part of the Acceptance Testing. The costs of Health (or its service provider) undertaking the Acceptance Testing will be borne by Health, unless the Acceptance Testing shows that the Service Provider failed to comply with the applicable Acceptance Criteria, in which case the cost of the Acceptance Testing must be borne by the Service Provider;
 - (d) the Service Provider must comply with any reasonable request by Health for further Acceptance Testing. Any further Acceptance Tests will be conducted in accordance with processes and criteria to be Notified by Health and will be at the expense of Health, unless the further Acceptance Testing shows that the Service Provider failed to comply with the provisions of this Services

Agreement, in which case the costs of the further Acceptance Tests must be borne by the Service Provider;

- (e) if Health determines that the Service Provider:
 - (i) has complied with the Acceptance Criteria, it will issue an Acceptance Certificate in respect of the relevant Service or Deliverable; or
 - (ii) has not complied with the Acceptance Criteria, it will Notify the Service Provider and the Service Provider must (at no cost to Health) then do all things necessary to ensure that the Acceptance Criteria are met. The Acceptance Testing must be repeated as soon as practicable after Notification from the Service Provider to Health that it believes it has been corrected and meets the Acceptance Criteria, and this clause 25 will apply to the repeated Acceptance Testing;
 - (f) if the Service Provider does not comply with the Acceptance Criteria for a Service or Deliverable within:
 - (i) 15 Business Days after the commencement of Acceptance Testing for a Service or Deliverable; or
 - (ii) if further Acceptance Testing is required under this clause 25, such further period as is Notified by Health,
- Health may treat the non-compliance as a failure by the Service Provider to comply with the relevant obligation under this Services Agreement;
- (g) the issuing of an Acceptance Certificate in accordance with clause 25.1.2(e) is not a waiver of rights and an Acceptance Certificate may impose such conditions and qualifications as Health reasonably requires and the Service Provider must comply with these conditions and qualifications; and
 - (h) the Service Provider must create and maintain comprehensive records of the Acceptance Testing undertaken, including any faults identified and the outcomes, and provide a copy to Health upon request by Health.

25.2 Conditional Acceptance

- 25.2.1 Despite clauses 25.1.2(e) and 25.1.2(f), Health may agree to conditional Acceptance.
- 25.2.2 If Health agrees to conditional Acceptance, the Service Provider must complete, at its own cost, any set of procedures required by Health described in the Acceptance Certificate to rectify any failure of the Service or Deliverable to meet the Acceptance requirements of that Service or Deliverable.
- 25.2.3 If the Service Provider fails to complete the set of procedures described in the Acceptance Certificate by the date specified in the Acceptance Certificate (**Rectification Date**), Health may by Notice to the Service Provider:
 - (a) withdraw Acceptance, in which case Health may exercise its other rights under this clause 25;
 - (b) extend the Rectification Date by a period of up to 30 days, or otherwise by agreement (**Extended Rectification Date**), and if the Service Provider fails to complete the set of procedures described in the Acceptance Certificate by the Extended Rectification Date, Health may exercise its other rights under this clause 25; or

- (c) Accept the Service or Deliverable (without prejudice to its other rights or remedies), in which case the Service Provider must still complete the set of procedures described in the Acceptance Certificate as soon as reasonably possible (unless otherwise agreed), but Health will not be able to withdraw Acceptance after that date.

25.2.4 If the Service Provider:

- (a) does not complete the set of procedures described in the Acceptance Certificate by the Rectification Date (or the Extended Rectification Date if applicable), the Charges will be reduced proportionally to reflect the reduction in value of the relevant Service or Deliverable as determined by Health acting reasonably; and
- (b) completes the set of procedures described in the Acceptance Certificate by the Extended Rectification Date, then any reduction of Charges applied in accordance with clause 25.2.4(a) will cease to apply from the date those procedures are completed.

26. Additional Services

Note to Tenderer

Health intends that Additional Services would only be used at the initiation of Health, as the flexibility provided to the Service Provider in delivering the Services means that the Service Provider is responsible for providing all Services needed to meet the Outcomes (i.e. all the Services are within scope).

Additional Services may be considered for major new or change initiatives that Health initiates.

- 26.1.1 At any time, Health may request the Service Provider to provide Additional Services. Additional Services will not include the addition of other or new registers to the Register. Any other or new register(s) will be added to the Register as a Project under clause 27.
- 26.1.2 In the event that Health requires Additional Services to be provided by the Service Provider pursuant to the terms of this Services Agreement, the Parties will negotiate in good faith to reach agreement on the details for the Additional Services and any necessary amendment to the Services Agreement. The following and any other relevant items (including those set out in **Schedule 4 - Pricing Framework**) may need to be negotiated and agreed:
 - (a) the specifications for the Additional Services;
 - (b) the price;
 - (c) any Milestone Dates or other timeframes to apply; and
 - (d) any consequential amendment to the Services Agreement (if any).
- 26.1.3 Where an Additional Service will result in a change to this Services Agreement, this change must be agreed in accordance with clause 82. Unless agreed otherwise in writing, changes which result from Additional Services implemented in accordance with this clause 26 will become part of the Services and will be subject to this Services Agreement.
- 26.1.4 Where agreed in writing between the Parties, the Service Provider must perform the Additional Services from the date specified by Health and in accordance with the relevant Documentation.
- 26.1.5 Charges for provision of the requested Additional Services will be calculated in accordance with the Labour Rates in **Schedule 4 - Pricing Framework**.

- 26.1.6 Health will consult with the Service Provider about how payment arrangements for the Additional Services will occur, including if payment for the Additional Services is intended to be included in the Outcomes payment arrangements.
- 26.1.7 The Service Provider:
- (a) warrants that Health will not be charged any amount for Service Provider or Subcontractor Personnel providing any Additional Services if Health is already being charged for those Personnel on a full time equivalent basis; and
 - (b) must ensure that it first seeks to use the spare capacity of any Personnel that Health are already paying for on a full time equivalent basis to satisfy any request by Health for the performance of any Additional Service and any response to a request for Additional Services must include a price that reflects the use of those Personnel at no additional charge.
- 26.1.8 At Health's request, the Service Provider must provide Health with documentary proof, to Health's reasonable satisfaction, that the Charges for Additional Services satisfy the criteria set out in this clause 26.
- 26.1.9 Existing Service Level Measures, Services requirements in the Statement of Requirement and Acceptance Testing will apply to the Additional Services unless otherwise agreed by the Parties.
- 26.1.10 The Parties agree that Additional Services do not include anything required to remedy any failure by the Service Provider to perform the Services.

27. Project Services

Note to Tenderer

Health intends that Project Services would only be used in exceptional circumstances and only at the initiation of Health, as the flexibility provided to the Service Provider in delivering the Services means that the Service Provider is responsible for providing all Services needed to meet the Outcomes (i.e. all the Services are within scope).

Project Services may be considered for major new or change initiatives that Health initiates, and will include the addition of another register to the Register.

- 27.1.1 At any time, Health may request the Service Provider to provide Project Services. Project Services may include the addition of other or new registers to the Register.
- 27.1.2 In the event that Health requires Project Services to be provided by the Service Provider pursuant to the terms of this Services Agreement, the Parties will negotiate in good faith to reach agreement on the details to be included in a Statement of Work for the Project Services and any necessary amendment to the Services Agreement. The following and any other relevant items may need to be negotiated and agreed:
- (a) the specifications for the Project Services;
 - (b) the price;
 - (c) any Milestone Dates or other timeframes to apply; and
 - (d) any consequential amendment to the Services Agreement (if any).
- 27.1.3 Where a Project Service will result in a change to this Services Agreement, this change must be agreed in accordance with clause 82. Unless agreed otherwise in writing,

changes which result from Project Services implemented in accordance with this clause 27 will become part of the Services and will be subject to this Services Agreement.

- 27.1.4 Where a Statement of Work is agreed in writing between the Parties, the Service Provider must perform the Project Services from the date specified by Health and in accordance with the relevant Statement of Work.
- 27.1.5 Charges for provision of the requested Project Services will be calculated in accordance with **Schedule 4 - Pricing Framework**.
- 27.1.6 If no such pricing mechanism or metric exists within this Services Agreement:
- (a) Charges for Project Services must be no higher than the prices the Service Provider charges to any other entity for the supply of services substantially similar to the Project Services and in substantially similar circumstances; and
 - (b) in any case, the Charges for Project Services must reflect all cost savings to the Service Provider resulting from any changes to the Service Provider's then current arrangements or operations for the provision of the Services. For example, if the Project Services replace the whole or any part of an existing Service, the Service Provider must ensure that any cost savings resulting from reduced resource requirements for performing the Project Services in lieu of the replaced Service are reflected in the Charges for the Project Services.
- 27.1.7 Payment of all Charges in accordance with this clause 27 is subject to the Service Provider:
- (a) performing the relevant Project Services; and
 - (b) meeting any Acceptance Criteria for Milestones where specified in the Project's Statement of Work, including the relevant Acceptance Tests under clause 25 which apply to the relevant Milestone.
- 27.1.8 The Service Provider must:
- (a) use Project Management tools, including Project Management systems, as reasonably necessary to perform the Services;
 - (b) provide Health during the Term and any Disengagement Period with reports on the performance of the Project, including to information and data contained within or available through the Project Management tools, to enable Health or its nominee to:
 - (i) make use of the Services; or
 - (ii) review or audit the Services; and
 - (c) cooperate and work with Health and any Other Service Provider that is involved in the delivery of the Project.
- 27.1.9 Where Health requires Service Levels and At Risk Amounts in respect of the Project, and except to the extent otherwise agreed by Health:
- (a) agreed Service Levels or At Risk Amounts will be added to the Statement of Work and Services Agreement as required; and
 - (b) agreed At Risk Amounts will be calculated,
- in accordance with **Schedule 5 - Service Level Framework**.

- 27.1.10 At Health's request, the Service Provider must provide Health with documentary proof, to the reasonable satisfaction of Health, that the Charges, Service Levels and At Risk Amounts for a Project satisfy the criteria set out in this clause 27.
- 27.1.11 The Parties agree that Project Services do not include anything required to remedy any failure by the Service Provider to perform the Services.
- 27.1.12 The Service Provider acknowledges that Health may obtain services the same as or similar to one or more of the Project Services from a person other than the Service Provider.
- 27.1.13 For the purpose of requesting, quoting and agreeing to any Project Services provided under this Services Agreement, the Parties must use the form Notified to the Service Provider by Health from time to time.

28. Change Management

- 28.1.1 The Service Provider:
 - (a) must not take an action or make a decision, including implementing Changes in the Register, which may adversely affect the function or performance of the Services without first obtaining Health's written approval to such Changes, which approval Health may withhold at its absolute discretion;
 - (b) must move applications from non-production environments to the Production Environment in a controlled and Documented manner, so that no unapproved changes are introduced into the applications during any such move; and
 - (c) must comply with the requirements of this clause 28 throughout the Change Management process and, if applicable, the Variation process (as the case may be).
- 28.1.2 The Service Provider must not make any Change to the Services or Register without:
 - (a) complying in full with the Change Management process; and
 - (b) conducting testing in a manner agreed between Health and the Service Provider to determine whether there is any adverse impact on the Services.
- 28.1.3 Health is not liable for any additional work undertaken or expenditure incurred by the Service Provider pursuant to a Change unless such Change has been effected in accordance with the Change Management process or Variation process (as the case may be).
- 28.1.4 The Change Management process does not apply to changes to the terms and conditions of the Services Agreement, pricing or the Service Levels.
- 28.1.5 The Service Provider must set out the details of the Change Management process in the Policies and Procedures Manual.

29. Health Assistance

- 29.1.1 Health will:
 - (a) where possible, make available, as reasonably requested by the Service Provider, any management decisions, information and approvals that are reasonably necessary for the Service Provider to perform or provide the Services; and

- (b) provide the Service Provider with, or arrange for the provision of, any assistance specified in this Services Agreement.
- 29.1.2 The Service Provider must comply with any terms set out or referred to in this Services Agreement, or Notified by Health, in relation to any provision of assistance by Health.
- 29.1.3 Health will use reasonable endeavours to require that Other Service Providers retained by Health, to the extent that they are performing work on Service Provider Material or Third Party Software licensed to the Service Provider or Equipment owned by or under the control of the Service Provider, comply with the Service Provider's reasonable security and confidentiality requirements and comply with the Service Provider's reasonable work standards, methodologies and procedures.

30. Health Supplied Items (HSI)

- 30.1.1 Health must provide the Service Provider with any Health Supplied Items as specified in **Schedule 11 - Health Supplied Items**.
- 30.1.2 Health Supplied Items remain the property of the party supplying them to the Service Provider. If no longer required for the purposes of this Services Agreement, Health Supplied Items must be returned to Health as soon as practicable unless other arrangements are agreed in writing by the Parties.
- 30.1.3 The Service Provider must:
 - (a) not use or allow others to use any Health Supplied Item other than for the purposes of this Services Agreement without the prior written approval of the party supplying it;
 - (b) not part with possession of any Health Supplied Items unless the party supplying them has provided its written consent, nor create or allow the creation of any lien, charge or mortgage over any Health Supplied Item;
 - (c) take all reasonable care of all Health Supplied Items including accounting for, preserving, installing or handling of Health Supplied Items;
 - (d) not modify any Health Supplied Items without the prior written approval of the party supplying them, unless expressly required by this Services Agreement;
 - (e) promptly inform the party supplying the Health Supplied Item of any Loss, destruction or damage to that Health Supplied Item and, if requested by the party supplying the Health Supplied Item and to the extent that such Loss, destruction or damage has been caused by the fault of the Service Provider, as soon as practicable replace Health Supplied Items at no cost to Health;
 - (f) comply with any reasonable instructions of the party supplying a Health Supplied Item for preserving, forwarding or disposing of any damaged Health Supplied Items at its own cost (provided that such damage has been caused by the fault of the Service Provider); and
 - (g) indemnify Health for any Loss or destruction of, or damage of a tangible nature caused by any act or omission of the Service Provider to any Health Supplied Items provided by Health.
- 30.1.4 The provision of Health Supplied Items does not limit or affect the Service Provider's obligations to achieve the Outcomes.

31. Asset Register

- 31.1.1 By no later than 20 Business Days after the end of each quarter of a Contract Year after the Go Live Date the Service Provider must provide Health with a current Asset Register for Assets used in the delivery of the Register and Services. The Service Provider will use the Asset Register as the base Document for Asset Register updates.
- 31.1.2 On a periodic basis, at 6 Monthly intervals (or more frequently if requested by Health), the Service Provider must update the Asset Register , and must continuously update the Asset Register as required to conduct the following actions:
- (a) remove Assets that are no longer in use;
 - (b) modify Asset information resulting from Asset relocation;
 - (c) modify Asset information in response to upgrades and Software updates;
 - (d) add new Asset information upon implementation of new Equipment or Software;
 - (e) capture information about Software Licences and Software Licence usage;
 - (f) include details where Incidents relate to Assets; and
 - (g) track and report on the completion progress of Asset refresh by lease-end date (where applicable).

32. Third Party Items

- 32.1.1 The Service Provider must ensure that Health has the benefit of any warranties, indemnities and other protections provided by any third party in relation to any Equipment, Software or other items or services provided to Health by the Service Provider but this does not in any way relieve the Service Provider from meeting its obligations under this Services Agreement (including to meet the Outcomes).

PART 8 - RELATIONSHIPS AND MANAGEMENT OF THE SERVICES AGREEMENT

33. Relationships

33.1 Meeting the Outcomes

- 33.1.1 The Parties acknowledge and agree that Health requires a strategic relationship with the Service Provider in order to ensure the Outcomes are met in an efficient, proactive and highly responsive, technologically contemporary and cost effective manner to Health for the Term of this Services Agreement as described in **Schedule 3 - Management and Governance**.

33.2 General Obligations of the Parties

- 33.2.1 The Parties must, at all times:
- (a) comply with their obligations set out in **Schedule 3 - Management and Governance**;
 - (b) act reasonably and in good faith in performing their obligations and exercising their rights under this Services Agreement;
 - (c) diligently perform their respective obligations under this Services Agreement; and
 - (d) without limiting any other obligation in clauses 35 or 36, work together in a collaborative manner with each other and with other organisations involved with the delivery of the Services.
- 33.2.2 The Service Provider must provide all reasonable assistance consistent with the Service Provider's obligations under this Services Agreement and required by Health.
- 33.2.3 The Service Provider must ensure that the Service Provider Representative (or another person specified in the Statement of Requirement) is reasonably available to attend meetings and answer any questions relating to the provision of the Services raised by Health.
- 33.2.4 The Service Provider must nominate the Governance roles and participate in the Governance forums as required under **Schedule 3 - Management and Governance**.

33.3 Limitation of relationship

- 33.3.1 The Service Provider must not represent itself, and must ensure that its Service Provider Personnel and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of Health, or as otherwise able to bind or represent Health unless authorised by Health in writing.
- 33.3.2 This Services Agreement does not create any relationship of employment, agency or partnership between the Parties.

34. Directions by Health

- 34.1.1 If:
- (a) Health reasonably considers that the Service Provider will not be able to, or has not met an Outcome that Health considers to be critically important; or

- (b) Health reasonably considers that the Service Provider has failed or may fail to meet an Outcome or any other requirement of this Services Agreement,

then Health may, after consultation with the Service Provider, issue a direction to the Service Provider including one which clarifies:

- (c) the actions that the Service Provider must take in order to meet the Outcomes or requirements;
- (d) the Service Provider's co-operation requirements with Other Service Providers; and
- (e) any governance, communication or reporting arrangements which Health reasonably considers necessary in order to facilitate the Service Provider providing the Services and meeting the Outcomes in accordance with this Services Agreement.

34.1.2 If a direction given by Health is unclear (e.g. the direction could be implemented in more than one way), may adversely affect the achievement of the Outcomes or the Service Provider considers the direction is inconsistent with this Services Agreement, the Service Provider must:

- (a) consult with Health; and
- (b) follow any subsequent direction by Health as to how the initial direction must be implemented.

35. Cooperation with States and Territories and Other Service Providers

35.1.1 The Service Provider must, at no additional cost to Health, cooperate with the States and Territories and Other Service Providers as necessary to achieve the Outcomes. Without limiting this obligation, the Service Provider must comply with the specific obligations set out in the Statement of Requirement, and **Schedule 3 - Management and Governance**.

35.1.2 If, during the Service Provider's performance of its obligations under this Services Agreement, any issue in relation to the performance of the Services or the Service Provider's ability to meet the Outcomes arises that is caused by a State, Territory or Other Service Provider, the Service Provider must, at no additional cost to Health, work with the Other Service Provider(s) in a timely manner to:

- (a) resolve the issue in a timely manner; and
- (b) Notify Health if the issue is likely to affect the Service Provider's ability to meet the Outcomes.

35.1.3 The Service Provider must respond to requests for information, assistance or support from the States and Territories or Other Service Providers, including as requested by Health, on the terms of this Services Agreement.

35.1.4 If Health engages Other Service Providers to perform any services related to or interacting with this Services Agreement, the Service Provider must cooperate with Health or the Other Service Provider to assist Health ensure that all services (including the Services) are able to be carried out in a co-ordinated, effective and timely manner, including by:

- (a) providing access to all necessary Equipment, Software, Documentation, Service Provider Personnel, accommodation and facilities, subject to the Service Provider's reasonable intellectual property, confidentiality and security requirements and procedures;

- (b) providing any information regarding the operating environment, system constraints, protocols, interfaces, design, architecture and other operating parameters which a person with reasonable technical and commercial skills and expertise would find reasonably necessary for Health or the Other Service Provider to perform the relevant services;
- (c) providing any assistance to Health or the Other Service Provider as required to:
 - (i) connect or interface any Equipment or Software;
 - (ii) make any Equipment, Software or the output of any Services compatible with Equipment, Software or the Services; and
 - (iii) otherwise perform its services; and
- (d) agreeing on procedures with Health and Other Service Providers for the division of responsibilities in relation to services and functions that may overlap between the Service Provider and those Other Service Providers.

36. Subcontractors

Note to Tenderer: Initial approved Subcontractors will be listed in the Policies and Procedures Manual.

36.1.1 The Service Provider must:

- (a) not subcontract any aspect of the performance of this Services Agreement without the prior written approval of Health, which will not be unreasonably withheld (for the purpose of this clause, Health may pre-approve categories of acceptable Subcontractors). Approved Subcontractors will be included in the Policies and Procedures Manual;
- (b) not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Service Provider, constitute a breach of this Services Agreement;
- (c) not subcontract with an entity that has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;
- (d) not subcontract with an entity that is, or which has one or more employees that are, or which is a member of an entity that is an Inappropriate Person;
- (e) comply with its obligations under clause 84.3.1(a)(ii);
- (f) ensure that all Subcontractors comply with Laws applicable to the provision of the Services any rules, policies, guidelines, processes and procedures of Health that are relevant to the Subcontractor's performance of the Services;
- (g) not allow further subcontracting by any Subcontractor approved under this Services Agreement without the prior written approval of Health;
- (h) agree to the public disclosure of the names of any approved Subcontractors;
- (i) ensure that all Subcontractors are informed that the subcontractor's participation in fulfilling this Services Agreement may be publicly disclosed;
- (j) obtain from the Subcontractor and provide Health with an original of signed undertakings in the form of **Schedule 9 - Health Deed of Confidentiality and Privacy**; and

- (k) ensure that any Subcontractor approved under this Services Agreement complies with the following clauses of this Services Agreement:
 - (i) clause 58 (Audit and access);
 - (ii) clause 59 (Data Management);
 - (iii) clause 59.4 (Compliance with Health Security requirements);
 - (iv) clause 61 (Confidentiality);
 - (v) clause 63 (Privacy);
 - (vi) clause 77 (Disengagement);
 - (vii) clause 78 (Knowledge transfer); and
 - (viii) clause 83 (Conflict of Interest).

36.1.2 For the avoidance of doubt, where any part of the Services is directly or indirectly provided to Health by a Subcontractor:

- (a) the Service Provider is and remains fully responsible in accordance with this Services Agreement for providing those Services, meeting the Outcomes and maintaining the Performance Standards with respect to those Services, regardless of the legal relationship (if any) between Health and the Subcontractor;
- (b) any approval of a Subcontractor by Health does not in any way relieve the Service Provider of any its obligations or responsibilities under this Services Agreement, or create a contractual relationship between Health and the Subcontractor;
- (c) the rights and remedies of Health under this Services Agreement against the Service Provider for any default in the Service Provider's obligations under this Services Agreement are not affected or in any way diminished by any such legal relationship between Health and the Subcontractor; and
- (d) the Service Provider must manage the delivery of Services by the Subcontractor as if it were the Service Provider. In particular, the Service Provider must maintain full responsibility for managing procurement, billing, fault management, Service requests, Intellectual Property Rights issues, privacy and confidentiality issues, Performance Standard attainment and defaults.

36.1.3 The Service Provider must ensure that it, and each of the Subcontractors, complies with all obligations relating to payments of tax instalment deductions, deductions from prescribed payments, fringe benefits tax, superannuation, payroll tax and any other taxes or levies imposed upon an employer which arise in respect of the Service Provider Personnel or otherwise in respect of any amounts paid to the Service Provider under this Services Agreement and that it complies with all requirements imposed on an employer under the relevant legislation to keep records, lodge returns and provide information in relation to such obligations. Upon request, the Service Provider must provide to Health proof that it has complied with these obligations.

36.1.4 Health may revoke its approval of a Subcontractor, on reasonable grounds, at any time and the Service Provider must cease using that Subcontractor to perform the Services within the time frames reasonably required by Health.

- 36.1.5 Any updates or changes to approved Subcontractors will be detailed in the Policies and Procedures Manual.
- 36.1.6 Clause 36.1.2 is in addition to, and does not waive, Health's right to seek any other remedy under this Services Agreement, at Law, or in equity.

37. Personnel

37.1 General

- 37.1.1 The Parties must each utilise such Personnel as are necessary to enable them to fulfil their respective obligations under this Services Agreement.
- 37.1.2 The Service Provider must ensure that the Personnel that it utilises pursuant to this clause 37 have the requisite skills, qualifications, experience and security clearances necessary to properly perform the Services and meet the Outcomes. The Service Provider must obtain any necessary security clearances, including as required under **Schedule 3 - Management and Governance**, at its own cost.
- 37.1.3 Health may, from time to time, Notify the Service Provider of additional or varied levels of security or access clearance required for the Service Provider's Personnel, and the date from which, or the period during which, that clearance will be effective and the Service Provider must comply with and ensure its Subcontractors and Personnel act in accordance with that Notice.
- 37.1.4 The Service Provider must:
- (a) provide, or procure the provision of, such information as can be lawfully provided (such as details of their education, training and qualifications) and which is reasonably requested by Health concerning the Personnel (if any) it proposes uses for the purposes of this Services Agreement;
 - (b) provide suitable replacement Personnel should Health, for security reasons, deny access to, or request removal of, any Personnel. If Health requests the removal of any Personnel for reasons not related to security, the Service Provider must address the matter, which may involve replacement of any Personnel approved by Health;
 - (c) ensure Service Provider Personnel comply with the obligations in this Services Agreement (including with respect to privacy, security and confidential information) and all applicable Laws relating to the Services;
 - (d) ensure that Service Provider Personnel comply with any policies, protocols, codes of conduct or procedures specified by Health from time to time;
 - (e) ensure that Service Provider Personnel have, if requested by Health, signed an undertaking in the form of **Schedule 9 - Health Deed of Confidentiality and Privacy**; and
 - (f) ensure Service Provider Personnel, when on Health's premises or when accessing Health's facilities and information, comply as necessary with the reasonable requirements and directions of Health with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on Health by Law).

38. Key Personnel

- 38.1.1 If Key Personnel are specified in the Statement of Requirement or **Schedule 3 - Attachment A - Key Personnel** as being responsible for the performance of key roles or tasks under this Services Agreement, the Service Provider must:
- (a) provide those individuals to perform those roles or tasks;
 - (b) ensure the Key Personnel that it uses have the necessary education, training, qualifications and skills to fulfil those tasks;
 - (c) ensure the Key Personnel comply with the obligations of this Services Agreement; and
 - (d) comply with any requirements or obligations in **Schedule 3 - Management and Governance**.
- 38.1.2 If a person specified as Key Personnel is unavailable at any time, the Service Provider must promptly advise Health and propose a substitute. The substitute provided must also have the necessary education, training, qualifications and skills to fulfil those tasks.
- 38.1.3 Any substitute Key Personnel must be approved by Health. Health may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under this Services Agreement.
- 38.1.4 Health may, from time to time, designate new or alternative positions as Key Personnel.
- 38.1.5 Any updates or changes to approved Key Personnel will be detailed in the Policies and Procedures Manual.
- 38.1.6 The unavailability of Key Personnel during the substitution process will not limit the Service Provider's obligations to provide the Services or meet the Outcomes under this Services Agreement.

38.2 Replacement of Personnel

- 38.2.1 Health may Notify the Service Provider that it requires the Service Provider to replace any of the Service Provider Personnel (including Key Personnel) involved in performing the Services for the reasons stated in the Notice. After receipt of that Notice, the Service Provider must replace that person with another person of suitable ability and qualifications.
- 38.2.2 The Service Provider remains obliged to perform the Services and meet the Outcomes in accordance with this Services Agreement in the event that Health requires the Service Provider to replace any of the Service Provider Personnel. The unavailability of Personnel during any replacement process will not limit the Service Provider's obligations to provide the Services or meet the Outcomes under this Services Agreement.

38.3 Restraints on Engagement of Key Commonwealth Personnel

- 38.3.1 Subject to clause 38.4.1, the Service Provider must not, and must ensure that its Service Provider Personnel, Subcontractors and any Related Company do not:
- (a) solicit, entice away or attempt to solicit or entice away any Key Commonwealth Personnel from continuing to be Engaged by Health or the Commonwealth (as applicable), either on behalf of the Service Provider or any other person; or
 - (b) Engage any Key Commonwealth Personnel,

during the period:

- (c) commencing on the Commencement Date and continuing for 6 Months after the Commencement Date;
- (d) commencing on the Commencement Date and continuing for 3 Months after the Commencement Date;
- (e) commencing on the Commencement Date and continuing for 2 Months after the Commencement Date; or
- (f) commencing on the Commencement Date and continuing for 1 Month after the Commencement Date.

38.4 Enforceable restraint

38.4.1 The Service Provider will not be in breach of a restraint contained in clause 38.3.1 if Health gives its prior written consent (such consent not to be unreasonably withheld) to the Service Provider, Service Provider Personnel, Subcontractors or Related Company to:

- (a) solicit any Key Commonwealth Personnel; or
- (b) Engage any Key Commonwealth Personnel,

who is specified by Health in giving such consent.

38.4.2 The restraints contained in clause 38.3.1 will be regarded as separate, distinct and several as regards each time period so that the unenforceability of a restraint in respect of one time period will not affect the enforceability of the others.

38.4.3 For the purposes of clause 38.3.1 and clause 38.4.1:

- (a) 'Key Commonwealth Personnel' means any Health Personnel or other personnel of the Commonwealth who are or have been:
 - (i) members of the steering committee or evaluation committee for the evaluation process for this Services Agreement;
 - (ii) team leaders for the evaluation process for this Services Agreement;
 - (iii) the evaluation co-ordinator for the evaluation process for this Services Agreement; or
 - (iv) in a position of substantial influence in relation to the evaluation process for this Services Agreement that is like or greater than that of the positions specified in clauses 38.4.3(a)(i) to 38.4.3(a)(iii) inclusive above; and
- (b) 'Engagement' means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and 'Engage', 'Engaged' and 'Engaging' have a like meaning.

39. Representatives

39.1.1 The Service Provider and Heath must each appoint a representative with the authority to represent it and to:

- (a) give and receive Notices under this Services Agreement;

- (b) exercise rights and give approvals under this Services Agreement; and
 - (c) conduct the day-to-day administration of this Services Agreement.
- 39.1.2 The Service Provider Representative is responsible for administration of this Services Agreement on behalf of the Service Provider.
- 39.1.3 The Health Representative is responsible for administration of this Services Agreement on behalf of Health.
- 39.1.4 The Health Representative and the Service Provider Representative must meet and communicate as required by Health or as specified in the Statement of Requirement or **Schedule 3 - Management and Governance**.
- 39.1.5 The Health Representative and Service Provider Representative may each delegate their functions, or authorise that their functions be carried out on their behalf, and will Notify the other Party of any such delegation or authorisation.
- 39.1.6 Any oral directions given by a Party that, in the other Party's opinion will impact scope, costs, timing or resources relevant to this Services Agreement, must (if requested by that other Party) be confirmed by Notice within a reasonable period.
- 39.1.7 The parties must comply with any requirements or obligations in **Schedule 3 - Management and Governance** in relation to the appointment, replacement or authority of the Service Provider Representative or the Health Representative.

40. E-commerce

- 40.1.1 The Parties will cooperate in performing their respective obligations under this Services Agreement in an electronic environment. This does not relieve either Party of its obligations under this Services Agreement.

41. Reporting

- 41.1.1 The Service Provider must provide Health with reports in accordance with the reporting requirements specified in this Services Agreement, including the Governance and management reporting required under **Schedule 3 - Management and Governance**.

42. Services Agreement Review

- 42.1.1 The Parties will, at least annually, comprehensively review the operation of this Services Agreement, including for compliance by the Service Provider with the obligations specified in this Services Agreement.
- 42.1.2 The annual review of the Service Provider's obligations referred to in clause 42.1.1 includes review of the Service Provider's performance against the Outcomes and the reporting obligations in accordance with clause 41.
- 42.1.3 The Service Provider must comply with any reasonable obligations for review specified by Notice from Health.
- 42.1.4 Each Party must bear its own costs of any review conducted under this clause 42.

PART 9 - PAYMENTS AND PERFORMANCE

43. Charges, Payment and Invoicing

43.1 Charges and Payment

- 43.1.1 In consideration for the performance of the Services by the Service Provider, but subject to this Services Agreement:
- (a) Health must pay the Charges set out in **Schedule 4 - Pricing Framework** to the Service Provider; and
 - (b) Health will pay the Charges within 30 days after receiving a Correctly Rendered Invoice from the Service Provider.
- 43.1.2 The Parties acknowledge and agree that:
- (a) the Charges fully compensate the Service Provider for performing all the Services and meeting the Outcomes however the Service Provider chooses to perform those Services or meet the Outcomes;
 - (b) the Service Provider is not entitled to charge Health any amount in addition to the Charges (including any amounts associated with any changes in the way the Services are performed or the Outcomes are met by the Service Provider) unless:
 - (i) this Services Agreement has been varied as set out in clause 82; or
 - (ii) Health has approved a request for Additional Services in accordance with clause 26 or Project Services in accordance with clause 27; and
 - (c) in certain circumstances, in recognition of the nature of the Outcomes, Health will be required to subjectively assess whether the Outcomes have been met.
- 43.1.3 The Service Provider is not entitled to be paid Charges more than once for any Services provided and must not invoice Health for any such Charges.
- 43.1.4 Except as expressly provided in this Services Agreement, if the Service Provider is obliged to do anything under this Services Agreement:
- (a) it must do so at no additional cost to Health; and
 - (b) the only consideration the Service Provider is entitled to is the Charges.
- 43.1.5 The Parties agree that payments may be effected by electronic transfer of funds.

43.2 Invoices

- 43.2.1 An invoice is a Correctly Rendered Invoice if it meets the requirements for invoices specified in **Schedule 4 - Pricing Framework**.
- 43.2.2 The Service Provider must provide Correctly Rendered Invoices to Health for all amounts payable by Health under this Services Agreement.
- 43.2.3 Health is not required to pay any amount which is not invoiced in accordance with this Services Agreement.

43.3 Disputed invoices

- 43.3.1 If Health disputes an invoice or an amount payable pursuant to an invoice:
- (a) Health will promptly Notify the Service Provider of the details and nature of the disputed portion;
 - (b) Health may withhold the disputed portion pending resolution of the dispute but will pay the undisputed portion;
 - (c) if required by Health, the Service Provider must cancel the original invoice and issue a new Correctly Rendered Invoice for the undisputed portion, and Health will pay the new invoice within the period specified in clause 43.1.1; and
 - (d) the provisions of clause 81 will apply in relation to the disputed portion and if that resolution process results in a determination that Health should pay the disputed portion, the Service Provider may issue a new Correctly Rendered Invoice for that amount and Health must pay that invoice in accordance with clause 43.1.1.

43.4 Stale invoices

- 43.4.1 The Service Provider must provide Correctly Rendered Invoices within the time period specified in **Schedule 4 - Pricing Framework** (if any). Health is not obliged to pay the amount specified in any invoice for Services where the invoice is provided after the time period specified in **Schedule 4 - Pricing Framework**.

43.5 Charges are all inclusive

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

43.6 Refunds

- 43.6.1 If the Service Provider receives or is entitled to receive a refund, credit or other rebate for goods or services previously paid for by Health, the Service Provider must include the refund, credit or rebate in the next invoice submitted to Health.

44. Performance Management

- 44.1.1 The Service Provider acknowledges and agrees that:
- (a) Health has relied on the Service Provider's representations, as reflected in this Services Agreement, and on the Service Provider's ability to:
 - (i) meet the Outcomes;
 - (ii) comply in full with the quality, architectural, functional and performance requirements for the Services; and
 - (iii) meet the performance management framework specified in this Services Agreement (including the Service Level Measures and the Performance Standards, or other performance standards described in that framework);

- (b) Health's value for money assessment of the Service Provider's representations depends on the Service Provider complying in full with this Services Agreement; and
 - (c) the Service Level Measures and Performance Standards operate in addition to, and so as to supplement, the Service Provider's obligation to meet the Outcomes.
- 44.1.2 The Parties agree that the Charges will be adjusted to reflect the application of At Risk Amounts in accordance with the performance management framework specified in **Schedule 5 - Service Level Framework**. The Parties acknowledge that any adjustment on this basis is reasonable and represents the reduced level of value provided to Health.
- 44.1.3 The Parties will comply with the details in the performance management framework specified in **Schedule 5 - Service Level Framework** including in relation to measuring and reporting on the Service Provider's performance under this Services Agreement.

44.2 Failure to meet the Performance Standards

- 44.2.1 If the Service Provider fails to meet any Outcome, Service Level Measure or Performance Standard, the Service Provider must, at no additional cost to Health, promptly:
- (a) investigate the underlying causes of the failure to meet the Outcome, Service Level Measure or Performance Standard (**Performance Issue**) and preserve any data indicating the cause of the Performance Issue;
 - (b) promptly prepare and deliver to Health a report identifying the Performance Issue;
 - (c) take whatever action is reasonably necessary to minimise the impact of the Performance Issue and prevent it from recurring;
 - (d) deploy at its own cost all additional resources and take all remedial action that is necessary to correct the Performance Issue and meet the Outcome, Service Level Measure or Performance Standard;
 - (e) advise Health, as and to the extent requested by Health, of the status of remedial efforts being undertaken with respect to the underlying cause of the Performance Issue; and
 - (f) show in the next invoice submitted by the Service Provider the At Risk Amount (if any) payable in accordance with this Services Agreement and adjust the next invoice or pay to Health on demand by Health any At Risk Amount that is due in accordance with the Services Agreement.

44.3 Performance management reporting

- 44.3.1 The Service Provider must:
- (a) measure and report on its performance as specified in **Schedule 5 - Service Level Framework**;
 - (b) report on its performance to Health as frequently and in as much detail as required by Health in the manner and at the times specified by this Services Agreement;
 - (c) use appropriate measurement and monitoring tools and procedures to measure its performance accurately including to provide the detail required by clause 44.3.1(b); and

- (d) provide the Health Representative with information about and access to those measurement and monitoring tools and procedures on request, to verify that they accurately measure the Service Provider's performance.

45. Periodic Reviews

45.1.1 From time to time Health and the Service Provider will review the Service Level Measures and Performance Standards and make adjustments to them as appropriate to reflect:

- (a) the Outcomes; and
- (b) improved performance capabilities,

and, in doing so, may consider any available benchmarking reports or other market information available to Health or the Service Provider.

46. Reductions in Charges - At Risk Amounts

46.1.1 The Service Provider acknowledges that:

- (a) its failure to meet an Outcome or Service Level Measure or Services requirement in the Statement of Requirement may have a materially adverse impact on the business and operations of Health;
- (b) At Risk Amounts:
 - (i) represent a reduction in Charges to reflect the provision by the Service Provider of a lower level of service than is required of it under this Services Agreement; or
 - (ii) are a reasonable pre-estimate of the Loss likely to be suffered by Health as a result of the Service Provider's actions (including a failure to meet the Outcomes),

and whether or not they are a reasonable pre-estimate of the Loss, constitute an agreed amount by which the Charges may be reduced in accordance with this Services Agreement; and

- (c) the payment of any At Risk Amounts by the Service Provider will be taken into account for the purposes of quantifying any Losses which are incurred in respect of the same event giving rise to the damage.

46.1.2 If the Service Provider fails to achieve an Outcome, a Service Level Measure or Services requirement in the Statement of Requirement the Charges will be reduced in accordance with **Schedule 5 - Service Level Framework**, and **Schedule 4 - Pricing Framework**.

46.1.3 If At Risk Amounts apply then:

- (a) the Service Provider must adjust the next invoice, or pay to Health on demand by Health, any At Risk Amount that corresponds to the failure to meet that Outcome, Service Level Measure or Performance Standard; or
- (b) Health may deduct any At Risk Amount that corresponds to the failure to meet that Outcome, Service Level Measure or Performance Standard from Charges payable to the Service Provider.

- 46.1.4 Health's rights under clauses 46.1.1 and 46.1.2 are in addition to, and do not waive, Health's right to seek any other remedy under this Services Agreement, at Law, or in equity.
- 46.1.5 To avoid any doubt, where clause 46.1.1 applies, Health may exercise any right it has under any Financial Undertaking or Performance Guarantee provided under this Services Agreement.
- 46.1.6 On or before the expiry or earlier termination of this Services Agreement, the Service Provider must pay any outstanding At Risk Amounts to Health.
- 46.1.7 The payment of At Risk Amounts does not relieve the Service Provider from its obligations to provide the Services or from any other obligations or liability under the Services Agreement.

47. Liquidated Damages

- 47.1.1 The Service Provider acknowledges that failure to achieve a Milestone Date in accordance with the Implementation Documentation, Transition Documentation or Project Documentation (as appropriate) will have a material adverse impact on the business and operations of Health.
- 47.1.2 If the Service Provider fails to achieve a [key] Milestone including a Project Milestone, Critical Implementation Milestone or a Critical Transition Milestone by the relevant Milestone Date then Health:
 - (a) may claim in accordance with clause 47.1.4 as liquidated damages and not as a penalty the amount specified (if any) in **Schedule 4 - Pricing Framework**, the Implementation Documentation, Transition Documentation or Project Documentation as the case may be for that Milestone for each Business Day of the delay;
 - (b) is not obliged to make any payment to the Service Provider for Services not properly or completely performed by the Service Provider in accordance with the Implementation Documentation, Transition Documentation or Project Documentation (as appropriate); and
 - (c) no amount will be owing to Health until Health elects, in accordance with clause 47.1.4, to claim any liquidated damages under this clause 47.1.2.
- 47.1.3 Subject to clause 47.1.8, the Parties agree that any liquidated damages claimed in accordance with clause 47.1.2:
 - (a) cover the lower level of performance by the Service Provider;
 - (b) are to compensate Health for the Service Provider's delay in achieving the Milestone Date for a period of up to [X] Business Days; and
 - (c) are a reasonable pre-estimate of the Loss likely to be suffered by Health as a result of the Service Provider's failure to achieve the Milestone Date during that period.
- 47.1.4 Where Health becomes entitled to claim liquidated damages under clause 47.1.2, Health may at its absolute discretion elect to do either or both of the following:
 - (a) recover all or part of the amount of liquidated damages under clause 47.1.2 as a debt due to Health; and/or

- (b) direct the Service Provider to provide Additional Services and/or Project Services to Health as required by Health.
- 47.1.5 Any Additional Services and/or Project Services provided under clause 47.1.4 may, at Health's absolute discretion, be provided to Health as a single instance of Services or as a series of Services. In any event, the total value of any Additional Services and/or Project Services to be provided under clause 47.1.4(b), together with any liquidated damages elected to be recovered under clause 47.1.4(a) (if any), will not exceed the amount of liquidated damages that Health is entitled to recover under clause 47.1.2.
- 47.1.6 The Service Provider will not be liable to pay any liquidated damages arising from the Service Provider's failure to achieve a Milestone Date to the extent that failure amounts to an Excusable Event under clause 48 and section 9 of **Schedule 5 - Service Level Framework**.
- 47.1.7 Health may claim the liquidated damages owing under clause 47.1.4 from the Financial Undertaking required to be provided under clause 68.2. Health will consult the Service Provider before exercising its rights under this clause.
- 47.1.8 Nothing in clauses 46 or 47 in any way limit or affect Health's rights to take other action in respect of the Services Agreement, including to claim additional Losses.

48. Excusable Events

48.1 Neither Party Liable

- 48.1.1 Other than as expressly provided in this clause 48 or **Schedule 5 - Service Level Framework**, the Service Provider:
 - (a) bears the risk of all delays, disruptions, events or circumstances affecting performance of the Services and this Services Agreement; and
 - (b) remains obliged to perform the Services and this Services Agreement notwithstanding any such delay, disruption, event or circumstance.
- 48.1.2 Neither Party will be:
 - (a) liable in respect of any At Risk Amount, Bonus Payment, liquidated damages or other amount under a remedy (including an indemnity) which would, but for this clause 48.1.2, have been available to the Party under this Services Agreement; or
 - (b) in default under this Services Agreement,
 if and to the extent only and for the period that the default or delay is caused by an Excusable Event.
- 48.1.3 For the purposes of this Services Agreement, an **Excusable Event** means any:
 - (a) fire, flood, earthquake, elements of nature or act of God;
 - (b) riot, civil disorder, rebellion or revolution;
 - (c) Government delay in passing any appropriation bills; or
 - (d) other cause beyond the reasonable control of the non-performing Party (including in the case of the Service Provider, Service Provider Personnel and subcontractors), but excluding acts or omissions of the other Party, where that cause is reasonably foreseeable to a person in the position of the non-

performing Party (including in the case of the Service Provider, whether the Service Provider Personnel were dealing with Health or not),

but in each case only if and to the extent that:

- (e) the non-performing Party is without fault in causing the default or delay; and
- (f) the default or delay:
 - (i) could not have been prevented by reasonable precautions; and
 - (ii) cannot reasonably be circumvented by the non-performing Party at its expense through the use of alternate sources, workaround plans or other means.

48.1.4 The Parties agree that a strike by employees of a Party or any subcontractor (or both) is not an Excusable Event unless the strike is part of an industry wide campaign that does not arise out of a dispute between that Party or a subcontractor and one or more of its employees.

48.1.5 Without limitation, the precautionary measures and efforts to prevent or circumvent any default or delay referred to in clause 48.1.3(f) in connection with the performance of the Services include:

- (a) executing any relevant Disaster Recovery Plan after declaration by Health of a Disaster;
- (b) workload management practices among configurations, Health Sites and Health Locations; and
- (c) backup and recovery measures and procedures in accordance with those specified in **Schedule 2 - Attachment B - Register ICT Service Requirements** and any other prudent backup and recovery measures and procedures that the other Party might reasonably expect the non-performing Party to have in place.

48.2 Notification of Excusable Event

48.2.1 In all instances where this clause 48 applies and an Excusable Event occurs, and the Service Provider wishes to obtain relief by the operation of this clause 48, the Service Provider must:

- (a) give the Health Representative a notice:
 - (i) as soon as practicable and in any event an informal notice within 10 Business Days after the Service Provider first becomes aware of the first occurrence of the Excusable Event giving rise to relief (if any) and a formal notice within 40 Business Days after the Service Provider first becomes aware of the first occurrence of the Excusable Event giving rise to relief (if any); and
 - (ii) which gives detailed particulars (or in the case of an informal notice, all such details as are reasonably available to the Service Provider at that time) of the Excusable Event giving rise to relief (if any) and the default or delay (including, where the issue was resolved, the nature of the resolution); and
- (b) if the Excusable Event or the consequences of the Excusable Event giving rise to the Service Provider's relief (if any) are continuing - continue to give the Health Representative the information required by clause 48.2.1(a) every 5

Business Days thereafter or within such other time period agreed with Health until the Excusable Event, or the consequences of the Excusable Event giving rise to the relief (if any) in respect of this Services Agreement and the Services, have ceased.

48.3 Period of Relief

- 48.3.1 Subject to clause 48.3.2, in the case of any Service Provider obligation which involves performance of an obligation by a due date or time (including meeting a Service Level Measure or delivery of a Deliverable) if the Service Provider gives a notice in accordance with clause 48.2.1(a) and the information required under clause 48.2.1(b), the Health Representative will where the Excusable Event has prevented or will prevent the Service Provider from performing such obligation under this Services Agreement (including meeting a Service Level Measure or delivery of a Deliverable), determine a reasonable extension of the period within which the Service Provider must perform the obligation, such extension being at least equivalent in duration to the period during which the Excusable Event prevented (or will prevent) the Service Provider from performing the obligation, unless otherwise agreed.
- 48.3.2 It is a condition precedent to the Service Provider's entitlement to any relief including a determination of an allowance or extension under clause 48.3.1 that:
- (a) the Service Provider must have complied with the obligations required by clause 48.2.1;
 - (b) the cause of the Service Provider being prevented from achieving the relevant Level Measure or performing the relevant obligation under this Services Agreement must have been an Excusable Event;
 - (c) the Service Provider must have actually been prevented from achieving the relevant Service Level Measure or performing the obligation under this Services Agreement by the Excusable Event;
 - (d) the Service Provider must have taken all reasonable steps to overcome or minimise the effect of the Excusable Event, including complying with the business continuity requirements in **Schedule 2 - Attachment A - Operator Service Requirements** and taking all reasonable steps to reschedule, reprogram, expedite and adjust activities, sequences and the performance of the Services and adopting any practicable alternative method of performing the Services as may be required to ensure that the relevant Level Measure is achieved or the relevant obligation under this Services Agreement is performed; and
 - (e) the Service Provider must have complied with all reasonable instructions and directions of Health in relation to the Excusable Event, including the steps available to overcome or minimise the effect of the circumstance beyond the Service Provider's reasonable control.
- 48.3.3 Instead of making a determination under clause 48.3.1, Health may, in consultation with the Service Provider, propose to vary the Services or this Services Agreement in accordance with clause 82 in relation to an Excusable Event.

48.4 Health's Option

- 48.4.1 If the Service Provider is excused from the performance of Services pursuant to clause 48.3 above and, as a result, the performance of critical functions is substantially prevented, hindered, degraded or delayed for more than 48 consecutive hours (or any shorter period specified in the Policies and Procedures Manual for particular functions), then at Health's option and without limiting any other rights it may have:

- (a) Health may require the Service Provider to procure those Services from a third party service provider, in which case the Service Provider will promptly nominate a third party service provider to provide the Services for Health's approval (such approval will not be unreasonably withheld). If Health:
 - (i) approves the Service Provider's nominated third party service provider, the Service Provider will engage that third party service provider to provide the Services and will be liable for payment for the provision of those Services by the third party service provider for as long as the delay in performance continues; or
 - (ii) rejects the Service Provider's nominated third party service provider, Health may direct the Service Provider to use a different third party service provider. The Service Provider will be liable for payment for the provision of those Services by Health's nominated third party service provider for as long as the delay in performance continues. However, if Health directs the Service Provider to use a third party service provider that will result in higher charges than the third party service provider proposed by the Service Provider, then Health will pay the Service Provider half of the difference between the cost of those two service providers if the Service Provider can demonstrate that the Service Provider's proposed third party service provider would be capable of providing the relevant Services in accordance with the Service Level Measures; or
- (b) Health may remove the affected Services from the scope of this Services Agreement under clause 76.3.

48.4.2 Without any obligation to do so, Health may at any time and from time to time provide a written notice to the Service Provider unilaterally adjusting any Service Level Measure or the timeframe for performing any other obligation of the Service Provider under this Service Agreement (in the Service Provider's favour) for a specified period to take account of any matter which Health Representative considers to be a circumstance beyond the Service Provider's reasonable control.

48.5 No Compensation

48.5.1 Health will, during the period of an Excusable Event, continue to pay Charges for Services actually provided to Health in accordance with this Agreement, but subject to clause 48.4.1(a), the Service Provider will not have the right to any payments (in addition to the Charges for Services actually provided to Health) from Health under this Services Agreement as a result of any Excusable Event or the performance of its obligations under this clause 48.

48.6 Service Provider's Suppliers

48.6.1 The failure of any of the Approved Subcontractors or the Service Provider's suppliers to perform any obligation owed to the Service Provider will only constitute an Excusable Event with respect to the Service Provider's performance of the Services if and to the extent that the failure by the Approved Subcontractor or supplier is caused by an Excusable Event.

48.7 Rectification

48.7.1 The Service Provider must:

- (a) immediately notify Health if an act or omission of any of the Service Provider or Service Provider Personnel causes a problem or delay that has a material impact on the Service Provider's ability to provide the Services; and

- (b) work with Health and any relevant Approved Subcontractor or supplier to prevent or circumvent the problem or delay.

49. Reduction in Charges

- 49.1.1 If at any time prior to the delivery and Acceptance or approval (if applicable) of any Service required to be provided under this Services Agreement, the Charges for that Service are reduced (whether generally to the market place or for other similar customers), the Charges for that Service will be deemed to be reduced to the same extent.

50. Set Off

- 50.1.1 If:
 - (a) any amount is payable by the Service Provider to Health; or
 - (b) an invoice is found to have been rendered incorrectly after payment,
 any payment due to Health or overpayment by Health will be a debt due to Health under this Services Agreement and, without limiting recourse to other available means, may be offset against any amount subsequently due by Health to the Service Provider under this Services Agreement.

51. Competitive Pricing

- 51.1.1 The Service Provider must ensure that the Charges will not, during the Term, be higher than the prices it charges to any other entity or Agency for supplying services substantially similar to the Services and in substantially similar circumstances (**Similar Services**) for any contracts it enters into after the Commencement Date.
- 51.1.2 If the Service Provider does charge lower prices to any entity for any Similar Services:
 - (a) the Service Provider must assist Health for a 3 Month period to determine the causes of uncompetitive pricing; and
 - (b) on and from the conclusion of the 3 Month period, the Service Provider must lower the Charges to match the prices of the Similar Services.
- 51.1.3 The Service Provider must charge the lower Charges referred to in clause 51.1.2 even if a dispute has arisen between the Parties about the reduced Charges until (at least) the dispute is resolved in accordance with this Services Agreement.
- 51.1.4 Within 30 days after each anniversary of the Commencement Date, the Service Provider must certify in writing to Health that the Service Provider has complied with this clause 51 during that previous year, and must provide the information reasonably requested by Health to verify that compliance. Health acknowledges that confidentiality obligations may apply to the information referred to in this clause 51.1.4. The Service Provider acknowledges and agrees that it will not withhold or otherwise prevent the release of any third party information if the third party consents to the release to Health of that information.
- 51.1.5 The Parties acknowledge and agree that the provision of the Services allows the Service Provider to meet the Outcomes and consequently, the requirement for the Service Provider to meet the Outcomes does not:
 - (a) deprive a service from being a Similar Service; or

- (b) constitute a unique requirement of Health.

51.1.6 This clause 51 is not intended to require the Service Provider to adopt unbundled pricing comparisons where contracts for Similar Services have been formulated and priced on a bundled basis.

52. Benchmarking

- 52.1.1 From time to time during the Term, Health may:
- (a) test the market for any or all of the Services; and
 - (b) undertake Benchmarking to measure the standards of delivery and cost of the Services or any other part of this Services Agreement in part or in the aggregate to determine if the performance of the Service Provider matches and the Charges are competitive with, then current market prices and standards of delivery for Similar Services.
- 52.1.2 The Service Provider acknowledges and agrees that Health may benchmark the performance of the Service Provider in delivering the Services required to meet the Outcomes, as well as the Service Provider's performance against the Outcomes themselves, in accordance with the process in **Schedule 4 - Pricing Framework**.
- 52.1.3 Without limiting the rights of Health, Health may release Benchmarking results to:
- (a) other Agencies;
 - (b) Ministers and their advisors;
 - (c) Parliament or parliamentary committees; and
 - (d) advisers to Health who have executed an appropriate confidentiality undertaking who are not competitors of the Service Provider in respect of the Services.
- 52.1.4 Any Dispute in relation to Benchmarking must be resolved in accordance with clause 81 of this Services Agreement.

53. Taxes

- 53.1.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Services Agreement (subject to clause 54) must be met by the Service Provider and are included in the Charges.

54. GST

54.1 Interpretation

- 54.1.1 In this clause 54, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* has the meaning given to it in that Act.

54.2 GST gross up

- 54.2.1 If a party (**Supplier**) makes a supply under or in connection with this Services Agreement in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**).

- 54.2.2 Clause 54.2.1 does not apply if the amount payable for the supply is expressed as 'GST inclusive'.

54.3 Reimbursements

- 54.3.1 If a Party must reimburse or indemnify another Party for a Loss, cost, or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the Loss, cost or expense, and then increased in accordance with clause 54.2.1.

54.4 Exclusion of GST from calculations

- 54.4.1 If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment will be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.

54.5 Adjustments

- 54.5.1 If the GST payable by a Supplier on any supply made under or in connection with this Services Agreement varies from the GST Amount paid or payable by the Recipient under clause 54.2.1, such that a further amount of GST is payable in relation to the supply or a refund or credit of GST in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 54.5.1 is deemed to be a payment, credit or refund of the GST Amount payable under clause 54.2.1.
- 54.5.2 If an adjustment event referred to under clause 54.2.1 occurs in relation to a supply, the Supplier must give an adjustment note to the Recipient in relation to that supply within 10 Business Days after becoming aware of the adjustment.

54.6 Tax invoice

- 54.6.1 A Party need not make a payment for a taxable supply made under or in connection with this Services Agreement until it receives a tax invoice for the supply to which the payment relates.

55. Cost Investigation

- 55.1.1 Without limiting clauses 52 or 58, for the purposes of any or all of the following:
- (a) substantiating whether the Charges payable or paid by Health are accurate;
 - (b) gathering such information as required to confirm the Charges payable or paid by Health are accurate (including the basis for the calculation of the Charges such as the unit resources consumed in any period); and
 - (c) establishing that the Outcomes are being met,
- Health may, at its discretion, conduct a cost investigation in relation to the Charges by its cost investigation staff or Health's nominee at any time as Health elects.
- 55.1.2 On request by Health, the Service Provider must facilitate any cost investigation conducted under clause 55.1.1.
- 55.1.3 The Service Provider must, for the purpose of clause 55.1.1 and on request by Health:
- (a) allow access for Health cost investigation personnel or Health's nominee to the Service Provider's premises, financial systems and information; and

- (b) provide detailed information in response to any requests from Health in connection with the cost investigation, including information which will allow a breakdown of the Service Provider's Charges and supporting information.

PART 10 - SECURITY INTERESTS

56. PPSA

- 56.1.1 In this clause, Security Interest has the meaning given to the term "security interest" in the PPSA.
- 56.1.2 If the terms of this document constitute one or more Security Interests in favour of Health:
- (a) the Service Provider agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Health may require for the purposes of:
 - (i) ensuring that any Security Interest of Health is enforceable, perfected and otherwise effective;
 - (ii) ensuring that any Security Interest of Health is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA, [except those identified in Schedule 17 or as agreed between the Service Provider and Health];

Note to Tenderers: If relevant, Security Interests may be set out in a schedule to the Contract.

- (iii) enabling Health to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by Health [except those identified in Schedule 17 or as agreed between the Service Provider and Health]; or
 - (iv) enabling Health to exercise any right or power in connection with the Security Interest;
- (b) the Service Provider agrees that it will bear all costs and expenses that it incurs in complying with clause 56.1.2(a);
- (c) to the extent permitted by Law, and in respect of any Security Interest created by this document:
 - (i) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - A. Health need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA; and
 - B. sections 142 and 143 of the PPSA are excluded;
 - (ii) for the purposes of section 115(7) of the PPSA, Health need not comply with section 132 and 137(3) of the PPSA;
 - (iii) the Service Provider waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to a Security Interest;
- (d) the parties agree that except for any disclosure agreed in clause 61 to the full extent permitted by Law not to disclose information of the kind mentioned in section 275(1) of the PPSA;

- (e) the Service Provider agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if Health approves;
- (f) Health's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this document;
- (g) the Service Provider will not, without Health's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral [except for any Security Interest created by the Service Provider, or which exists, in favour of **insert**]; and

Note to Tenderers: Clause 56.1.2(g) to be amended as required, following consideration of any proposed Security Interests.

- (h) for the avoidance of doubt, pursuant to section 80 of the PPSA, the Service Provider covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person Health assigns some or all of its rights and obligations under this document should have the benefit of this covenant.

PART 11 - INFORMATION MANAGEMENT AND ACCESS

57. Books and records

57.1 Maintenance of Records

- 57.1.1 The Service Provider must, at all times, maintain full, true, and up-to-date accounts and records relating to this Services Agreement. Such accounts and records must:
- (a) include appropriate audit trails for transactions performed;
 - (b) record all receipts and expenses in relation to the provision of Services all matters on which the Service Provider is obliged to report;
 - (c) be kept in a manner that permits them to be conveniently and properly audited, and enables the amounts payable by Health under this Services Agreement to be determined;
 - (d) be drawn in accordance with any applicable Australian Accounting Standards;
 - (e) in the case of any Services provided on a time and Materials or cost plus basis, identify the time spent by the Service Provider's Personnel in providing those Services;
 - (f) be made available to Health as required for monitoring and reviewing the performance of the Service Provider's obligations under this Services Agreement;
 - (g) be in accordance with the relevant requirements set out in this Services Agreement and enable the extraction of all information relevant to the performance of, and compliance with, this Services Agreement; and
 - (h) be certified as true and correct by the Service Provider.
- 57.1.2 The Service Provider must:
- (a) provide the accounts and records relating to this Services Agreement to Health upon request (or such other period of time the Parties agree in writing) to allow Health to verify accuracy and compliance with the requirements of this Services Agreement; and
 - (b) participate in invoice reconciliations conducted by Health as requested to assist Health to ensure invoices are correctly referred in accordance with this Services Agreement.

57.2 Subcontractor requirements

- 57.2.1 The Service Provider must securely retain and require its Subcontractors to securely retain, for a period of seven (7) years after termination or expiration of this Services Agreement, whichever is later, all accounts and records referred to in clause 57.1.1.

57.3 Archival Requirements

- 57.3.1 The Service Provider agrees to comply with, and to follow any reasonable directions by Health which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements.

- 57.3.2 The Service Provider must maintain all accounts and records in relation to this Services Agreement for the Term and for a period of seven (7) years after the date of expiry or termination of this Services Agreement.

57.4 Costs

- 57.4.1 The Service Provider must bear its own costs of complying with this clause 57.

58. Audit and access

58.1 Right to conduct audits

- 58.1.1 Health, or a representative of Health may conduct audits relevant to the performance of the Service Provider's obligations under this Services Agreement at any time. Audits may be conducted of:
- (a) the Service Provider's operational practices and procedures as they relate to this Services Agreement, including security procedures;
 - (b) the accuracy of the Service Provider's invoices and reports in relation to the performance of this Services Agreement;
 - (c) the Service Provider's compliance with its confidentiality, privacy and security and other obligations under this Services Agreement;
 - (d) material (including books and records) in the possession of the Service Provider relevant to this Services Agreement; and
 - (e) any other matters determined by Health, or a representative to be relevant to this Services Agreement.
- 58.1.2 Health may, at its discretion, agree to an audit conducted by the Service Provider or a representative relevant to this Services Agreement and only after seeing and approving the audit methodology.

58.2 Access by Health

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

58.3 Conduct of audit and access

- 58.3.1 The Service Provider must provide access to its premises to the extent necessary for Health or its representative to exercise its rights under this clause 58, and provide Health or its representative with any reasonable assistance requested by Health or its representative.
- 58.3.2 Health must use reasonable endeavours to ensure that:
- (a) audits performed pursuant to clause 58.1.1; and
 - (b) the exercise of the general rights granted by clause 58.1.1,
- do not unreasonably delay or disrupt in any material respect the Service Provider's performance of its obligations under this Services Agreement.

58.4 Costs

- 58.4.1 Except as set out in clause 58.4.2, each Party must bear its own costs of any inspections, access and audits.
- 58.4.2 If the Service Provider is able to substantiate that it has incurred direct expenses in Health's exercise of the rights granted under clause 58.1.1 or clause 58.2.1 which, having regard to the value of this Services Agreement, are substantial, Health and the Service Provider may negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated, and will not be payable to the extent the audit reveals failures by the Service Provider to comply with this Services Agreement.

58.5 Auditor General, ANAO and Privacy Commissioner

- 58.5.1 The Auditor-General, the Australian National Audit Office and the Privacy Commissioner, or their delegates, may for the purpose of performing their statutory functions, at reasonable times and on giving reasonable notice to the Service Provider:
- (a) require the provision by the Service Provider or Service Provider Personnel, of records and information which are directly related to this Services Agreement;
 - (b) have access to the premises of the Service Provider for the purpose of inspecting and copying documentation and records, however stored, in the custody or under the control of the Service Provider or Service Provider Personnel, which are directly related to this Services Agreement; and
 - (c) inspect any Health Material held on the premises of the Service Provider.
- 58.5.2 The Service Provider must ensure that any subcontract entered into for the purposes of this Services Agreement contains an equivalent clause granting the rights specified in this clause (Auditor-General, ANAO and Privacy Commissioner).
- 58.5.3 This clause (Auditor-General, ANAO and Privacy Commissioner) applies for the term of this Services Agreement and for a period of seven (7) years after the date of expiration or termination of this Services Agreement. The Service Provider must ensure that any records and documentation related to this Services Agreement are maintained for a minimum of seven (7) years.

58.6 No reduction in responsibility

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

58.7 Subcontractor requirements

- 58.7.1 The Service Provider must ensure that any subcontract entered into for the purpose of this Services Agreement contains an equivalent clause granting the rights specified in this clause 58.

58.8 Consequences of audit

- 58.8.1 The Service Provider must promptly take, at no additional cost to Health, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Service Provider has performed its obligations under this Services Agreement, including but not limited to, the way the Service Provider has:
- (a) provided any Service; or
 - (b) calculated Charges, or any other amounts or fees billed to Health.

59. Data Management**59.1 Generally**

- 59.1.1 The Parties acknowledge that the implementation of the Services may involve the access to or creation of information incorporating personal and other sensitive information and that compliance with this Services Agreement and applicable Laws, including in respect of privacy and security, are of paramount importance.
- 59.1.2 The Service Provider acknowledges and agrees that:
- (a) Health holds and deals with highly sensitive information;
 - (b) Health is concerned that such information is not improperly damaged, destroyed, lost, used or disclosed contrary to this Services Agreement or any Laws; and
 - (c) use or disclosure of such information contrary to this Services Agreement may constitute a breach to which clause 76.1.1 applies; and
 - (d) the Service Provider must notify Health immediately and comply with all directions of Health if the Service Provider becomes aware of any contravention of security requirements.

59.2 Ownership of Health Data

- 59.2.1 Health Data remains the property of Health at all times.

59.3 Protection of Health Data

- 59.3.1 The Service Provider must comply with all data security requirements in respect of access to and use of Health Data specified in the Statement of Requirement or Notified to the Service Provider by Health from time to time.

- 59.3.2 The Service Provider must not, and must ensure that its Subcontractors and Personnel do not:
- (a) remove Health Data or allow Health Data to be removed from Health's, or an End User's premises, otherwise than as required by, and in accordance with, this Services Agreement;
 - (b) take Health Data or allow Health Data to be taken outside of or stored outside of, or accessed from outside of, Australia or require Health to allow Health Data to be taken outside of or stored outside of Australia;
 - (c) use Health Data for purposes other than those directly related to the performance of the Services;
 - (d) sell, let for hire, assign rights in or otherwise dispose of any Health Data;
 - (e) make available any Health Data to any third party other than Subcontractors approved in accordance with this Services Agreement and then only to the extent necessary to enable the Subcontractor to perform its part of the Services;
 - (f) allow any person who does not have the appropriate level of security clearance from gaining access to Health Data; or
 - (g) commercially or otherwise exploit Health Data,
- without Health's prior written consent.
- 59.3.3 The Service Provider must ensure that it has in place, at all times, safeguards against the unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data (including by third parties) which is in the possession of the Service Provider or Service Provider Personnel. The Service Provider must ensure that such safeguards comply with any other security procedures or requirements specified by Health from time to time and all applicable Laws.

59.4 Compliance with Health Security requirements

- 59.4.1 The Service Provider must, and must ensure that its Subcontractors and Personnel, comply with all relevant security procedures and other security requirements as set out in the Statement of Requirement or as otherwise specified by Notice from Health.
- 59.4.2 The Service Provider must comply with such a security procedure or other security requirement immediately if directed by Health or, if no direction is given, within a reasonable time, having regard to the nature of the requirement.
- 59.4.3 The Service Provider must send Health a Notice identifying any potentially relevant security procedure or other security requirement of Health of which it is aware and which is not the subject of a Notice in accordance with clause 59.4.1.
- 59.4.4 The Service Provider must allow Health to undertake assessment visits from time to time to verify that the Service Provider complies with the requirements set out in clauses 59.4.1 to 59.4.3.
- 59.4.5 The Service Provider must:
- (a) comply with all relevant requirements of the Commonwealth Protective Security Policy Framework at <http://www.protectivesecurity.gov.au>, as amended or replaced from time to time and its Protective Security Protocols, including the Protective Security Governance Guidelines - Security of outsourced services

and functions and the Information Security Manual at <http://www.asd.gov.au/infosec/ism/index.htm>;

- (b) comply with the requirements of the ISM, as amended from time to time;
 - (c) ensure that Service Provider Personnel and Subcontractors undertake any security checks, clearances or accreditations as required by Health;
 - (d) notify Health of any changes to circumstances which may affect the Service Provider's capacity to provide the Services in accordance with Health's security requirements.
- 59.4.6 The Service Provider must classify all information in its possession relating to the performance of this Services Agreement according to the Security Classification Grading Document in Schedule [X] and must ensure that such information is safeguarded and protected according to its level of security classification.
- 59.4.7 Security classified information furnished or generated under this Services Agreement, must not be released to a third party, including a representative of another country, without prior written Acceptance of the originator through the Health Representative.
- 59.4.8 In giving any Acceptance to the Service Provider under clause 59.4.7, the Health Representative may impose such conditions as the Health Representative thinks fit, including conditions requiring any recipient of Security Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to Health.
- 59.4.9 The Service Provider must promptly report to the Health Representative any instance in which it is known or suspected that Security Classified Information furnished or generated under this Services Agreement has been lost or disclosed to unauthorised persons, including a representative of another country.
- 59.4.10 All Security Classified Information transmitted between the Parties or a Party and a Subcontractor, located overseas, whether generated in Australia or by another country, must be subject to the Laws of the overseas country regarding the custody and protection of Security Classified Information, and to any bilateral security instrument between Australia and the overseas country.
- 59.4.11 If there has been a breach by the Service Provider, Service Provider Personnel or a Subcontractor of clause 59.4 the Health Representative may give the Service Provider a notice of immediate termination for default under clause 76.1.
- 59.4.12 The Service Provider must ensure the requirements of this clause 59.4 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to Security Classified Information, in order to perform the obligations of the Subcontract.

59.5 Commonwealth Data Protection Plan

- 59.5.1 The Service Provider must comply with the Commonwealth Data Protection Plan in its delivery of the Register and provision of the Services.
- 59.5.2 The Service Provider must maintain and update the Commonwealth Data Protection Plan as material changes occur, and as agreed by the Parties, and provide to Health for Acceptance.

59.6 Return of Health Data

- 59.6.1 Upon Health's request, or on expiry or termination of this Services Agreement, the Service Provider must:
- (a) promptly return all Health Data and all physical and written records containing any of Health's Confidential Information, and all documentation relating to or concerning that Health Data and Confidential Information (or the part Health requests) (including copies) to Health in a form reasonably requested by Health; or
 - (b) if requested by Health:
 - (i) destroy that Health Data and Health's Confidential Information (including copies) in the manner specified by Health or otherwise deal with these items in the manner specified by Health; and
 - (ii) promptly certify to Health in writing that it has done so.
- 59.6.2 Without limiting clause 59.6.1, upon Health's request, or on expiry or termination of this Services Agreement, the Service Provider must:
- (a) provide Health with access to, and the ability to retrieve any Health Data (at no additional charge);
 - (b) comply with any directions of Health in relation to the destruction or de-identification of Health Data;
 - (c) not destroy any Health Data unless it has the prior written approval of Health to do so; and
 - (d) return all Health Data in the format required by Health.

59.7 Breaches of data security

- 59.7.1 The Service Provider must Notify the Health Representative immediately and comply with all directions of Health if the Service Provider becomes aware of:
- (a) any contravention of Health's data security requirements; and
 - (b) any requests from foreign governments or agencies for access to any Health Data (unless such Notification is prohibited by Law).
- 59.7.2 If the Service Provider becomes aware of any actual or suspected:
- (a) action taken through the use of computer networks that result in an actual or potentially adverse effect on Health's systems (including those operated by the Service Provider to provide the Services to Health) or any Health Data (**Cyber Incident**); or
 - (b) any other unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data by any person (**Other Incident**),
- the Service Provider must:
- (c) Notify Health in writing immediately (and no later than 12 hours after becoming aware of the Cyber Incident or Other Incident); and

- (d) comply with any directions issued by Health in connection with the Cyber Incident or Other Incident, including in relation to:
 - (i) notifying CERT Australia, or any other relevant body, as required by Health;
 - (ii) obtaining evidence about how, when and by whom Health's systems (including those operated by the Service Provider to provide the Services to Health) or Health Data has or may have been compromised, and preserving and protecting that evidence for no less than 12 Months;
 - (iii) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
 - (iv) preserving and protecting Health Data (including as necessary reverting to any backup or alternative site or taking other action to recover Health Data).

59.7.3 The Service Provider must ensure that:

- (a) all Subcontracts and other supply chain arrangements, which may allow or cause access to Health Data, contain no provisions that are inconsistent with clauses 59.7.1 or 59.7.2; and
- (b) all Personnel and any Subcontractors who have access to Health Data act in a manner that is consistent with the Service Provider's obligations under this clause 59.

59.8 Misuse of Health Data

59.8.1 The Service Provider acknowledges and agrees that:

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

60. Supply Chain Integrity and Security

60.1.1 To ensure the Integrity of Equipment, Software, people and process that are provided to Health through this Services Agreement the Service Provider must:

- (a) provide Health with visibility of its local and global Equipment and Software supply chains as they relate to Services provided to Health, this includes

reporting each quarter on Subcontractor arrangements, alliances and partnerships with third party suppliers and Software providers;

- (b) provide to Health any additional supply chain information in a timely manner at the request of Health at any time during the Term;
- (c) allow Health to conduct a due diligence and risk review of suppliers and supply chain elements prior to entering into this Services Agreement and during the Term to acquire information regarding Register hardware, Software, firmware, or services and ensure security risks are adequately addressed. Health, in its sole discretion, may require the Service Provider to remove suppliers and/or supply chain elements as a result of any due diligence or risk review. Changes during the Term will be reflected through the Services Agreement variation process;

Note to Tenderers: If Health requests the Service Provider to exclude any suppliers from its solution, Health will endeavour to provide notice. The period of this notice will be determined by Health, at its discretion.

- (d) not deliver Services, store Health Data or information about Health on Equipment or Software from specific suppliers when requested by Health;
- (e) provide Health on a Monthly basis forward plans associated with Infrastructure upgrades and Changes, Software patching and version upgrades or Changes for Software products used to provide the Services to Health, whether shared with the Service Provider's other customers or dedicated to Health;
- (f) protect the Integrity of the Equipment and Software, Health Data and information about Health from unauthorised interference;
- (g) use secure shipping and warehousing for information systems, information system components, and information technology products;
- (h) seek to minimise the time between purchasing decisions and delivery of information systems, information system components, and information technology products; and
- (i) employ independent analysis and penetration testing against delivered information systems, information system components, and information technology products.

Note:

In addition to the above requirements, Health may:

- 1. At the time of request for any information outlined above, apply At Risk Amounts to the non-delivery of requested information in accordance with Schedule 4 - Pricing Framework.***
- 2. Define Service Levels to measure compliance against any of the above.***

61. Confidentiality

61.1 Disclosure and care of Confidential Information

- 61.1.1 Subject to clause 61.3.1, a Party must not, without the prior written consent from the other Party, disclose any Confidential Information of the other Party to a third party.
- 61.1.2 In giving consent to the disclosure of Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party must comply with these conditions if it proceeds to make the disclosure.

- 61.1.3 Each Party must take all reasonable steps to ensure that, subject to clause 61.3.1, its Personnel engaged to perform work under this Services Agreement do not disclose Confidential Information of the other Party obtained during the course of performing such work.
- 61.1.4 The Service Provider must:
- (a) use due care to safeguard Health's Confidential Information and comply with any security requirements specified by Health from time to time;
 - (b) implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of any of Health Confidential Information;
 - (c) immediately notify Health if the Service Provider:
 - (i) suspects or becomes aware of any unauthorised access to or copying, use, disclosure in any form, damage or destruction of any of Health Confidential Information; or
 - (ii) is required by law to disclose any of Health's Confidential Information;
 - (d) take all reasonable steps to enforce any obligation of confidence imposed or required to be imposed by this Services Agreement; and
 - (e) do all things, execute all Documents and give all assistance reasonably required by Health to enforce any obligation of confidence imposed or required to be imposed by this Services Agreement.

61.2 Written undertakings

- 61.2.1 A Party may, at any time, require the other Party to arrange for any of its Personnel (other than a person employed under the *Public Service Act 1999* (Cth)) to whom information may be disclosed pursuant to clauses 61.3.1(a) or 61.3.1(b) to give a written undertaking in the form set out at **Schedule 9 - Health Deed of Confidentiality and Privacy** or **Schedule 10 - Service Provider Deed of Confidentiality**, as the case may be, relating to the use and non-disclosure of the first Party's Confidential Information.
- 61.2.2 The Service Provider must arrange for its Personnel to execute a deed in the form of **Schedule 9 - Health Deed of Confidentiality and Privacy** if any onsite access to Health premises is required, or where an offsite person will access Health's Confidential Information.
- 61.2.3 If a Party receives a request under clause 61.2.1, it must promptly arrange for all such undertakings to be given and must provide copies to the requesting Party.

61.3 Exceptions to obligations

- 61.3.1 The obligations of the Parties under this clause 61 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by a Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Services Agreement, or to the extent necessary in order to obtain advice in relation to its rights under this Services Agreement;
 - (b) is disclosed to a Party's internal management Personnel, solely to enable effective management or auditing of Services Agreement-related activities;

- (c) is shared by Health within Health's organisation, or with another Agency, where this serves the Commonwealth's legitimate interests;
- (d) subject to any Law to the contrary, is disclosed by Health for governmental, reporting or public accountability reasons, including a request for information by the responsible Minister;
- (e) is disclosed by Health, in response to a request by a House or a Committee of the Parliament of the Commonwealth or any State or Territory;
- (f) is information for which disclosure is authorised or required by Law, including under this Services Agreement, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 61.3.1 or any other obligation of confidentiality
- (h) in the case of the Service Provider, as part of its mandatory reporting requirements as a public company or under the rules of a stock exchange.

61.3.2 Health may disclose this Services Agreement, including the total amounts payable by Health under it, to the public.

61.4 Obligations on disclosure

61.4.1 If a Party discloses Confidential Information to another person:

- (a) pursuant to clauses 61.3.1(a) or 61.3.1(b) the disclosing Party must:
 - (i) inform the receiving person that the information is Confidential Information; and
 - (ii) not provide the information, unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 61.3.1(c), 61.3.1(f) or 61.3.1(h), the disclosing Party must inform the receiving Party that the information is Confidential Information.

61.4.2 It is acknowledged that where disclosure is made under clauses 61.3.1(d), 61.3.1(e) and 61.3.1(f), no confidentiality undertaking will be required and no guarantee can be given that the information may not be further disclosed by the recipient.

61.5 Additional Confidential Information

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

61.6 No reduction in privacy obligations

61.6.1 Nothing in clauses 61.1.1 to 61.5.1 derogates from any obligation which either Party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Services Agreement, in relation to the protection of Personal Information.

61.7 Public Announcements

61.7.1 The Service Provider must, before making any public announcement in connection with this Services Agreement or any transaction contemplated by this Services Agreement,

obtain Health's agreement to the announcement, except if the public announcement is required by Law or a regulatory body (including a relevant stock exchange).

61.7.2 If the Service Provider is required by Law or a regulatory body to make a public announcement in connection with:

- (a) this Services Agreement; or
- (b) any transaction contemplated by this Services Agreement,

the Service Provider must limit the public announcement to the extent required by the relevant Law or regulatory body, and, to the extent practicable, first consult with and take into account the reasonable requirements of Health.

62. Disclosures under laws of a foreign country

62.1.1 If the Service Provider or any Subcontractor (including Personnel) is subject to an order made under any law of a foreign country to disclose or transfer data it holds in relation to this Services Agreement to a foreign country or to an entity outside of Australia, the Service Provider must, unless prohibited by such law, Notify Health immediately.

62.1.2 Nothing in clause 62.1.1 otherwise limits or affects the Service Provider's obligations to comply with any Law.

63. Privacy

63.1 Application of the clause

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

63.2 Obligations

63.2.1 In the course of providing the Services, the Service Provider must:

- (a) comply with its obligations under the Privacy Act, including all applicable regulations and registered APP codes or CR codes;
- (b) not engage in an act or practice in connection with the provision of the Services that would:
 - (i) breach an Australian Privacy Principle; or
 - (ii) be an interference with the privacy of an individual under the Privacy Act,

unless that act or practice is permitted under the Privacy Act;

- (c) not do any act, or engage in any practice, in connection with the provision of the Services or this Services Agreement, that would breach an Australian Privacy Principle if it were done or engaged in by Health;
- (d) collect, use, disclose, store, retain and dispose of any Personal Information obtained in the course of providing Services under this Services Agreement only for the purposes of, and as required by, this Services Agreement;

- (e) 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;
- (f) without limiting paragraph 63.2.1(d), not use or disclose any Personal Information or engage in an act or practice that would breach, or cause Health to breach, Australian Privacy Principle 7 (direct marketing) of Schedule 1 of the Privacy Act unless the use or disclosure is authorised by this Services Agreement or is necessary, directly or indirectly, to discharge an obligation under this Services Agreement;
- (g) comply with the security obligations in the Statement of Requirement in relation to the collection, storage, use or disclosure of any Personal Information obtained in the course of providing Services under this Services Agreement;
- (h) not transfer outside of Australia any Personal Information obtained as a result of, or in connection with, providing the Services, or allow access to such Personal Information from a location outside of Australia;
- (i) comply with any Notice given to the Service Provider by Health which is necessary in order for Health to comply with any:
 - (i) notice, direction, determination, recommendation or other requirement of the Privacy Commissioner; or
 - (ii) any undertaking given to the Privacy Commissioner by the Health;
- (j) comply with any Notice given to the Service Provider by Health which is, in the opinion of Health, required in order for Health to comply with data breach notification guidelines;
- (k) 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 63;
- (l) comply with any other applicable Law in relation to Health Data and Personal Information obtained during the course of providing the Register under the Service Agreement; and
- (m) ensure that all of the Service Provider Personnel who deal with Personal Information obtained in the course of providing the Services are made aware of the Service Provider's obligations under this clause 63;
- (n) ensure that any Subcontract for the provision of the Services contains clauses requiring the Subcontractor to comply with this clause 63 as if it were the Service Provider including the requirement in relation to subcontracts;
- (o) immediately Notify Health if the Service Provider becomes aware of any breach, or possible breach, of any obligations under this clause 63, including by Service Provider Personnel or any subcontractors; and
- (p) arrange for all persons to whom Personal Information is to be disclosed to give a written undertaking substantially in the form set out in **Schedule 9 - Health Deed of Confidentiality and Privacy**.

- 63.2.2 Notwithstanding any other provision in this clause 63, if the Service Provider provides a health service to an individual, it will:
- (a) comply with the Australian Privacy Principles in relation to the use and disclosure of health information about the individual; and
 - (b) transfer health information to another health service provider when directed to do so by Health.
- 63.2.3 Without derogating from any other obligations of the Service Provider under statute or otherwise, the Service Provider must assist Health to enable any person, on request, to ascertain in respect of Personal Information:
- (a) whether the Service Provider has possession or control of any records that contain such Personal Information;
 - (b) the nature of the information;
 - (c) the main purposes for which the Personal Information is used by the Service Provider; and
 - (d) the steps that the person should take if the person wishes to obtain access to the Personal Information.
- 63.2.4 The Service Provider must include in the Commonwealth Data Protection Plan the procedures it will implement to ensure that it and all Service Provider Personnel fully comply with and discharge all the Service Provider's obligations under this clause 63.
- 63.2.5 To avoid doubt:
- (a) the Service Provider's obligations in this clause 63 are in addition to, and (to the fullest extent practicable) do not restrict, any other obligations it may have under the Privacy Act, any other applicable Law or any privacy codes or privacy principles contained in, authorised by or registered under any Law, including any such privacy codes or principles that would apply to the Service Provider but for the application of the other provisions of this clause 63; and
 - (b) except as expressly specified in the Services Agreement, the provisions of the Services Agreement do not authorise, and are not to be taken as authorising, the Service Provider to engage in any act or practice that is inconsistent with any Australian Privacy Principle.
- 63.2.6 The Parties agree that:
- (a) subject to clause 63.2.6(b), Health will not seek access to Health Data except for de-identified reports provided to Health by the Service Provider in accordance with the Statement of Requirement;
 - (b) where Health requires access to Health Data that contain Personal Information, the Secretary to Health will notify the Service Provider accordingly, and the Service Provider must comply with that notification; and
 - (c) if a Health employee seeks access to a Health Data without a notification from the Secretary to Health, the Service Provider must notify the Secretary of the request and must not provide the information without a notification from the Secretary to Health.
- 63.2.7 For the purposes of clause 63.2.6, the Secretary to Health includes any person acting as the Secretary to Health.

63.3 Breach of Australian Privacy Principle

- 63.3.1 If either Party believes that any act or practice required under this Services Agreement would or might breach an Australian Privacy Principle, it must immediately Notify the other Party. The Parties will promptly take action to discuss and agree any changes to this Services Agreement which are necessary to ensure that neither the Service Provider or Health are in breach of their obligations under the *Privacy Act 1988 (Cth)*.

63.4 Changes to the Privacy Act

- 63.4.1 If during the Term there are changes to the Privacy Act, including amendments to the APP, which come into force during the Term:
- (a) the Service Provider must comply with the changes to the Privacy Act in the provision of the Services, from the date those changes take effect; and
 - (b) if either Party considers that the changes do or may significantly affect the provision of the Services, it may issue a Notice to the other Party and:
 - (i) the Parties must meet to consider the nature and impact of the changes; and
 - (ii) either Party may request consequential changes to this Services Agreement in accordance with the change control process in clause 82.

63.5 Definitions

- 63.5.1 For the purposes of clause 63:
- (a) 'Privacy Act' means the *Privacy Act 1988 (Cth)*; and
 - (b) 'APP code', 'Australian Privacy Principle', 'CR code' and 'Personal Information' have the same meaning as in the Privacy Act.

63.6 State and Territory Law

- 63.6.1 The Service Provider must also comply with its obligations under any relevant State or Territory privacy Law in its provision of the Services.

Note to Tenderers: Privacy legislation in each of the States and Territories may be applicable to the provision of the Services.

PART 12 - INTELLECTUAL PROPERTY

64. Intellectual Property Rights

64.1 Service Provider to provide all necessary Intellectual Property Rights

64.1.1 The Service Provider must ensure that:

- (a) during the Term and Disengagement Period, Health has access to (or the right to exercise), or usage of, all Intellectual Property Rights necessary for Health to fully benefit from the provision of the Services and the achievement of the Outcomes; and
- (b) following the end of the Term, Health has access to, or usage of, or is able to obtain access to (or the right to exercise) or usage of, all Intellectual Property Rights necessary to ensure continuity of delivery of services that are the same or similar to the Services.

64.1.2 Without limiting any other requirement of this Services Agreement, the Service Provider must do all things necessary to ensure that Health has, and all End Users have, all Intellectual Property Rights necessary to:

- (a) obtain the full benefit of this Services Agreement and the Services;
- (b) properly exercise all functions and tasks contemplated by this Services Agreement and as necessary or incidental to the use or receipt of the Services; and
- (c) obtain ongoing services after the end of the Term.

64.1.3 Clause 64.1.2 includes, without limitation, ensuring that:

- (a) Health and End Users have the right to access and Use the Services (including any Deliverables) or any adaptation of the Services undertaken by any person in accordance with, or as permitted by, this Services Agreement;
- (b) Health has the right to copy, reproduce in a material form, make extracts from, publish, display, perform in public, communicate to the public, adapt and (in the case of Software) integrate, interface, load, compile and run the Services (including any Deliverables) or any adaptation of the Services;
- (c) Health is able to do the things set out in clauses 64.1.3(a) and 64.1.3(b) for any purpose, including for the purposes of developing, implementing and operating Health programs or policies; and
- (d) Health and End Users are able to do the things set out in clauses 64.1.3(a) and 64.1.3(b) anywhere in the world.

64.1.4 The Service Provider must meet the requirements in clauses 64.1.1, 64.1.2 and 64.1.3:

- (a) at all times during the Term (including the Implementation Period and any Transition Period and Disengagement Period); and
- (b) for any items which remain with Health after the Term (including through any vesting, assignment, novation or other transition to Health in accordance with this Services Agreement), for an additional period of 7 years after the end of the Term (unless the Parties agree in writing a different period for a particular item or items).

- 64.1.5 The Service Provider must meet the requirements in clauses 64.1.1, 64.1.2 and 64.1.3 through one or more of the following means:
- (a) a licence or sublicense of the necessary Intellectual Property Rights from the Service Provider, or access or usage rights in respect of those Intellectual Property Rights;
 - (b) a licence or sublicense of the necessary Intellectual Property Rights from a Subcontractor, or access or usage rights in respect of those Intellectual Property Rights;
 - (c) a licence or sublicense of the necessary Intellectual Property Rights from an Other Service Provider, or access or usage rights in respect of those Intellectual Property Rights;
 - (d) a licence or sublicense of the necessary Intellectual Property Rights from a third party, or access or usage rights in respect of those Intellectual Property Rights; or
 - (e) vesting of the necessary Intellectual Property Rights in, or transfer of the necessary Intellectual Property Rights to, Health.
- 64.1.6 If the Service Provider achieves the necessary Intellectual Property Rights through a licence, sublicense or access and usage rights, the Service Provider must ensure that the terms of that licence, sublicense or access and usage rights (including any 'end-user terms' or hyperlinked terms) do not:
- (a) increase the Charges or any other amount payable by Health under this Services Agreement;
 - (b) impose additional obligations on Health or End Users beyond those contained in this Services Agreement;
 - (c) increase Health's liability to the Service Provider or any third parties compared with the position under this Services Agreement;
 - (d) limit or reduce the licences or rights granted by this Services Agreement or otherwise restrict or prohibit Health from using the Services in a way that would otherwise be inconsistent with this Services Agreement;
 - (e) require Health to obtain any additional Software or Services from the Service Provider or any third party;
 - (f) reduce or limit any other rights Health would otherwise have, including but not limited to any right for Health to terminate this Services Agreement or for Health to recover damages for breach whether arising under this Services Agreement or at Law;
 - (g) include additional procedures or processes that must be followed by Health in order to enforce its rights under this Services Agreement;
 - (h) include any additional grounds for the Service Provider to terminate this Services Agreement or the licences granted by this Services Agreement;
 - (i) include any additional rights for the Service Provider or any third parties to access Health's premises or systems;
 - (j) give the Service Provider or any third party any other additional rights or protections beyond those contained in this Services Agreement;

- (k) limit the liability that the Service Provider or any third party would otherwise have under this Services Agreement, whether to Health or an End User;
- (l) limit or reduce any undertakings, guarantees or warranties given by the Service Provider or any third party under this Services Agreement;
- (m) release the Service Provider or any third party from any liability beyond that already contemplated under this Services Agreement,

or are otherwise:

- (n) inconsistent with any other provision of this Services Agreement; or
- (o) less favourable (in a non-trivial respect) to Health than the terms of this Services Agreement.

64.1.7 Any terms that do, or purport to do, any of the things listed in clause 64.1.6 will have no force or effect (any such terms will be treated as if they were marked "Not Used" and any terms the application of which are reduced as a result of that clause will be read and construed accordingly). For clarity, if Health or an End User is required to physically accept terms in order to install, Use or access Services, this clause 64.1.6 will apply despite any such physical acceptance.

64.1.8 Clauses 64.1.6 and 64.1.7 will not apply if, before the relevant Services are Used, accessed or incorporated under this Services Agreement, the Service Provider:

- (a) clearly advises Health of the terms of the licence or sublicense that are inconsistent with clause 64.1.6 and the effect of those terms for Health and any End Users; and
- (b) obtains Health's written consent to the application of those terms of the purposes of this Services Agreement.

64.1.9 For the avoidance of doubt:

- (a) clause 64 applies to any Open Source Software, cloud-based services, Material provided by Other Service Providers, Subcontractors or any other third party;
- (b) clause 64 does not apply to any Software applications or services which are not provided by or on behalf of the Service Provider as part of the Services;
- (c) Health's consent under clause 64.1.8 can be given on conditions or withheld in its absolute discretion; and
- (d) if Health does not provide its written consent to the inconsistent terms under clause 64.1.8, the Service Provider must make alternative arrangements which satisfy clauses 64.1.2, 64.1.3 and 64.1.5.

64.1.10 To the extent that the Service Provider uses or provides any of the Services by using cloud-based services, the Service provider must ensure that all requirements of this Services Agreement are met in respect of those cloud-based services.

64.2 IP Register

64.2.1 The Service Provider must:

- (a) ensure that a comprehensive, accurate, up-to-date, consolidated record is kept of all Intellectual Property Rights incorporated in or related to the Services (**IP Register**), that will enable Health to determine for each item:
 - (i) the ownership and licensing, usage or other access arrangements for that item; and
 - (ii) the method by which the Service Provider has made that item available to Health and End Users under this Services Agreement (that is, which of the mechanisms in clause 64.1.5 has been utilised);
- (b) provide a copy of that record to Health upon request, at no additional charge; and
- (c) otherwise follow best practice for managing Intellectual Property Rights in relation to the Services.

64.2.2 Without limiting clause 64.2.1, the Service Provider must identify to Health all Intellectual Property Rights existing in or required to exist in the Services if requested by Health.

64.3 IP Management

64.3.1 The Service Provider must manage all Intellectual Property related to this Services Agreement in accordance with **Schedule 3 - Management and Governance**.

64.4 Ownership

64.4.1 Nothing in this Services Agreement affects the ownership of Existing Material.

64.4.2 Subject to clause 64.4.3, as between the Parties, all Intellectual Property Rights in the Register and all parts of the Register vest in the Service Provider from the date of creation and are licensed to Health in accordance with clause 64.5.

64.4.3 All New Material created by the Service Provider or its Subcontractors under this Services Agreement vests on its creation in Health unless before that New Material is created:

- (a) the Service Provider proposes alternative ownership arrangements for that New Material to Health in writing; and
- (b) Health agrees to those alternative ownership arrangements in writing.

64.4.4 To the extent any New Material which vests in Health incorporates or is delivered in conjunction with Existing Material:

- (a) Intellectual Property Rights in that Existing Material are retained by the Service Provider (or relevant Subcontractor) absolutely; and
- (b) in respect of Intellectual Property Rights in the Existing Material as and to the extent incorporated or embedded in New Material, the Service Provider grants to Health a perpetual, irrevocable, non-exclusive, world-wide, paid-up licence to use and disclose that Existing Material (and including a right to sublicense to Health contractors) as part of the relevant New Material, and to alter, enhance, and produce derivative works from that Existing Material for the purpose of enabling Health to exercise its rights in relation to the New Material.

- 64.4.5 Prior to a subcontractor commencing any work under the Services Agreement, the Service Provider must obtain from that subcontractor and provide to Health a written assignment to Health of the Intellectual Property Rights described in clause 64.4.3.
- 64.4.6 If requested by Health to do so, the Service Provider will at its own cost, bring into existence, sign, execute or otherwise deal with any Document which may be necessary to give effect to clause 64.4.3.
- 64.4.7 Health may transfer or sublicense any licence under this clause 64 to any person for any purpose related to the Services or meeting the Outcomes.
- 64.4.8 On the expiration or termination of this Services Agreement, the Service Provider must deliver to Health:
- (a) all New Material together with all copies thereof;
 - (b) an up to date and accurate copy of the IP register specified in clause 64.2; and
 - (c) a copy of all other Material created under this Services Agreement.
- 64.4.9 Where Intellectual Property Rights in the New Material vest in Health, in accordance with this clause 64 the Service Provider must ensure that the New Material is used, copied, supplied or reproduced only for the purposes of this Services Agreement.
- 64.4.10 Each Party will have the continuing right to use any know-how it acquires under or in connection with this Services Agreement, subject to compliance with its obligations in respect of confidentiality, privacy, security and data protection and compliance with any Intellectual Property rights, obligations or restrictions.

64.5 Licence of Register

- 64.5.1 For the purposes of:
- (a) Health accessing the Register, using the New Material (as needed) and obtaining the benefits of this Services Agreement; or
 - (b) Disengagement,
- the Service Provider grants to Health a perpetual, irrevocable, royalty free, world-wide, non-exclusive (and including a right to sublicense to Health contractors) licence to use, reproduce and adapt (use) all Intellectual Property Rights relevant to the provision of the Register. To avoid doubt, this licence extends to the Register and Documentation relevant to the operation of the Register.
- 64.5.2 The Intellectual Property Rights referred to in clause 64.5.1 include Intellectual Property Rights in tools and methodologies used for providing the Register.

64.6 Moral Rights

- 64.6.1 To the extent permitted by applicable Laws and for the benefit of Health, the Service Provider must do all things necessary to ensure that Health and End Users do not infringe any individual's Moral Rights by doing any of the things permitted by this clause 64. This includes obtaining genuine and effective consents from individuals as required to ensure that Health may:
- (a) fail to attribute, or falsely attribute, the authorship of the Material, or any content in the Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968 (Cth)*);

- (b) materially alter the style, format, colours, content or layout of the Material and deal in any way with the altered Material;
- (c) reproduce, communicate, adapt, publish or exhibit any Material; and
- (d) add any additional content or information to the Material.

64.7 Licence to the Service Provider for Health Supplied Items

- 64.7.1 During the Term, Health grants to the Service Provider a revocable, non-exclusive, royalty-free and licence-fee free licence to Use, copy and reproduce any Health Supplied Items to meet the requirements of this Services Agreement (including the right to grant a sub-licence to Subcontractors on the same terms for the sole purpose of meeting the requirements of this Services Agreement).
- 64.7.2 The Service Provider must not and must ensure that Service Provider Personnel do not modify any Health Supplied Items without the prior written consent of Health.

65. Escrow Agreement

Note to Tenderers: The need for an escrow agreement will be considered in any negotiations.

- 65.1.1 The Service Provider must:
- (a) place the Escrow Materials in escrow;
 - (b) arrange for itself and each applicable subcontractor (as the case may be), Health and an escrow agent approved by Health to enter into an escrow agreement substantially in the form set out in **Schedule 15 - Escrow Agreement** under which the Escrow Materials will be held in escrow; or
 - (c) arrange for Health to become a party to a new or an existing escrow arrangement covering that Escrow Material which Health regards as a satisfactory arrangement; and
 - (d) no later than 6 Months after the Commencement Date, promptly deposit those Escrow Materials with an escrow agent approved by Health; and
 - (e) every subsequent 6 Months update the Escrow Materials held in escrow so that they reflect the Register from time to time.
- 65.1.2 The cost of the escrow arrangement will be shared equally by the Service Provider and Health. The Service Provider must consult with, and comply with the reasonable directions of, Health in any negotiations with the escrow agent arising under this clause 65.
- 65.1.3 The Service Provider grants to Health a licence to make full use of the Escrow Materials to enable it to derive the full benefits it is entitled to receive under the terms of this Services Agreement (including the right to modify, adapt and support the Register), with effect from the date of the event that triggered release of the Escrow Materials to Health in accordance with the relevant escrow agreement.

PART 13 - WARRANTIES AND INDEMNITIES

66. Disclaimer

66.1.1 The Service Provider:

- (a) acknowledges and agrees that:
 - (i) it has been provided information prior to the signing of this Services Agreement relevant to the Service Provider's performance of this Services Agreement (**Pre-Services Agreement Information**); and
 - (ii) the accuracy of the Pre-Services Agreement Information has not been verified or checked by Health or any of its officers, employees, agents or advisers, or independently audited;
- (b) acknowledges and agrees that it has conducted its own investigations and made its own assessments as to the appropriateness and accuracy of all Pre-Services Agreement Information and has sought appropriate professional advice about:
 - (i) any information, statements, or representations contained in any Pre-Services Agreement Information;
 - (ii) the regulatory regime applicable to the provision of the Services to Health;
 - (iii) the financial condition, business affairs, and operations of Health;
 - (iv) the assumptions, uncertainties and contingencies which may affect the future business of Health; and
 - (v) the impact that a variation in future outcomes may have on any Services and the ability of the Service Provider to meet the Outcomes;
- (c) agrees that it will be deemed to have satisfied itself as to all matters which affect or may affect its obligations under this Services Agreement;
- (d) acknowledges that, subject to any Law to the contrary, and to the maximum extent permitted by Law, Health, its officers, employees, agents and advisers each disclaim all liability for any Loss or damage (whether foreseeable or not) suffered by any person acting on any part of the Pre-Services Agreement Information, whether or not the Loss or damage arises in connection with any negligence, default or lack of care on the part of Health or its officers, employees, agents or advisers or any misrepresentation or any other cause;
- (e) agrees to be bound (to the maximum extent permitted by Law) by any disclaimer contained in or accompanying any Pre-Services Agreement Information;
- (f) agrees that no Pre-Services Agreement Information forms part of this Services Agreement unless expressly incorporated into this Services Agreement;
- (g) waives and releases (to the maximum extent permitted by Law) all claims or rights of action against Health, its officers, employees, agents and advisers in relation to the conduct of the process relating to the Pre-Services Agreement Information and the RFT process and Documents in respect of this Services Agreement;

- (h) agrees that neither Health nor its officers, employees, agents or advisers (to the extent permitted by Law):
 - (i) subject to any express provision in this Services Agreement to the contrary, makes or gives any representation, assurance or warranty, express or implied, that any part of the Pre-Services Agreement Information is or will be current, accurate, reliable, suitable or complete;
 - (ii) subject to any express provision in this Services Agreement to the contrary, is under any obligation to notify the Service Provider or any other person, or to provide any further information to the Service Provider or any other person, if they or any of them become aware of an inaccuracy, incompleteness or change in the Pre-Services Agreement Information;
 - (iii) is under any obligation or duty in relation to the Pre-Services Agreement Information, either to the Service Provider, or to any person obtaining information from the Service Provider;
 - (iv) professes any expertise, or represents any willingness to apply any expertise, for the benefit of the Service Provider;
 - (v) makes any express or implied representation or warranty that any estimate or forecast will be achieved or that any statements as to future matters will prove correct;
 - (vi) represents that the assumptions on which any forecast is based are accurate, complete or reasonable;
 - (vii) (except so far as liability under any Law cannot be excluded) accepts responsibility arising in any way for errors in, or omissions from, the Pre-Services Agreement Information, or in negligence;
 - (viii) accepts any liability for any Loss or damage suffered by any person as a result of that person or any other person placing any reliance on any Pre-Services Agreement Information; or
 - (ix) assumes any duty of disclosure or fiduciary duty to any interested party; and
- (i) acknowledges that Health has entered into this Services Agreement relying on the warranties, acknowledgements, agreements, waivers, releases and indemnities given by the Service Provider in this Services Agreement.

66.1.2 This clause 66 of the Services Agreement is intended to benefit and is to be interpreted as benefiting Health and each of its officers, employees, agents and advisers and to be enforceable by each of those persons. To that extent, Health has entered the Services Agreement on its own behalf and on behalf of each of those persons.

67. Warranties

67.1 General Warranties

67.1.1 The Service Provider warrants, represents and undertakes that:

- (a) Health will not require access to the Service Provider's proprietary information to ensure continuity of the delivery of services that are the same or similar to Services following the end of the Term;

- (b) another service provider appointed by Health following the Term will not require access to the Service Provider's proprietary information to provide services to Health that are the same or similar to the Services; and
- (c) to the extent that the Service Provider's proprietary information or material are needed to ensure continuity of service delivery during the Term, or during the Transition-Out Period, the Service Provider will make that information or material available to Health upon request.

67.1.2 The Service Provider represents and warrants that:

- (a) it has, and the Service Provider Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to provide the Services and to meet the Outcomes in a skilful, diligent, responsive, professional, courteous, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Services Agreement and meets Health's requirements (including the Outcomes) in full;
- (b) it will meet and seek to exceed the Performance Standards at all times during the Term;
- (c) it will provide and use the necessary resources to provide the Services and to meet the Outcomes;
- (d) the Services and use of the Services by Health (including End Users) will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (e) it has or will have the necessary rights to vest the Intellectual Property Rights and grant all necessary licences or sublicences under clause 64;
- (f) it has undertaken, and will undertake during the Term, all necessary investigations (for example, ensuring that the Services do not infringe any current Intellectual Property Rights) in order to provide the warranties under this Services Agreement;
- (g) the Service Provider will perform its responsibilities under this Services Agreement in a manner that does not infringe any of Health's Intellectual Property Rights;
- (h) it will not infringe any person's Intellectual Property Rights in performing the Services or meeting the Outcomes;
- (i) it owns or has the right to use the Register and all other Materials necessary to perform the Services and to meet the Outcomes;
- (j) it has the right to grant all licences granted pursuant to this Services Agreement;
- (k) it is not aware of any circumstances that would affect its ability to perform the Services or achieve the Outcomes in a manner that complies with all Laws and this Services Agreement and it will immediately notify Health if any such circumstances arise;
- (l) it has and will be deemed to have done everything possible to inform itself completely as to:
 - (i) Health's requirements for Services and Outcomes under this Services Agreement;

- (ii) the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Services Agreement; and
 - (iii) all things necessary for delivery and management of this Services Agreement and the performance of the Service Provider's obligations under this Services Agreement;
- (m) it enters into this Services Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (n) in providing the Services and meeting the Outcomes, it will at all times comply with this Services Agreement;
- (o) each of the Services will conform with:
 - (i) this Services Agreement; or
 - (ii) where relevant and subject to clause 67.3.3, any third party warranties specified in this Services Agreement or applicable to a Service;
- (p) if and to the extent ownership of a Service or Deliverable under this Services Agreement is to pass to Health, the Service or Deliverable will be free from any charge or encumbrance and will meet the required functional and performance requirements;
- (q) it will not, nor will it suffer or permit Service Provider Personnel or any third party under its direction or control to negligently or wilfully introduce into Health's systems or any Software, any Harmful Code; and
- (r) if any Harmful Code is introduced into Health's systems or any Software, whether through a breach of clause 67.1.2(b) or otherwise, the Service Provider must:
 - (i) immediately report that introduction to Health;
 - (ii) take all necessary action to eliminate the Harmful Code; and
 - (iii) promptly and at its own cost, repair any harm or destruction caused by that Harmful Code, subject to any directions from Health.

67.1.3 The Service Provider represents and warrants that:

- (a) it has the right to enter into this Services Agreement;
- (b) it has:
 - (i) full corporate power and authority; and
 - (ii) all rights, title, licences, interests and property necessary,
 to lawfully enter into, perform and observe its obligations under this Services Agreement;
- (c) the execution, delivery and performance of this Services Agreement has been duly and validly authorised by all necessary corporate action; and

- (d) the Service Provider's signing, delivery and performance of this Services Agreement does not constitute:
 - (i) a violation of any judgment, order or decree;
 - (ii) a material default under any Services Agreement which relates in any way to the provision of the Services, and 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.

67.1.4 The Service Provider represents and warrants that it has disclosed in writing to Health prior to the Commencement Date any litigation or Proceeding whatsoever that, to the best of the Service Provider's knowledge and belief after due inquiry, are taking place, are pending, or are threatened against it or a Related Body Corporate which, if adversely decided, would in all the circumstances be reasonably likely to have a material adverse effect on:

- (a) the Service Provider's ability to perform its obligations under this Services Agreement; and/or
- (b) the Service Provider's reputation.

67.1.5 The Service Provider represents and warrants that:

- (a) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount; and
- (b) it is not, and Service Provider Personnel are not, an Inappropriate Person.

67.1.6 The Service Provider warrants that it will promptly Notify and fully disclose to Health any event or occurrence actual or threatened during the Term of this Services Agreement that would materially affect the Service Provider's ability to perform any of its obligations under this Services Agreement, including but not limited to any event or occurrence referred to in clause 67.1.4 and 67.1.5.

67.1.7 The Service Provider warrants that, subject to the exceptions in clause 11.5, the data Services will be provided in accordance with:

- (a) the requirements of this Services Agreement in all material respects;
- (b) the Outcomes; and
- (c) due care and skill.

67.1.8 The Service Provider warrants that all components of the Register will combine and interact with each other.

67.2 Warranty in respect of Health Data

67.2.1 The Service Provider warrants, represents and undertakes that:

- (a) no Health Data will be accessed without authorisation, misused, damaged, destroyed, lost, altered or corrupted in the course of the provision of the Services as a result of a breach by the Service Provider or any of the Service Provider Personnel of the obligations set out in this Services Agreement; and

- (b) all Health Data required to be migrated or otherwise transferred between any component of the Health ICT environment will retain the same degree of integrity, functionality and useability following any migration or transfer,

67.3 Effect of warranties

67.3.1 Nothing in this clause 67:

- (a) restricts the effect of any conditions or warranties which may be implied by the *Competition and Consumer Act 2010 (Cth)* or any sale of goods or fair trading Laws; or
- (b) limits Health's right to take action on the basis of the common law that would be applied by the High Court of Australia in respect of a breach of Services Agreement, tort, equity or any other common law or statutory cause of action.

67.3.2 The Service Provider acknowledges that Health is entering into this Services Agreement in reliance on the warranties given by the Service Provider in this clause 67.

67.3.3 Where the Service Provider supplies Services that have been procured from a third party, the Service Provider assigns to Health, to the extent permitted by Law, the benefits of the warranties given by the third party. This assignment does not in any way relieve the Service Provider of the obligation to comply with warranties provided directly by the Service Provider under this Services Agreement.

67.3.4 Health warrants that it has the right and authority to enter into this Services Agreement.

68. Guarantees

68.1 Performance Guarantee

Note to Tenderers: The need for a performance guarantee will depend on Health's risk assessment.

If the Guarantor is a foreign entity, a legal opinion will be required about the validity and enforceability of the guarantee.

68.1.1 The Service Provider must provide, on or before the Commencement Date of this Services Agreement, a Performance Guarantee, which must be:

- (a) duly executed by a guarantor approved by Health and enforceable against the guarantor; and
- (b) in a form acceptable to Health and substantially in the form set out at **Schedule 12 - Performance Guarantee**.

68.1.2 The purpose of the Performance Guarantee referred to in clause 68.1.1 is to ensure the due performance of this Services Agreement by the Service Provider and, in the event of default, for the Service Provider's guarantor to perform this Services Agreement on behalf of the Service Provider.

68.1.3 If the guarantor is incorporated outside of Australia or is a charity, the Service Provider must also provide to Health a legal opinion supporting, and in respect of, the performance guarantee which is:

- (a) from lawyers to the guarantor, authorised to practice in the place of incorporation of the guarantor, stating that the performance guarantee is binding and enforceable against the guarantor;

- (b) in favour of Health; and
- (c) in a form reasonably satisfactory to Health.

68.2 Financial Undertaking

Note to Tenderers: The need for a financial undertaking will depend on Health's risk assessment.

- 68.2.1 The Service Provider must, at its expense, provide to Health, within 30 Business Days after a request from Health, security in the form of an unconditional and irrevocable banker's undertaking which must be:
- (a) executed by a financial institution approved by Health and be stamped (if required);
 - (b) materially in the form of the undertaking appearing at **Schedule 13 - Financial Undertaking**, or an alternative form agreed by the Health Representative; and
 - (c) in an amount notified by Health, which will not exceed the sum of **[insert]**.
- 68.2.2 The Financial Undertaking referred to in clause 68.2.1 is for the purpose of ensuring the due and proper performance of this Services Agreement by the Service Provider, and Health may (without reference to the Service Provider) demand any sum under that banker's security from the financial institution referred to in clause 68.2.1 in respect of:
- (a) amounts owed to Health by the Service Provider;
 - (b) damages suffered by Health and Health Personnel as a result of a breach of this Services Agreement by the Service Provider; and
 - (c) any Loss suffered by Health and Health Personnel that is the subject of an indemnity under this Services Agreement.
- 68.2.3 If the Financial Undertaking referred to in clause 68.2.1 is subject to a time limit, and the Term of this Services Agreement is extended under clause 2.1.2 beyond that time limit, the Service Provider must, prior to the commencement of that extension, provide to Health a further Financial Undertaking in accordance with clause 68.2.1 for a period that continues for the relevant Term or such longer period as is requested by Health.
- 68.2.4 If Health exercises any or all of its rights under the Financial Undertaking, Health will not be liable for, and the Service Provider releases Health from, liability for any resultant Loss to the Service Provider.

68.3 Future Payments

- 68.3.1 Health is not obligated to make any payment or further payments under this Services Agreement whether or not those payments are due until Health has received a duly executed Financial Undertaking and Performance Guarantee as required by this clause 68.
- 68.3.2 Health's rights to recover from the Service Provider the balance of Losses suffered by Health after any exercise of its rights under a Financial Undertaking or the Performance Guarantee will not be limited by Health's exercise of those rights.

69. Insurance

69.1 Obligation to maintain insurance

- 69.1.1 The Service Provider must have and maintain valid and enforceable insurance policies (with reputable insurance companies and on terms acceptable to Health) to the following levels:
- (a) for the Term of this Services Agreement:
 - (i) public liability insurance - an insured amount of not less than [AUD 20,000,000] per claim and [AUD 20,000,000] in the aggregate;
 - (ii) professional indemnity or errors and omissions insurance - on a claims made basis for an insured amount of not less than [AUD 20,000,000] per claim and [AUD 20,000,000] in the aggregate for all claims during any one 12 Month policy period which covers the legal liability of the Service Provider arising from wrongful acts of the Service Provider, its employees, or of someone for whose wrongful acts the Service Provider is legally responsible. The policy must include cover for infringement of copyright or trademark, solely with respect to Software and Software code and design, committed or attempted in the performance of professional services;
 - (iii) product liability insurance - an insured amount of not less than [AUD 20,000,000] per claim and [AUD 20,000,000] in the aggregate for all occurrences during any one 12 Month policy period;
 - (iv) workers' compensation insurance or have an approved self-insurance regime:
 - A. as required by Law under any statute relating to workers' or accident compensation and, where common law claims are permissible outside of the relevant statutory scheme, insurance for employer's liability at common law with a limit of indemnity of not less than [AUD 50 million] for any one event; and
 - B. in each country, state or territory where the Service Provider's employees normally reside, where their contract of employment was made or where work is undertaken; and
 - (v) property insurance to cover the risk of loss of or damage to property under this Services Agreement including liability cover for loss or damage to the property of others in the care, custody and control of the Service Provider; and
 - (b) for seven (7) years following the expiry or termination of the later of this Services Agreement, AUD 20,000,000 per claim and AUD 20,000,000 in the aggregate for all claims during any one 12 Month policy period either professional indemnity or errors and omissions insurance which covers the legal liability of the Service Provider arising from wrongful acts of the Service Provider, its employees, or of someone for whose wrongful acts the Service Provider is legally responsible. The policy must include cover for infringement of copyright or trademark, solely with respect to Software and Software code and design, committed or attempted in the performance of professional services.

- 69.1.2 The taking out and maintaining of insurance as required by this Services Agreement does not in any way limit or expand the responsibilities, obligations or liability of this Services Agreement under other provisions of this Services Agreement.

69.2 Certificates of currency

- 69.2.1 The Service Provider must, on request by Health, promptly provide to Health:
- (a) a certificate of currency evidencing compliance with the terms of clause 69 for any insurance policy required to be effected and maintained pursuant to clause 69 and such documentation must record the name of the insurer or the insurers, the insured, the profession or business activities, the type of policy, policy number, the policy expiry date and the amount of cover, the excess or deductible, territorial or geographical limits and the extensions or exclusions applying;
 - (b) copies of all cover notes, policy wordings, certificates of currency, renewal certificates and endorsement slips (for access to view and take notes on any such documents at any time on reasonable notice at a convenient location within the Canberra central business district) as soon as the Service Provider receives them; and
 - (c) other evidence of the insurances which the Service Provider reasonably requires.

69.3 Terms of Insurance

- 69.3.1 The Service Provider must:
- (a) except for statutory insurance, effect all insurance required by clause 69 with insurers with a financial security rating of A- or better with AM Best or the equivalent rating with another international recognised rating agency;
 - (b) in relation to the public liability insurance required to be effected and maintained pursuant to clause 69.1.1, ensure that Health is named as an additional insured;
 - (c) to the extent permitted by the relevant statutory scheme, and in respect of employers' liability insurance, where this insurance is commercially available in relation to workers compensation insurance, ensure that the policy is endorsed to insure Health as principal, for principal's liability but only with respect to any vicarious liability of Health for the acts or omissions of the Service Provider;
 - (d) ensure that the Approved Subcontractors effect and maintain valid and enforceable insurance policies of the types specified in clause 69.1 and in amounts that are appropriate taking into consideration the services to be provided by the Approved Subcontractor in connection with this Services Agreement. Without limiting the Service Provider's responsibility for acts or omissions of its Approved Subcontractors, any deficiencies in the coverage or policy limits of the Approved Subcontractor's insurance is the sole responsibility of the Service Provider; and
 - (e) notify Health in writing:
 - (i) within 5 Business Days after the Service Provider becomes aware of an event which would give the Service Provider's insurer the right to terminate any of the policies required by clause 69.1; or

- (ii) within 5 Business Days after the Service Provider's insurer gives the Service Provider notice that it intends to cancel or commute any of the policies required by clause 69.1.

- 69.3.2 The Service Provider must ensure that in relation to the insurance policies required by clause 69.1 that:
- (a) all insurance agreements and endorsements (with the exception of limits of indemnity) also name as insureds and operate as if there was a separate policy of insurance covering Health (for Health's vicarious liability for the act or omissions of other insureds), the Service Provider and its employees;
 - (b) in relation to which the insurer agrees to waive all rights, remedies of relief to which it might be entitled by way of subrogation against named insureds;
 - (c) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of other insured; and
 - (d) notice of a claim by any insured will be accepted by the insurer as notice by all insureds.
- 69.3.3 The insurance policies required by clause 69.1 must be effected and maintained with an insurance company authorised to conduct insurance business in Australia and must be governed by the Law of an Australian state or territory.
- 69.3.4 Without limiting the Service Provider's responsibility for acts or omissions of its Approved Subcontractors, any deficiencies in the coverage or policy limits of the Approved Subcontractor's insurance is the sole responsibility of the Service Provider.

69.4 Specific Insurance Policy

- 69.4.1 If Health requests specific insurance, the Service Provider must seek details and premium costs for such a policy and provide that information to Health within 20 Business Days after the request or such other time period agreed by the Parties after Health's request.
- 69.4.2 An insurance policy referred to in clause 69.4.1 must:
- (a) be primary, and
 - (b) in relation to any public liability insurance and property insurance taken out under this clause 69.3, ensure that Health is named as a joint insured or the loss payee, as appropriate, on the insurance policies and that it is a term of the policies that they operate as if a separate policy was issued to each named insured and in which the insurer waives its rights of subrogation against named insureds.
- 69.4.3 If Health approves the information provided by the Service Provider under clause 69.4.1, the Service Provider must promptly effect and maintain the insurance. Health will pay the costs of the insurance premium as an Approved Pass Through Charge.
- 69.4.4 Health must be given a copy of the insurance policy wording and all endorsements for any policy so provided under this clause 69.3 and, thereafter whenever requested, a certificate of currency.

69.5 Failure to take out or maintain insurance

- 69.5.1 If the Service Provider fails to satisfy its obligations under clause 69, Health may take out and maintain such insurance policies and pay the premiums as necessary and then

deduct such amounts from any Charges or other moneys that are or may become due to the Service Provider or recover the same as a debt due under this Services Agreement. The Service Provider must provide Health with all reasonable assistance and information without delay in order to allow Health to exercise this right.

69.6 Excess

- 69.6.1 In the event of a claim under any of the policies referred to in this clause 69, the Service Provider is liable for any excess applicable except to the extent that the claim is due to the negligent act or omission of or breach of Services Agreement by:
- (a) Health which will be the responsibility of Health and will be paid by Health or reimbursed by Health to the Service Provider; or
 - (b) more than one Party in which the extent of the excess will be paid by the Parties in proportion to their liability for their loss or damage which gave rise to the claim.

69.7 Compliance with Insurance

- 69.7.1 The Service Provider must ensure that in relation to any insurance policy required to be effected and maintained by it by clause 69 it:
- (a) complies with and abides by all the terms and conditions of the insurance policies;
 - (b) notifies Health of any event which may result in an insurance policy lapsing or being cancelled or being avoided;
 - (c) gives, full, true and particular information to the insurer of all matters and things the non-disclosure or misrepresentation of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
 - (d) does everything reasonably required to claim and to collect or recover monies due under any insurance policy; and
 - (e) where the Service Provider becomes aware that an insurer's security rating has fallen below A - with AM Best or the equivalent rating with another recognised rating agency, immediately inform Health and if requested by Health, seek alternative equivalent insurance to replace the insurance held with such an insurer without unreasonable delay.

69.8 Subcontractors

- 69.8.1 The Service Provider must ensure that its subcontractors, agents and consultants are insured as required by clause 69.1, as is appropriate given the nature of services or work to be performed by them, as if they were the Service Provider.

70. Liability

70.1 Relevant Law

- 70.1.1 The liability of a Party for breach of this Services Agreement, or in tort (including negligence), or for any other common law or statutory cause of action arising out of the operation of this Services Agreement, will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia.

70.2 Risk of Loss

- 70.2.1 The Service Provider is responsible for risk of, Loss of, and damage to, any property, the Register including Equipment and Software or other Materials used by it to provide the Services, except to the extent that any Loss of, or damage to, any such property, Equipment, Software or other Materials is caused by a malicious or negligent act or omission of Health or any Health Personnel.

70.3 Limitation of Liability - Health and the Service Provider

- 70.3.1 The liability of each of Health and the Service Provider arising out of or in connection with any common law, equitable, statutory or other cause of action arising out of operation of this Services Agreement (including under any indemnity) is, subject to clause 70.1.1, limited to an amount equal to AUD 20,000,000.
- 70.3.2 The limit on the liability of Health or the Service Provider under clause 70.3.1 does not apply in relation to liability relating to:
- (a) personal injury (including sickness and death);
 - (b) Loss of, or damage to, tangible property;
 - (c) an infringement of Intellectual Property Rights;
 - (d) a breach of any obligation of confidentiality, security, privacy or data security obligations under this Services Agreement or at Law; or
 - (e) fraud, breach of a Law, any deliberately wrongful act or omission, or unlawful act or omission (including repudiation of this Services Agreement).
- 70.3.3 The limitation of liability specified in clause 70.3.1 is an aggregate limit during the Term.
- 70.3.4 Notwithstanding any other clause in this Services Agreement, each Party excludes any and all liability to the other Party (whether arising in contract or tort (including negligence) or under any statute) for the following Losses suffered by that other Party:
- (a) exemplary damages; and
 - (b) punitive damages.
- 70.3.5 The exclusion in clause 70.3.4 does not extend to or include:
- (a) additional internal administrative and management costs and expenses;
 - (b) expenditure or fees rendered unnecessary;
 - (c) costs of procuring replacement goods or services;
 - (d) costs of repairing goods; and/or
 - (e) legal fees on a full indemnity basis.
- 70.3.6 For clarity, subject to the limitations on liability specified in clause 70.3.1, the Losses in clause 70.3.5 are not excluded from a Party's liability.

70.4 Mitigation

- 70.4.1 Each Party must use all reasonable endeavours to mitigate its Loss, damages and expenses arising under and in connection with a breach of this Services Agreement, or in

tort (including negligence), or for any other common law or statutory cause of action arising under or in connection this Services Agreement.

70.5 Contribution

70.5.1 The Parties agree to review the limitation of liability before any extension of the Term of this Services Agreement with the intent that the Parties may agree, for the extended Term, to maintain the limit of the liability applicable to this Services Agreement. If no change is agreed, the existing limit will apply to the extended Term.

70.5.2 The liability of a Party for any Losses incurred by another Party will be reduced proportionately to the extent that:

- (a) any negligent act or omission of the Party that incurred the Loss (or of its Subcontractors or Personnel); or
- (b) any failure by the Party that incurred the Loss to comply with its obligations under this Services Agreement,

contributed to those Losses, regardless of whether legal Proceedings are brought by either Party for negligence or breach of Services Agreement.

71. Indemnities

71.1 Service Provider's Indemnity

71.1.1 The Service Provider indemnifies the Indemnified Persons against any Losses sustained or incurred by any of the Indemnified Persons as a result of, or arising out of, or in connection with:

- (a) any breach of the Services Agreement by the Service Provider;
- (b) any breach of any Law by the Service Provider;
- (c) any claim by a third Party against Health in connection with any failure by the Service Provider or any of the Service Provider Personnel to comply with any Law; or
- (d) any Wilful Misconduct or any negligent or unlawful act or omission of the Service Provider or its Subcontractors or Service Provider Personnel in the performance of this Services Agreement (including any act or omission that constitutes repudiation of this Services Agreement).

- 71.1.2 The Service Provider's liability to any Indemnified Person under clause 71.1.1 will be reduced proportionally to the extent that any Wilful Misconduct or any unlawful or negligent act or omission of, or breach of this Services Agreement by, that Indemnified Person caused or contributed to the Loss.
- 71.1.3 Subject to compliance at all times with clause 71.5, Health reserves the right to take any action it chooses in the defence of any claim (including seeking damages from the Service Provider) in the event that the Service Provider fails to admit its obligations under clause 71.1.1.
- 71.1.4 Nothing in an indemnity contained in clause 71.1.1 shall in any way reduce or qualify an Indemnified Person's rights at Law in respect of the events which are the subject of the indemnity.
- 71.1.5 The indemnity under clause 71.1.1 will survive the expiration or termination of this Services Agreement.

71.2 Service Provider's Intellectual Property Right Indemnity

- 71.2.1 The Service Provider indemnifies the Indemnified Persons against any Losses whatsoever sustained or incurred by those Indemnified Persons as a result of a claim, suit, demand, action or proceedings made or threatened by a third party that:
- (a) the performance of the Services by the Service Provider, or and use of or access to the Services by Health in accordance with this Services Agreement, infringes the Intellectual Property Rights or Moral Rights of a third party;
 - (b) any Health Supplied Material or Health Material infringes a third party's Intellectual Property Rights, if the claim is based on or attributable to the fact that the Service Provider has modified (or has had modified by a third party) any of the Health Supplied Material or Health Material unless the modification was made by the Service Provider at the express direction of Health and not in contravention of any conditions of use of the Health Supplied Material or Health Material disclosed to the Service Provider by Health;
 - (c) that the combination, operation or use by the Service Provider of a Health Supplied Material or Health Material with any Service Provider Material or Third Party Material infringes the Intellectual Property Rights of a third party except to the extent that:
 - (i) Health consented in writing to the proposed use of the Health Supplied Material or Health Material by the Service Provider; or
 - (ii) Health failed to disclose to the Service Provider any limitations of which Health was aware that related to the Health Supplied Material or Health Material and that would restrict the Service Provider's right to combine, operate or use the Health Supplied Material or Health Material in such a way; and

the failure to comply with the limitations referred to in this clause 71.2.1(c) directly results in the infringement, and the infringement is caused by the Health Supplied Material or Health Material; and
 - (d) that the combination, operation or use by the Service Provider of New Material with any Service Provider Material or Third Party Material infringes the Intellectual Property Rights of a third party.
- 71.2.2 The indemnity in clause 71.2.1 does not apply to the extent that any Losses arise as a result of an allegation that provision of the Services by the Service Provider using Health

Supplied Items infringes Intellectual Property Rights or Moral Rights that are not provided by the Service Provider or a Subcontractor, but only if:

- (a) the Service Provider has complied with its obligations under this Services Agreement in relation to its rights associated with the Services;
- (b) the Service Provider has used reasonable endeavours to make diligent enquiries about the Intellectual Property Rights or Moral Rights in those Services before providing the Services; and
- (c) those enquiries did not indicate that the Service Provider's provision of the Services will or might lead to any allegation that any Service infringes the Intellectual Property Rights or Moral Rights of a third party.

71.2.3 For the purposes of clause 71.2.1, an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990 (Cth)*, section 96 of the *Designs Act 2003 (Cth)*, section 183 of the *Copyright Act 1968 (Cth)* and section 25 of the *Circuit Layouts Act 1989 (Cth)*, constitute an infringement.

71.2.4 If any Materials or item used by the Service Provider to provide the Services becomes, or in the Service Provider's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or Proceeding, the Service Provider must, in addition to indemnifying Health as provided in this clause 71 and to the other rights Health may have under this Services Agreement, promptly:

- (a) use its best endeavours to secure the right to continue using the Material or item to continue providing the Services or modify the Materials or item so as to continue to meet the Outcomes without infringing any entity's Intellectual Property Rights or Moral Rights;
- (b) replace or modify the Materials or item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected Services or the Service Provider's ability to meet the Outcomes; or
- (c) if, and only if, the Service Provider cannot do those things in this clause or Health does not exercise the rights referred to in clause 71.2.5, the Service Provider must remove the Material or item from the Services and the Charges will be reduced to reflect that removal (but this will not affect the Service Provider's obligations to meet the Outcomes).

71.2.5 If the Service Provider has been unsuccessful under clause 71.2.4, Health may decide to continue to possess and use the infringing part of the Services by exercising its rights, if it has power to do so, under the legislation referred to in clause 71.2.3. In such a case Health may, after consulting with the Service Provider, reach agreement with the owner of the affected Intellectual Property Rights for Health's continued possession and use of the relevant Materials, item and Services.

71.2.6 The actions under clause 71.2.4 and 71.2.5 will be at the Service Provider's expense except to the extent that the Service Provider establishes that the infringement was caused by the act or omission of Health or Health Personnel acting contrary to any terms and conditions notified in writing to health by the Service Provider.

71.2.7 Health's right to be indemnified under this clause 71.2 in addition to, and not exclusive of, any other right, power or remedy provided at Law.

71.3 Service Provider's Privacy Indemnity

- 71.3.1 The Service Provider indemnifies Health and Health Personnel in respect of any Loss or liability suffered or incurred by the Health which arises directly or indirectly from any claim, suit, demand, action, or Proceeding by any person in respect of a breach by the Service Provider, Service Provider Personnel or Subcontractors, of the obligations under clause 63.

71.4 Indemnity in respect of Health Data

- 71.4.1 The Service Provider indemnifies the Commonwealth in respect of any Loss suffered by the Commonwealth because any Health Data is lost or corrupted in the course of the provision of the Services as a result of any:

- (a) deliberately wrongful, reckless, negligent or unlawful act or omission of; or
- (b) conduct amounting to a breach of the warranty in clause 67.2 by,

the Service Provider or the Service Provider Personnel, except to the extent that Health Data is lost or corrupted in the course of the provision of the Services due to an act or omission of the Commonwealth or its Personnel (not including an act or omission which the Service Provider has advised or recommended to the Commonwealth or its Personnel to take).

71.5 Health obligations

- 71.5.1 If Health wishes to enforce an indemnity under clauses 71.1.1 or 71.2.1 it:

- (a) must give written Notice to the Service Provider as soon as practical;
- (b) may, subject to the Service Provider agreeing to comply at all times with clause 71.6.1, permit the Service Provider, at the Service Provider's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (c) in the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of Health under clause 71.5.1(b), must provide all reasonable assistance to the Service Provider in the handling of any negotiations and litigation.

71.6 Service Provider's obligations

- 71.6.1 In the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of Health under clause 71.5.1(b) the Service Provider must:

- (a) defend the claim and comply with government policy and obligations, as if the Service Provider were Health, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction given by the Attorney-General to the Commonwealth or delegate;
- (b) keep Health informed of any significant developments relating to the conduct of Health or settlement of any claim;
- (c) provide to Health such information and Documentation as are reasonably requested by Health, to enable it to ascertain whether settlement by the Service Provider of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality; and

- (d) comply with any conditions imposed by Health (including any condition requiring the provision of a financial undertaking).

71.7 Rights held on trust

- 71.7.1 If an indemnity in this clause 71 provides a benefit to a person who is not a Party to this Services Agreement, that benefit will be held on trust for that person by Health through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by Health as trustee.

71.8 Enforcement of indemnities

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

PART 14 - SUSPENSION AND TERMINATION

72. Step In

72.1 Step In Events

72.1.1 Each of the following is a Step In Event:

- (a) a Termination Event; and
- (b) an event or circumstance which arises out of or in connection with the Services that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons; or
 - (ii) the performance of the Services.
- (c) any default or non-performance by the Service Provider under this Services Agreement which substantially prevents, hinders, degrades or delays the performance of any critical function of Health for more than 48 consecutive hours;
- (d) a delay in the Service Provider meeting a Milestone or other obligation that is, in Health's reasonable opinion, a critical Milestone or obligation and the Service Provider does not start to remedy the relevant failure within 24 hours of being given Notice by Health requiring the Service Provider to remedy the relevant event or fails to remedy the relevant event within 20 Business Days (or such longer period as agreed by Health) after being given that Notice;
- (e) the Service Provider seeks to terminate this Services Agreement other than in accordance with its legal rights under this Services Agreement or at Law, or otherwise repudiates or abandons this Services Agreement; or
- (f) an event referred to in clause 76.1.5 occurs in respect of the Service Provider.

72.2 Step In Rights

72.2.1 If:

- (a) a Step In Event occurs; and
- (b) Health has given notice to the Service Provider in accordance with clause 72.2.2,

then a Step In Party may exercise all or any of the Step In Powers set out in clause 72.3 (**Step In Right**).

72.2.2 The notice referred to in clause 72.2.1(b):

- (a) must be in writing and must specify:
 - (i) the Step In Event which has triggered the Step In Right;
 - (ii) the date on which the relevant Step In Party proposes to commence performing the relevant Services; and

- (iii) the date on which the relevant Step In Party proposes to cease performing the relevant Services; or
 - (b) may be given orally if Health considers that the Step In Event requires urgent remedy or action and there is insufficient time to issue a written notice under clause 72.2.2(a), but if given orally must be followed within 24 hours by a written notice under clause 72.2.2(a).
- 72.2.3 The Step In Right is without prejudice to Health's other rights in respect of a Step In Event, including its rights under clauses 73 to 76.

72.3 Step In Powers

- 72.3.1 A Step In Party may in performing the Services referred to in the notice under clause 72.2.1(b), do anything in respect of those activities that the Services Provider could do including:
- (a) enter into and remain in possession of all or any of the Assets;
 - (b) operate and manage all or any of the Assets;
 - (c) exercise all or any of the Service Provider's rights, and perform all or any of the Service Provider's obligations in connection with the performance of the Services or under or in relation to any approval held by the Service Provider as if it were the Service Provider, to the exclusion of the Service Provider;
 - (d) exercise all or any of the Service Provider's rights, and perform all or any of the Service Provider's obligations under or in relation to this Services Agreement or any other Document to which the Service Provider is a party;
 - (e) take any other action that the Step In Party considers necessary or desirable; and
 - (f) do anything incidental to the matters listed in clauses 72.3.1(a) to 72.3.1(e),

(Step In Powers).

72.4 Service Provider's obligations

- 72.4.1 The Service Provider must:
- (a) cooperate with the Step In Party in the exercise of the Step In Powers to enable the Step In Party to exercise the Step In Powers effectively and expeditiously; and
 - (b) ensure that its Related Bodies Corporate do likewise.
- 72.4.2 Without limiting clause 72.4.1, the Service Provider must:
- (a) allow the Step In Party to access and use:
 - (i) all or any of the Assets, Documentation or Software;
 - (ii) the Service Provider's Personnel; and
 - (iii) any information the Step In Party reasonably requires;
 - (b) comply with all reasonable directions given by the Step In Party;

- (c) return to Health the Health Data and any Health Supplied Material, and removing Service Provider Personnel and Equipment or other items from Health's premises, as directed by Health; and
- (d) ensure that its Subcontractors do likewise,

to enable the Step In Party to exercise its Step In Powers.

72.4.3 The Service Provider irrevocably appoints Health as its attorney with full power to exercise the Step In Powers (or to delegate the exercise of the Step In Powers to another Step In Party).

72.4.4 The Service Provider's obligations under this Services Agreement will be suspended to the extent and for such period as is necessary to permit Health to exercise its Step In Rights.

72.5 Cessation of Step In

72.5.1 The Step In Party may cease to exercise the Step In Rights at any time and, in any event, must cease to exercise its Step In Rights once the relevant breach has been remedied or the event or circumstance referred to in clause 72.1 has ceased (as applicable).

72.5.2 Health must give written notice to the Service Provider of the date on which the Step In Party will cease to exercise the Step In Powers (which notice must be given by Health to the Service Provider a reasonable time prior to the date the Step In Party proposes to cease to exercise the Step In Powers).

72.5.3 Health and the Service Provider must consult with each other with the intention of ensuring that the transition from the Step In Party ceasing to exercise the Step In Powers to the Service Provider resuming the performance of the relevant Services is effected without interruption to the Services.

72.5.4 Upon the Step In Party ceasing to exercise the Step In Powers, the Service Provider must resume the performance of the relevant Services in accordance with this Services Agreement (unless this Services Agreement has been terminated).

72.6 Payment if Service Provider is at fault

72.6.1 If the Step In Event:

- (a) is an event of the kind referred to in clauses 72.1.1(a) or 72.1.1(f); or
- (b) is an event or circumstance of the kind referred to in clause 72.1.1 in circumstances where the Service Provider (or its Related Bodies Corporate) has caused or contributed to the event or circumstance,

then:

- (c) to the extent and for such period as the Service Provider is prevented from providing the Services as a result of the Step In Party exercising the Step In Rights, Health must pay to the Service Provider the Charges in respect of any Services which are affected by the Step In Party's exercise of the Step In Rights; and
- (d) Health will be entitled to deduct from the Charges an amount equal to:
 - (i) the Loss suffered or incurred by Health in connection with the Step In Party exercising the Step In Right; and

- (ii) the cost savings derived by the Service Provider from not providing the relevant Services (assuming the Service Provider would have provided a level of service in accordance with this Service Agreement).

72.6.2 If the Loss suffered or incurred by Health in connection with the Step In Party exercising the Step In Right exceeds the Charges, Health or its nominee may recover from the Service Provider the difference between the amount of the Loss and the Charges.

72.7 Payment if Service Provider is not at fault

72.7.1 If the Step In Event is an event or circumstance of the kind referred to in clause 72.1.1 (excluding clauses 72.1.1(a) or 72.1.1(f)) in circumstances where the Service Provider or its Related Bodies Corporate have not caused or contributed to the event or circumstances, to the extent and for such period as the Service Provider is prevented from providing the Services as a result of the Step In Party exercising the Step In Rights, Health must pay to the Service Provider:

- (a) the Charges in respect of any Services which are affected by the Step In Party's exercise of the Step In Rights, less an amount equal to the cost savings derived by the Service Provider from not providing the relevant Services (assuming the Service Provider would have provided a level of service in accordance with this Services Agreement); and
- (b) the extra costs reasonably incurred by the Service Provider as a result of the Step In Party's exercise of the Step In Rights.

72.8 No liability

72.8.1 The Service Provider acknowledges that, subject to clauses 72.6 and 72.7, Health will have no liability to the Service Provider, and the Service Provider will not be entitled to make any claim against Health, arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step In Power; nor
- (b) for any Loss which results,

except where it arises from any Wilful Misconduct or any unlawful or negligent act or omission on the part of Health or its nominee.

72.8.2 The Service Provider acknowledges that a Step In Party is not under any obligation to remedy the Step In Event nor to overcome the risk or mitigate any consequences resulting from the Step In Event.

72.9 Termination by Health

72.9.1 If:

- (a) the event giving rise to the Step In Event has not been remedied or resolved within a period of 40 Business Days after the date that the notice under clause 72.2.1(b) was given, or such later date for remedy or resolution agreed to by Health and the Service Provider; or
- (b) in Health's reasonable opinion it is unlikely that the Service Provider will be able to continue to meet the Outcomes upon the remedy or resolution of the Step In Event,

Health may terminate this Services Agreement.

- 72.9.2 If this Services Agreement is terminated in the circumstances referred to in clause 72.9.1 the Service Provider is not entitled to any termination compensation or payment whatsoever (including Unavoidable Losses), including any payment in relation to the remaining period of this Services Agreement.

72.10 Other matters

- 72.10.1 No action of Health or its nominee under this clause 72 limits or otherwise affects the Service Provider's liability to Health with respect to any default or non-performance by, or other liability of, the Service Provider under this Services Agreement.

73. Suspension of Services

- 73.1.1 The Service Provider acknowledges and agrees that circumstances may arise which affect the ability of this Services Agreement to be performed including:
- (a) fiscal and budgetary pressures enforced upon, and within, Health by the Commonwealth; and
 - (b) the policy, financial and strategic objectives of the Commonwealth.
- 73.1.2 Health will, if possible in the circumstances and subject to the requirements and procedures of the Commonwealth (including under the Protective Security Policy Framework and Information Security Manual), as soon as practicable after the occurrence of a circumstance contemplated by clause 73.1.1, inform the Service Provider of the:
- (a) nature of the circumstance that has arisen;
 - (b) likely effect the occurrence of the circumstance will have on this Services Agreement; and
 - (c) action, or range of actions, that Health believes are available to respond to the occurrence of the circumstance.
- 73.1.3 The Service Provider acknowledges and agrees that if Health considers that suspension of the whole or part of this Services Agreement is necessary or appropriate for any reason, Health may by Notice direct the Service Provider to suspend the progress of the whole or part of this Services Agreement and the Service Provider must promptly suspend work under this Services Agreement.
- 73.1.4 Health will use reasonable endeavours to ensure that any power to suspend this Services Agreement is not exercised without consultation with the Service Provider.
- 73.1.5 The Service Provider is not required to consent to Health's exercise of its right of suspension under this clause 73.
- 73.1.6 The Parties may agree on cost implications of a suspension of this Services Agreement and negotiate in good faith to alter the Charges for this Services Agreement in accordance with clause 82.
- 73.1.7 A Notice given under clause 73.1.3 may, if required by Health, include details of when the Service Provider must recommence performance of the suspended obligations.

74. Persistent Breach

- 74.1.1 Health may issue a notice to the Service Provider (**Persistent Breach Notice**) if a breach of the same Service Provider obligation under this Services Agreement occurs more than once in any 12 Month period (**Persistent Breach**).

74.1.2 A Persistent Breach Notice must:

- (a) state that it is a Persistent Breach Notice;
- (b) identify the breach;
- (c) not relate to:
 - (i) a Performance Issue (as defined in clause 44) which the Service Provider is diligently correcting; or
 - (ii) a breach in relation to which Health has issued a Frequent Breaches Notice under clause 75.1.1 and which the Service Provider is diligently remedying; and
- (d) state that, if the breach continues beyond 30 Business Days or recurs within the 12 Month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, it may result in Health becoming entitled to terminate this Services Agreement.

74.1.3 If, following the issue of a Persistent Breach Notice, the breach specified in the Persistent Breach Notice has continued beyond 30 Business Days or recurred within the 12 Month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, then Health may issue a notice to the Service Provider (**Final Persistent Breach Notice**).

74.1.4 A Final Persistent Breach Notice must:

- (a) state that it is a Final Persistent Breach Notice;
- (b) identify the breach;
- (c) state that the breach has been the subject of a Persistent Breach Notice served within the period of 12 Months and 30 Business Days prior to the date of the service of the Final Persistent Breach Notice; and
- (d) state that if the breach continues beyond 30 Business Days or recurs 3 or more times within the 6 Month period after the date of service of the Final Persistent Breach Notice, Health will become entitled to terminate this Services Agreement.

75. Frequent Breaches

75.1.1 Health may issue a Notice to the Service Provider (**Frequent Breaches Notice**) if the Service Provider commits frequent breaches of this Services Agreement which, in aggregate:

- (a) substantially frustrate the objects of this Services Agreement;
- (b) significantly impair Health's ability to fulfil any of its functions;
- (c) have a material adverse effect on the Services; or
- (d) in Health's reasonable opinion indicate that the Service Provider does not intend to be or does not regard itself as being bound by this Services Agreement,

whether or not such breaches are of the same type or class (**Frequent Breaches**).

75.1.2 A Frequent Breaches Notice must:

- (a) state that it is a Frequent Breaches Notice;
- (b) identify the Frequent Breaches; and
- (c) not relate to:
 - (i) a Performance Issue (as defined in clause 44) which the Service Provider is diligently correcting; or
 - (ii) a breach in relation to which Health has issued a Frequent Breaches Notice under clause 75.1.1 and which the Service Provider is diligently remedying; and
- (d) state that, if Frequent Breaches continue to occur, they may result in Health becoming entitled to terminate this Services Agreement.

75.1.3 If Frequent Breaches continue to occur during the 12 Month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, Health may issue a notice to the Service Provider (**Final Frequent Breaches Notice**).

75.1.4 A Final Frequent Breaches Notices must:

- (a) state that it is a Final Frequent Breaches Notice;
- (b) identify the Frequent Breaches;
- (c) state that the Frequent Breaches have been the subject of a Frequent Breaches Notice served within the period of 12 Months and 30 Business Days prior to the date of service of the Final Frequent Breaches Notice; and
- (d) state that if Frequent Breaches continue to occur at any time in the 6 Month period after the date of service of the Final Frequent Breaches Notice, Health will become entitled to terminate this Services Agreement.

76. Termination and Reduction in Scope

76.1 Termination by Health for default

76.1.1 Without limiting any other rights or remedies Health may have against the Service Provider arising out of or in connection with this Services Agreement, Health may terminate this Services Agreement in whole or in part, by giving Notice to the Service Provider if:

- (a) Health has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days or recurred 3 or more times within the 6 Month period after the date of service of the Final Persistent Breach Notice (**Persistent Breach**);
- (b) Health has issued a Final Frequent Breaches Notices and Frequent Breaches continue to occur at any time in the 6 Month period after the date of service of the Final Frequent Breaches Notice (**Frequent Breaches**);
- (c) the Service Provider commits a breach of this Services Agreement where that breach is not capable of remedy;

- (d) the Service Provider commits a material breach of this Services Agreement and fails to remedy the breach within 20 Business Days or such other timeframe as is agreed in writing after receiving Notice requiring it to do so; or
- (e) the Service Provider has not achieved Implementation of the Register by the date which is 3 Months after the Go Live Date,

(a Termination Event).

- 76.1.2 Without limiting Health's other rights or the Service Provider's other obligations under this Services Agreement, the Service Provider must notify Health immediately upon becoming aware of a Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become a Termination Event.
- 76.1.3 Any termination under clause 76.1.1 is effective immediately or on such later date specified in the Notice issued by Health.
- 76.1.4 Without limitation, for the purposes of clause 76.1.1, each of the following constitutes a material breach:
 - (a) a regular or persistent failure to meet any or all of the Outcomes;
 - (b) a failure to meet the Milestones specified in the Implementation Plan or Transition Plan;
 - (c) a failure to comply with clause 64 (Intellectual Property Rights);
 - (d) a failure to comply with clause 59 (Data Management);
 - (e) a failure to comply with clause 59.4 (Compliance with Health Security requirements);
 - (f) a failure to comply with clause 61 (Confidentiality);
 - (g) a failure to comply with clause 63 (Privacy);
 - (h) a failure to comply with clause 69 (Insurance);
 - (i) an event specified in clause 76.1.5 happens to the Service Provider;
 - (j) a failure to Notify Health of a Conflict of Interest under clause 83 or an inability to resolve that Conflict of Interest to the reasonable satisfaction of Health; and
 - (k) a failure to comply with clause 84.2.1.
- 76.1.5 The Service Provider must Notify Health immediately if:
 - (a) the Service Provider is a corporation, there is any change in the direct or indirect beneficial ownership or control of the Service Provider which may have an adverse effect on the ability of the Service Provider to perform its obligations under this Services Agreement;
 - (b) an application or an order is made for the winding up of the Service Provider and, in the case of an application, it is not stayed, dismissed or withdrawn within 10 Business Days;
 - (c) a resolution is passed for the winding up of the Service Provider where the resolution is for purposes other than reconstruction or amalgamation, the terms of which have previously been approved in writing by Health;

- (d) the Service Provider disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (e) the Service Provider ceases to be able to pay its debts as they become due;
- (f) the Service Provider is a company, enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (g) a receiver and manager (or either), is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of the Service Provider;
- (h) the Service Provider makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (i) the Service Provider ceases, or threatens to cease, to carry out its business;
- (j) if the Service Provider is a partnership, any step is taken to dissolve that partnership;
- (k) any material statement made or particular given by the Service Provider to Health prior to or in relation to this Services Agreement or Service Provider is found to be incorrect in any material respect; and
- (l) any other event or series of events, whether related or not, exists or occurs (including any material adverse change in the business, assets, management or financial condition of the Service Provider) which in the reasonable opinion of Health would affect the ability of the Service Provider to comply with any of its obligations under this Services Agreement.

76.2 Termination by Health for convenience

76.2.1 Health may by Notice terminate this Services Agreement in whole or in part at any time for its convenience. Without limiting this clause 76.2.1, Health may by Notice terminate this Services Agreement (or part of this Services Agreement) at any time for a machinery of government change or to implement a government directive. Health will provide a minimum of 90 days' notice of any termination under this clause.

76.2.2 If this Services Agreement is terminated under clause 76.2.1, Health, as appropriate, is only liable for:

- (a) payments due under this Services Agreement for:
 - (i) the Outcomes met in accordance with this Services Agreement; and
 - (ii) any Services provided in accordance with this Services Agreement (to the extent that any amounts are separately payable for Services),

if payment for that Outcome or Service is payable before the effective date of termination of this Services Agreement (less any amount that Health is entitled to deduct or set-off); and

- (b) subject to **Schedule 4 – Pricing Framework**, any Unavoidable Losses (if any) incurred by the Service Provider that are:
 - (i) directly attributable to the termination; and
 - (ii) substantiated to Health's satisfaction (including through the provision of appropriate evidence).

- 76.2.3 Subject to **Schedule 4 – Pricing Framework** the Service Provider is not entitled to compensation for:
- (a) payments that would be due after the date of termination or reduction in scope; or
 - (b) Loss of prospective profits or any other indirect or consequential Losses.
- 76.2.4 Health is not liable to pay compensation under clause 76.2.2 in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this Services Agreement, exceed the total Charges payable under this Services Agreement.
- 76.2.5 The Service Provider must, wherever possible, include in all subcontracts and supply contracts an equivalent provision to this clause.

76.3 Reduction in Scope

- 76.3.1 Health may from time to time, by giving the Service Provider written Notice, remove any of the Services or reduce the scope of this Services Agreement (**Reduced Scope**).
- 76.3.2 If Health no longer requires the Service Provider to meet any of the Outcomes relevant to the Reduced Scope, Health will Notify the Service Provider of the extent to which that Outcome no longer needs to be met. If no such Notice is provided, the Service Provider must continue to meet the Outcomes.
- 76.3.3 If Health issues a Notice under clause 76.3.1:
- (a) the Reduced Scope will no longer form part of this Services Agreement from the date specified in the Notice;
 - (b) Health's liability to pay the Charges and any other relevant Health obligations abate in accordance with the Reduced Scope;
 - (c) the Charges will be equitably adjusted to reflect the Reduced Scope in a manner consistent with **Schedule 4 - Pricing Framework**; and
 - (d) each Party will comply with its obligations under the Disengagement Plan in relation to the Reduced Scope.
- 76.3.4 Subject to **Schedule 4 – Pricing Framework**, the Service Provider is only entitled to compensation for any Unavoidable Losses associated with any Reduced Scope (if any) incurred by the Service Provider that are:
- (a) directly attributable to the Reduced Scope; and
 - (b) substantiated to Health's satisfaction (including through the provision of appropriate evidence).
- 76.3.5 The Service Provider is not entitled to compensation for:
- (a) payments that would be due after the date of the reduction in scope; or
 - (b) Loss of prospective profits or any other indirect or consequential Losses.
- 76.3.6 The Parties acknowledge and agree that the longer the period of Notice given by Health of its intention to reduce the scope of this Services Agreement under clause 76 then the greater the Service Provider's ability to minimise the Unavoidable Losses described in this clause 76.

- 76.3.7 No compensation is payable to the Service Provider under this clause 76 or otherwise if:
- (a) a machinery of government change results in a removal of Services from Health to any other Agency and the Service Provider is the provider of outsourced ICT services to the other Australian Commonwealth Agencies; or
 - (b) the Services are removed from the scope of this Services Agreement as a result of a WoG Arrangement between the Commonwealth (or an Agency) and the Service Provider under clause 4.
- 76.3.8 Health is not liable to pay compensation under clause 76 in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this Services Agreement, exceed the total Charges payable under this Services Agreement.

76.4 After termination or reduction in scope

- 76.4.1 On termination or reduction in scope (in whole or part) of this Services Agreement, the Service Provider must:
- (a) stop performance of:
 - (i) this Services Agreement; or
 - (ii) if this Services Agreement is terminated or reduced in part, the terminated or reduced part of this Services Agreement;
 - (b) take all available steps to minimise any Loss resulting from that termination or reduction and to protect material in which the Intellectual Property Rights or Confidential Information of Health subsists;
 - (c) return all of Health's Confidential Information associated with:
 - (i) this Services Agreement; or
 - (ii) if this Services Agreement is terminated in part or reduced in scope, the terminated Party or reduced of this Services Agreement,
 to Health unless otherwise agreed in writing by Health;
 - (d) follow any reasonable direction of Health; and
 - (e) continue to perform any part of this Services Agreement including to continue to meet the Outcomes not affected by the Notice of termination or reduction in scope (and the Charges will abate in accordance with the reduction in the scope of this Services Agreement).

76.5 Consequences of termination

- 76.5.1 If this Services Agreement is terminated or reduced in scope (in whole or part) under this clause 76:
- (a) subject to the terms of this Services Agreement, the Parties are relieved from future performance, without prejudice to any rights or remedies that have accrued at the date of termination or reduction in scope;
 - (b) Health is entitled to all damages that may be available to it at common law, in equity, under statute or otherwise;

- (c) subject to this Services Agreement, all licences and authorisations relating to or concerning this Services Agreement granted to the Service Provider by Health terminate immediately despite anything to the contrary contained in the licence or authorisation (but only to the extent they apply to the terminated or reduced scope of this Services Agreement); and
- (d) licences that are perpetual continue despite any whole or partial termination or reduction in scope of this Services Agreement.

76.6 Deemed termination for convenience

- 76.6.1 If a purported termination for cause by Health is determined by a competent authority not to be properly a termination for cause, then such termination by Health will be deemed to be a termination for convenience and the maximum liability of Health will not exceed the amount referred to in clause 76.2.2.

PART 15 - DISENGAGEMENT REQUIREMENTS

77. Disengagement

77.1 Disengagement Assistance

- 77.1.1 The Service Provider must perform all Services included in this Services Agreement in a manner that will effectively and efficiently allow for their transfer to Health or an alternative service provider, including an alternative operator of the Services.
- 77.1.2 The Service Provider must take all reasonable actions to ensure the Services for any part of the Services and all necessary information are transferred to Health or another entity nominated by Health during the Disengagement Period, including preparation of Disengagement Plans in accordance with the Statement of Requirement.
- 77.1.3 The Service Provider must comply with any Notice issued by Health about commencing Disengagement for part or all of the Services.

77.2 Disengagement Documentation

- 77.2.1 **Schedule 7 - Disengagement Requirements** lists the Disengagement Documentation that the Service Provider must provide as part of Disengagement.
- 77.2.2 The Service Provider must complete the Disengagement Plan and Disengagement Deliverables:
 - (a) as part of the Transition to the extent possible and as agreed by Health; and
 - (b) in accordance with the requirements in the Services Agreement including **Schedule 7 – Disengagement Requirements**.
- 77.2.3 The Service Provider must update the Disengagement Plan and Disengagement Deliverables annually within 20 Business Days after the commencement of each Contract Year and submit to Health for approval.
- 77.2.4 If the Service Provider is Notified by Health of any Reduced Scope in accordance with this Services Agreement, the Service Provider must submit the Disengagement Documentation, in accordance with the requirements in **Schedule 7 - Disengagement Requirements** within 20 Business Days after the Notice for approval by Health.
- 77.2.5 When approved, the Service Provider must comply with the approved Disengagement Documentation.

77.3 Disengagement Period

- 77.3.1 The Disengagement Period starts on the earlier of:
 - (a) the date 12 Months before the time for expiry of the Term, unless Health Notifies the Service Provider of a later date; or
 - (b) the date on which a Notice or termination or reduction in scope is given in accordance with this Services Agreement,

and will continue until 12 Months after the date of expire or termination of this Services Agreement unless:

 - (c) the Parties agree a different period in writing; or

- (d) Health Notifies the Service Provider that Disengagement Services are no longer required.

77.3.2 The objectives of the Disengagement are:

- (a) to enable Health to continue to use and make available the solution for the Services after the expiry or termination of this Services Agreement; and
- (b) to eliminate or minimise any disruption or deterioration of the Services, during and as a result of the transition and handover of the Services to Health or another entity.

77.3.3 During any Disengagement Period, the Service Provider:

- (a) must comply with the Disengagement Plan approved by Health;
- (b) must comply with the requirements of **Schedule 7 – Disengagement Requirements**; and
- (c) subject to the Disengagement Plan being approved by Health, if requested by Health, must continue to perform the Services that have not been transferred to another entity (as specified in the Statement of Requirement) at the then prevailing terms and conditions, including without limitation the Charges.

77.3.4 If the Service Provider receives a Notice under clauses 76.2.1 or 76.3.1 and the scope of the Services changes as a result, the Service Provider must;

- (a) promptly provide any updated Disengagement Documentation (including the Disengagement Plan) in respect of the proposed changed scope of Services for approval in writing by Health;
- (b) conduct the Disengagement in accordance with that updated Disengagement Documentation and Disengagement Deliverables once approved by Health; and
- (c) commence supplying any changed scope of Services as part of the Services from the relevant date specified in the updated Disengagement Plan once approved by Health.

77.3.5 Health will pay the Service Provider the Charges for Disengagement set out in **Schedule 4 - Pricing Framework**.

77.3.6 If this Services Agreement is terminated or reduced in scope for cause by Health in accordance with clause 74, Health:

- (a) will pay the Service Provider the Charges for the Services performed during the Disengagement Period in accordance with **Schedule 4 - Pricing Framework**; and
- (b) is not required to pay the Charges associated with Disengagement.

78. Knowledge transfer

78.1.1 The Service Provider must, at no additional cost to Health, provide the following assistance to Health (or its nominee) as appropriate on termination, Disengagement or expiration of this Services Agreement:

- (a) transfer or provide access to all information, stored by whatever means, held by the Service Provider or under the control of the Service Provider in

connection with this Services Agreement, including up to date technical and operator Documentation provided under clause 23;

- (b) make Service Provider Personnel available for discussions with Health (or its nominee) as may be required. The time, length and subject of these discussions will be at the sole discretion of Health (provided that any matter discussed is not considered to reveal any Confidential Information of the Service Provider not otherwise required to be provided under this Services Agreement); and
- (c) comply with any additional requirements in the Statement of Requirement and the approved Disengagement Plan.

PART 16 - GENERAL TERMS

79. Standards and Codes

- 79.1.1 The Service Provider must, in performing the Services and meeting the Outcomes and the Deliverables, comply with:
- (a) any standards in the Statement of Requirement;
 - (b) if there are no standards specified under clause 79.1.1(a), any applicable Australian or New Zealand standards that are consistent with the requirements or this Services Agreement, or if there are no applicable Australian or New Zealand standards, any applicable international standards that are consistent requirements or this Services Agreement; and
 - (c) any industry codes and best practice methodologies.
- 79.1.2 The Service Provider must perform its obligations under this Services Agreement in such a way that Health is able to participate in any necessary inspections of work in progress and testing of the Services, and is able to obtain the full benefit of Services for the purposes for which they are delivered (including the Outcomes), without being in breach of any occupational health and safety Laws.

80. Language and measurement

- 80.1.1 All information delivered as part of the provision of the Services under this Services Agreement, including Documentation must be written in English.
- 80.1.2 Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurement Act 1960 (Cth)*, or if Services are imported, units of measurement as agreed by Health.

81. Dispute Resolution

- 81.1.1 The Parties will each use their reasonable endeavours to resolve Disputes:
- (a) cooperatively; and
 - (b) in accordance with clauses 81.1.2 to 81.1.7.
- 81.1.2 The Service Provider and Health must, promptly after becoming aware of any Dispute (and in any event within 2 Business Days after becoming aware of any Dispute), give the other Party Notice of the Dispute (**Dispute Notice**) that sets out the details of the Dispute including, to the extent relevant to the Dispute, the:
- (a) nature of the Dispute;
 - (b) date, time and location of the Dispute;
 - (c) known or likely cause of the Dispute;
 - (d) known or likely consequences of the Dispute; and
 - (e) actions taken to date in response to the Dispute to mitigate its effects and prevent its recurrence.

- 81.1.3 The Service Provider must, promptly after providing a Dispute Notice to Health or receiving a Dispute Notice from Health (and in any event within 2 Business Days after providing or receiving a Dispute Notice):
- (a) provide to Health a draft Dispute Resolution Plan designed to assist in mitigating the effects and preventing the recurrence of the Dispute; and
 - (b) arrange a meeting of the Parties to discuss the Dispute and draft Dispute Resolution Plan.
- 81.1.4 Health and the Service Provider must endeavour to agree as soon as possible a final Dispute Resolution Plan that includes details of:
- (a) the approach for resolving the Dispute;
 - (b) the timeframe for resolving the Dispute;
 - (c) any persons who will be involved in resolving the Dispute;
 - (d) dates and times for, and manner of, monitoring the progress made in relation to mitigating the effects and preventing the recurrence of the Dispute; and
 - (e) the outcomes that must be achieved in order for the Dispute to be classified as resolved.
- 81.1.5 If Health and the Service Provider are unable to agree a final Dispute Resolution Plan within 5 Business Days (or such longer time agreed by the Parties) of meeting to discuss the Dispute and draft Dispute Resolution Plan, they must refer the matter to an independent third party as agreed by the Parties, or where no agreement has been reached, a person appointed by Health to determine a final Dispute Resolution Plan.
- 81.1.6 The Parties must implement the agreed Dispute Resolution Plan in accordance with its terms. The Dispute Resolution Plan will remain in force until one or both of the following occurs:
- (a) Health and the Service Provider agree that the Dispute has been resolved; or
 - (b) Health and the Service Provider agree to discontinue the implementation of the Dispute Resolution Plan.
- 81.1.7 The Parties must continue to comply with their obligations under this Services Agreement while attempting to resolve any Dispute.
- 81.1.8 The obligations under clauses 81.1.1 to 81.1.7:
- (a) are without limiting any rights that a Party has under this Services Agreement; and
 - (b) do not prevent a Party from obtaining urgent interlocutory relief.

82. Variations to the Services Agreement

- 82.1.1 This clause does not apply where this Services Agreement expressly gives Health the right to:
- (a) reduce or change the scope of the Services;
 - (b) make changes to this Services Agreement as a result of a WoG Arrangement; or

- (c) make any other change to this Services Agreement without obtaining the Service Provider's consent in writing,

and any change to this Services Agreement permitted by such a change will be effected by giving written Notice to the Service Provider in accordance with this Services Agreement.

82.1.2 All other changes to this Services Agreement, except Changes made as part of Change Management under clause 28, will be dealt with as follows:

- (a) either Party may request a variation by providing a draft Change Proposal to the other Party setting out the proposed variations;
- (b) within 10 Business Days after receipt of the draft Change Proposal or within another period agreed by the Parties, the Parties must meet to consider the draft Change Proposal. At the meeting, the Service Provider must advise and discuss as required the impact the variations will have on:
 - (i) the Charges;
 - (ii) the Services;
 - (iii) the Service Provider's ability to perform its obligations under this Services Agreement; and
 - (iv) this Services Agreement;
- (c) at the meeting of the Parties, or within a period after that meeting that is agreed by the Parties, each Party must Notify the other Party whether it accepts or rejects the draft Change Proposal (based on the stated impact of the variations); and
- (d) if all Parties accept the draft Change Proposal, the Parties must execute the Change Proposal.

82.1.3 Any changes to the Charges associated with a variation to this Services Agreement must:

- (a) not exceed any reasonable additional cost and the Service Provider must substantiate any proposed additional resource costs; and
- (b) take fully into account any reduction in the cost of provision of the Services from efficiency improvements, increased volume or otherwise.

82.1.4 Any variation in this Services Agreement takes effect from the date on which the Parties execute a Change Proposal or as otherwise agreed by the Parties.

82.1.5 The Parties must comply with any other change control obligations (including in respect of roles, responsibilities and change logging) as set out in the Statement of Requirement.

83. Conflict of Interest

83.1 Warranty that there is no Conflict of Interest

83.1.1 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Services Agreement, no Conflict of Interest (either perceived or actual) exists or is likely to arise in the performance of its obligations under this Services Agreement.

83.1.2 A 'Conflict of Interest' for the purposes of this clause 83, includes:

- (a) the Service Provider accepting benefits or bribes from a third party or providing benefits or bribes to Personnel of Health in respect of this Services Agreement, including for the purposes of influencing Health to enter into this Services Agreement with the Service Provider or a third party;
- (b) unauthorised distribution of Health's Confidential Information by the Service Provider for the purposes of the Service Provider gaining financial benefit from a third party; or
- (c) a conflict created as a result of a breach by the Service Provider of a fiduciary obligation to Health.

83.2 Notification of a Conflict of Interest

83.2.1 If, during the performance of this Services Agreement, a Conflict of Interest (either potential, perceived or actual) arises, or appears likely to arise, the Service Provider must:

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

84. Laws and Government Policy

84.1 Laws

84.1.1 The Service Provider must:

- (a) comply with all applicable Laws in the performance of its obligations under this Services Agreement, as amended or replaced from time to time, including:
 - (i) the *Crimes Act 1914* (Cth);
 - (ii) the *Competition and Consumer Act 2010* (Cth);
 - (iii) all applicable Laws of the Commonwealth, or of any State, Territory or local government authority; and
- (b) avoid causing Health, Health Personnel, the States and Territories and State and Territory Personnel to contravene any Laws.

84.2 Policy

84.2.1 The Service Provider must, in performing its obligations under this Services Agreement, comply with any applicable Commonwealth policies referred to in this Services Agreement including the Statement of Requirement, or Notified to the Service Provider, as amended or replaced from time to time.

84.3 Anti-discrimination

84.3.1 Workplace Gender Equality

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

84.3.2 Disability discrimination

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

84.3.3 Indigenous Opportunities

- (a) The Service Provider must use its reasonable endeavours to increase its purchasing from Indigenous enterprises, and employment of Indigenous Australians, in the delivery of the Services.

84.3.4 General

- (a) The Service Provider must comply with such other Commonwealth, State or Territory legislation relevant to anti-discrimination as may be relevant to this Services Agreement.

84.4 Environment

- 84.4.1 The Service Provider must perform its obligations under this Services Agreement in a way that does not place the Service Provider or Health in breach of any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
- 84.4.2 The Service Provider must seek to implement any best practice environmental or green standards applicable to the Services and must implement any such standards which are Notified to it by Health.

- 84.4.3 The Service Provider acknowledges the Greening of Government policy framework, which includes Health's obligations, if any, to report on its environmental performance and its contribution to Ecologically Sustainable Development under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- 84.4.4 The Service Provider must comply with all reasonably practicable directions given by Health in respect of work practices or use of equipment in order to eliminate or mitigate any condition contrary to published environmental standards which apply to Health.

84.5 Australian Packaging Covenant

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

84.6 ICT Sustainability Plan

- 84.6.1 The Service Provider must:
- (a) comply with the Australian Government Sustainability Plan 2010-15 (ICT Sustainability Plan), where relevant to the provision of the Services;
 - (b) report on compliance at least annually, as required by that Plan and as requested by Health; and
 - (c) notify Health at the earliest possible time of any failure, or likely failure, to comply with the ICT Sustainability Plan.
- 84.6.2 In particular, the Service Provider must:
- (a) comply with ISO 14024 or ISO 14021 at the level of Electronic Product Environmental Assessment Tool (EPEAT) "Silver" rating or equivalent as a minimum standard for relevant hardware being supplied under this Services Agreement;
 - (b) comply with the current version of ENERGY STAR for any relevant hardware supplied under this Services Agreement;
 - (c) where no other disposal arrangements are specified for equipment supplied under this Services Agreement:
 - (i) for ICT equipment covered by the National Television and Computer Recycling Scheme, take back the supplied equipment at end-of-use for re-use or resource recovery;
 - (ii) for mobile devices and toner cartridges, either take back the devices and cartridges at end-of-use for re-use or resource recovery, or dispose of through a suitable recycling program (for example the official recycling program of the Australian Mobile Telecommunications Association, or a multi-vendor imaging consumables collection and recycling service); and
 - (iii) comply with the National Waste Policy: Less Waste, More Resources set out at <http://www.scew.gov.au/node/849/> in regards to waste disposal;

- (d) be a signatory to the National Packaging Covenant or comply with the requirements of the National Environment Protection (Used Packaging Materials) Measure (unless exempt by legislation); and
- (e) have an Environmental Management System aligned to the ISO 14001 standard, or alternatively, the Service Provider must implement business processes that are aligned to the ISO 14001 standard within 6 Months after the commencement of this Services Agreement.

84.6.3 Terms used in clauses 84.6.1 and 84.6.2 that are not defined in this Services Agreement, have the meaning provided in the ICT Sustainability Plan.

84.7 Energy Efficiency Policy

- 84.7.1 The Service Provider must comply with the Energy Efficiency In Government Operations (EEGO) Policy, where relevant to the provision of the Services. See the Department of Industry and Science's 'Energy in Government Operations' website at: <http://www.industry.gov.au/energy/energyefficiency/non-residentialbuildings/governmentbuildings/energyefficiencyoperations/Pages/default.aspx>.
- 84.7.2 Where reasonably practicable, the Service Provider agrees to use energy efficient products, products from recycled materials or other environmentally preferable products in its performance of the this Services Agreement
- 84.7.3 The Service Provider must provide information to Health in relation to the products the Service Provider uses in its performance of this Services Agreement, including how those products are energy efficient, made from recycled materials or are otherwise environmentally preferable upon request by Health.

84.8 Hazardous Substances

- 84.8.1 The Service Provider must not provide any part of the Services containing any Ozone Depleting Substances or Hazardous Substances, except for those substances authorised in writing by Health.
- 84.8.2 The Service Provider must ensure that, for all Hazardous Substances:
 - (a) full details of the authorised substances incorporated into the any part of the Services, including the location and protective measures adopted, are provided to Health in the format of a Material Data Safety Sheet in accordance with NOHSC 2011 (2003): "National Code of Practice for the Preparation of Material Safety Data Sheets 2nd Edition";
 - (b) all Documentation supporting the part of Services containing Hazardous Substances clearly identifies the presence and nature of the hazard;
 - (c) any part of the Services containing the authorised substance are labelled to clearly identify the nature of the substance, its associated hazards and appropriate safeguards.
- 84.8.3 To the extent consistent with their function, all parts of the Services must not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to Personnel, the environment or the operation of other equipment.
- 84.8.4 The Service Provider must as soon as practicable or as otherwise required by Law advise Health if it becomes aware of a non-hazardous substance which could be substituted for a Hazardous Substance without significant detriment to the performance of the Services Agreement.

84.9 Work Health and Safety

84.9.1 In clauses 84.9.2 to 84.9.6 below:

- (a) Act means the *Work Health and Safety Act 2011 (Cth)*; and
- (b) Person Conducting a Business or Undertaking (**PCBU**) as defined by the Act means a person conducting a business or undertaking:
 - (i) whether the person conducts the business or undertaking alone or with others; and
 - (ii) whether or not the business or undertaking is conducted for profit or gain.

84.9.2 The Service Provider must ensure that the Services are provided in a manner that does not pose any avoidable health or safety risk to the Service Provider's Personnel, to Health's Personnel or to any other person.

84.9.3 Without limiting in any way the work health and safety obligations that the Service Provider has under this Services Agreement, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Service Provider must:

- (a) ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act or corresponding State or Territory legislation;
- (b) ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act or corresponding State or Territory legislation; and
- (c) notify Health of:
 - (i) any work related injury that causes death or serious personal injury;
 - (ii) any notifiable incident as defined at sections 35, 36 and 37 of the Act, or corresponding State or Territory legislation; and
 - (iii) each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, or the corresponding or equivalent State or Territory legislation,

within 1 Business Day after the incident has occurred or within 2 hours if the injury causes death.

84.9.4 At Health's request, the Service Provider must provide reasonable assistance to Health or Comcare (including giving Health, Comcare and their agents access to the Service Provider's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Services.

84.9.5 To the extent that performance of the Services under this Services Agreement constitutes construction work, Health authorises the Service Provider to have management and control of the workplace for work health and safety purposes in relation to that construction work and the Service Provider is engaged as the principal contractor for the purposes of that work.

84.9.6 In this clause (Work Health and Safety), the terms "construction work" and "principal contractor" have the same meanings as in the WHS Act.

84.10 Illegal workers

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

84.11 Building Code 2013

- 84.11.1 The Service Provider must comply with the Building Code 2013 (**Building Code**). Copies of the Building Code are available at www.employment.gov.au/BuildingCode.
- 84.11.2 Compliance with the Building Code does not relieve the Service Provider from responsibility to perform this Services Agreement, or from liability for any defect in the works arising from compliance with the Building Code.
- 84.11.3 Where a change in this Services Agreement is proposed and that change would affect compliance with the Building Code, the Service Provider must submit a report to the Commonwealth specifying the extent to which the Service Provider's compliance with the Building Code will be affected.
- 84.11.4 The Service Provider must maintain adequate records of the compliance with the Building Code by:
 - (a) the Service Provider;
 - (b) its Subcontractors;
 - (c) consultants engaged by the Service Provider; and
 - (d) its Related Entities (refer Section 8 of the Building Code).
- 84.11.5 If the Service Provider does not comply with the requirements of the Building Code in the performance of this Services Agreement such that a sanction is applied by the Minister for Employment, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those Parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Service Provider or a Related Entity in respect of work funded by the Commonwealth or its agencies.
- 84.11.6 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Service Provider may give preference to Subcontractors and consultants that have a demonstrated commitment to:
 - (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or

- (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

84.11.7 The Service Provider must not appoint a Subcontractor or consultant in relation to the Services where:

- (a) the appointment would breach a sanction imposed by the Minister for Employment; or
- (b) the Subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, WHS Laws, or workers' compensation law and has not fully complied, or is not fully complying, with the order.

84.11.8 The Service Provider agrees to require that it and its Subcontractors or consultants and its Related Entities provide the Health Representative, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Project the subject of this Services Agreement; and
- (c) interview any person,

as is necessary to demonstrate its compliance with the Building Code.

84.11.9 Additionally, the Service Provider must, and must ensure that its Related Entities comply with any request by Health or any other relevant Commonwealth entity to produce a specified document within a specified period, in person, by fax or by post.

84.11.10 The Service Provider must ensure that all subcontracts impose obligations on Subcontractors equivalent to the obligations under this clause 84.

84.12 Building and Construction WHS Accreditation Scheme

84.12.1 The Service Provider must be accredited under the Australian Government Building and Construction WHS Accreditation Scheme (**Scheme**) at the Commencement Date and must maintain that accreditation during the Services Agreement Term.

84.12.2 The Service Provider must comply with all conditions of the Scheme accreditation during the Services Agreement Term.

84.12.3 If the Service Provider ceases to maintain accreditation under the Scheme at any time during the Services Agreement Term, Health may terminate this Services Agreement immediately in accordance with clause 74.

84.13 Freedom of Information access to documents

84.13.1 In clauses 84.13.2 to 84.13.5 'document' and 'Commonwealth Services Agreement' have the same meaning as in the *Freedom of Information Act 1982 (Cth)*.

84.13.2 The Service Provider acknowledges that this Services Agreement is a Commonwealth Services Agreement.

84.13.3 The *Freedom of Information Act 1982 (Cth)* enables the Australian community to have access to information in the possession of the Commonwealth Government. Where Health has received a request for access to a document created by, or in the possession of, the Service Provider or any Subcontractor that relates to the performance of this

Services Agreement (and not to the entry into that Services Agreement), Health may at any time by written Notice require the Service Provider to provide the document to the Health and the Service Provider must, at no additional cost to Health, promptly comply with the Notice.

- 84.13.4 The Service Provider must indicate if it believes any material provided by it should be exempt from the operations of the *Freedom of Information Act 1982 (Cth)*.
- 84.13.5 The Service Provider must include in any subcontract relating to the performance of this Services Agreement, provisions that will enable the Service Provider to comply with its obligations under clause 84.13.3.
- 84.13.6 Clauses 84.13.2 to 84.13.5 apply for the Term and for a period of seven (7) years after the termination or expiry of this Services Agreement, whichever is later.

84.14 Fraud

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

84.15 SME Participation

- 84.15.1 If the total Charges payable under this Services Agreement will exceed AUD \$20 million, the Service Provider must ensure that at least 20% of the Services (excluding hardware) and 10% of the hardware are provided by Small and Medium Enterprises (**SMEs**).
- 84.15.2 For the purpose of determining compliance with clause 84.15.1, the percentage of Services (excluding hardware) and hardware provided by SMEs is calculated as the value of the Services (excluding hardware) and hardware (as applicable) provided by SMEs as a percentage of the total Changes.
- 84.15.3 The Service Provider must report to Health as required by Health in relation to its compliance with clause 84.15.1.

84.16 Anti-terrorism

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

84.17 Anti-money laundering

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

84.18 Archiving

- 84.18.1 The Service Provider must:

- (a) comply with any of Health's archiving policies as notified to it from time to time;
- (b) comply with the requirements of the *Archives Act 1983* (Cth) and any Records Disposal Authority in respect of Commonwealth Records which are in the possession or under the control of the Service Provider;
- (c) comply with any reasonable direction given by Health or the National Archives of Australia for the purpose of transferring a Commonwealth Record to the National Archives of Australia or providing the National Archives of Australia with full and free access to those records at the cost of Health;
- (d) ensure that Health has access at all times and in any manner to Commonwealth Records whilst they are in the possession or under the control of the Service Provider; and
- (e) on or before the termination or expiry of the Contract, deliver all Commonwealth Records in the possession or under the control of the Service Provider to Health or, if directed by Health, to another person specified in writing by Health.

84.19 Fair Work Act

- 84.19.1 The *Fair Work Act 2009* (Cth) (**Fair Work Act**) establishes the framework for workplace relations in Australia.
- 84.19.2 The Supplier must comply, and as far as practicable must ensure its Subcontractors (if any) comply, with all applicable workplace relations, work health and safety and worker's compensation Laws.
- 84.19.3 As far as practicable, the Supplier must ensure that all subcontracts impose obligations on Subcontractors equivalent to the obligations in this clause 84.19.

84.20 Lobbying Code of Conduct

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

the Lobbying Code of Conduct and Post Separation Contact with Government where their activities fall within the scope of the Lobbying Code of Conduct.

84.21 General

- 84.21.1 Without limiting specific provisions of this Services Agreement, the Service Provider must, at its own expense, in performing the Services:
- (a) comply with all relevant Laws (including the *Crimes Act 1914 (Cth)*, *Criminal Code Act 1995 (Cth)*, *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)*, and *Workplace Gender Equality Act 2012 (Cth)* and listed in regulations made under the Act and regulations made under the *Charter of the United Nations Act 1945 (Cth)*;
 - (b) comply with specific Health policies and procedures, as notified by Health from time to time; and
 - (c) obtain and maintain all necessary permits, consents, approvals and certifications.

85. Notices and other communications

85.1 Service of Notices

- 85.1.1 A Notice must be in written English and signed by:
- (a) in the case of a Notice from Health, the Health Representative; or
 - (b) in the case of a Notice from the Service Provider, the Service Provider Representative.
- 85.1.2 A Notice or other communication is properly given or served by a Party if that Party:
- (a) delivers it by hand;
 - (b) posts it;
 - (c) delivers it by facsimile;
 - (d) transmits it by electronic mail; or
 - (e) transmits it by any other electronic means,
- to the recipient's address for Notices specified in clause 85.3.1, marked for the attention of the person who at that time is the Service Provider Representative, or Health Representative, as appropriate.

85.2 Deemed Receipt

- 85.2.1 A Notice or other communication is deemed to be received if:
- (a) delivered by hand, when the Party who sent the Notice or other communication holds a receipt for it, signed by a person employed by the intended recipient at the physical address for Notices;
 - (b) sent by post from and to an address within Australia and correctly addressed, after 3 Business Days;

- (c) sent by post from or to an address outside Australia and correctly addressed, after 10 Business Days;
- (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside Business Hours, at the time of resumption of Business Hours);
- (e) sent by electronic mail, only in the event that the other Party acknowledges receipt by any means in person, by phone or by a message which has been generated by the intended recipient and not purely by a machine; or
- (f) sent by any other electronic means, only in the event that the other Party acknowledges receipt in person, by phone or by message which has been generated by the intended recipient and not purely by a machine, or by other means agreed in writing by the Parties.

85.3 Address for Notices

85.3.1 Subject to clause 85.4.1, the Service Provider Representative and Health Representative's address for Notices are as follows:

Health Representative:	
Name:	[insert]
Position:	[insert]
Address:	[insert]
Phone:	[insert]
Fax:	[insert]
Email:	[insert]

Service Provider Representative:	
Name:	[insert]
Position:	[insert]
Address:	[insert]
Phone:	[insert]
Fax:	[insert]
Email:	[insert]

85.4 Change of Address

- 85.4.1 Each Party must Notify the other Party of any change in its address for Notices, or in the identity of the Service Provider Representative or Health Representative (as applicable), including through delegation or authorisation under clause 39.1.5.

86. General

86.1 Export approvals and imported supplies

- 86.1.1 The Service Provider acknowledges that the Service Provider is obliged to arrange or meet any customs or export requirements necessary for performance of this Services Agreement.
- 86.1.2 The Service Provider must, at no additional cost to Health, arrange customs entry and the payment of any necessary customs duty and obtain all necessary valid export licences or other approvals to meet the requirements of this Services Agreement. The Service Provider must provide, on request by Health, a copy of any licence or other approval, or proof that such licence or approval has been obtained.
- 86.1.3 The Service Provider must Notify Health in writing within 10 Business Days after becoming aware of the refusal, revocation, or any qualification of any export licence or other approval necessary for the Service Provider to meet its obligations under this Services Agreement.
- 86.1.4 Health will do all that all that is reasonably necessary to assist the Service Provider in performing its obligations under clause 86.1.2, but will not be responsible for any failure by the Service Provider to meet its obligations under this Services Agreement as a result of any failure to obtain the approvals required under clause 86.1.2.

86.2 Approvals and consents

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

86.3 Costs of contracting

- 86.3.1 Each Party must pay its own costs of negotiating, preparing and executing this Services Agreement.

86.4 Further action

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

86.5 No security

- 86.5.1 The Service Provider must not, without Health's prior written consent, give or purport to give any security interest in any of its rights to receive payment from Health under this Services Agreement.

86.6 Assignment and Novation

- 86.6.1 Subject to clause 86.6.3, a Party must not assign its rights, benefits in whole or in part, under this Services Agreement without the prior written consent (by Notice) of the other Party, and this consent must not be unreasonably withheld.
- 86.6.2 The Service Provider must not enter into discussions or facilitate a novation of this Services Agreement without the prior written approval of Health.
- 86.6.3 Health may, at any time, assign, transfer or novate its rights or benefits and obligations under this Services Agreement to another Agency if that Agency is to have administrative responsibility for the Services and this Services Agreement.

86.7 Change in Control

- 86.7.1 The Service Provider agrees that:
- (a) the Service Provider must notify the Health as soon as it is aware that a Change in Control Event has occurred or if possible, will occur and promptly provide to Health such further information and assurances as are required by the Health to demonstrate to the Health's satisfaction; and
 - (b) the Service Provider must not undergo a Change in Control Event without the prior consent in writing of Health, such consent not to be unreasonably delayed and only to be withheld where Health, acting reasonably, is not satisfied (having regard to all matters relevant to Commonwealth entities in the position of Health) that there will be no adverse consequences to the supply of the Register or Services or Health's reputation resulting from the occurrence of the Change of Control Event. Without prejudice to the generality thereof, Health may seek assurances relating to the Service Provider's ongoing capacity, capability and financial viability; and
 - (c) Health's consent will not be required with respect to a solvent corporate restructure within the Service Provider's group.
- 86.7.2 Without limiting this clause 86.7, where there is a Change in Control Event that will involve a transfer of this Services Agreement, and clause 86.7.1 has been satisfied, each Party

must, at the other Party's request, sign a Deed of Novation formalising the arrangement, at the Service Provider's cost.

- 86.7.3 Health reserves the right at any time during the Term to ask the Service Provider about any potential or actual Change in Control Event, including in relation to corporate restructures, and the Service Provider will use its reasonable endeavours to respond to the enquiry.

86.8 Waiver

- 86.8.1 A waiver of any provision of, or right under this Services Agreement:

- (a) must be by Notice from the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in such Notice.

- 86.8.2 The fact that a Party fails to do (or delays in doing) something the Party is entitled to do under this Services Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

86.9 Severability

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

86.10 Entire Agreement

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

86.11 Rights are Cumulative

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

86.12 No merger

- 86.12.1 The rights and obligations of the Parties under this Services Agreement do not merge on completion of any transaction contemplated by this Services Agreement.

86.13 Recovery of moneys due to Health

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

86.14 Contra proferentum

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

Survival

86.14.2 The following clauses survive the termination and expiry of this Services Agreement:

- (a) clause 57 (Books and records);
- (b) clause 58 (Audit and access);
- (c) clause 59 (Data Management);
- (d) clause 59.4 (Compliance with Health Security requirements);
- (e) clause 61 (Confidentiality);
- (f) clause 63 (Privacy);
- (g) clause 64 (Intellectual Property Rights);
- (h) clause 69 (Insurance);
- (i) clause 71 (Indemnities);
- (j) clause 77 (Disengagement);
- (k) clause 78 (Knowledge transfer);
- (l) the termination provisions in so far as they relate to rights and obligations arising on termination;
- (m) any clauses that are expressed to or which by their nature survive termination or expiry, including warranties, limitations on liability, licensing and Intellectual Property Rights; and
- (n) all clauses required to give effect to the clauses referred to in clauses 86.14.2(a) to 86.14.2(m).

86.15 Intellectual Property Rights in the Services Agreement

86.15.1 Health owns all Intellectual Property Rights in this Services Agreement.

86.16 Counterparts

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

86.17 Governing Law

86.17.1 The Laws of the Australian Capital Territory apply to this Services Agreement. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter arising out of this Services Agreement.

EXECUTION

Executed as a Deed

Signed for and on behalf of the **Commonwealth of Australia** as represented by the **Department of Health** by its duly authorised delegate:

In the presence of:

.....

Signature of delegate

.....

Signature of witness

.....

Name of delegate (Print)

.....

Name of witness (Print)

.....

Date

.....

Date

Signed by and on behalf of [insert] **ABN** [insert] in accordance with section 127 of *the Corporations Act 2001* by or in the presence of:

In the presence of:

.....

Signature

.....

Signature of witness

.....
Name (Print)

.....
Name of witness (Print)

.....
Date

.....
Date

Schedule 1: Overview and Outcomes

Schedule 2: Solution and Service Requirements

Schedule 2: Solution and Service Requirements includes the following Attachments:

1. Attachment A - Operator Service Requirements;
2. Attachment B - Register ICT Service Requirements;
3. Attachment C - Functional Requirements;
4. Attachment D - Non-functional Requirements; and
5. Attachment E - High Level Design.

Schedule 3: Management and Governance

Schedule 4: Pricing Framework

Schedule 4: Pricing Framework includes the following Attachments:

1. Attachment A - Resource Unit Definition Tables;
2. Attachment B - Pricing Tables;
3. Attachment C - Invoice Substantiation; and
4. Attachment D - Labour Rate Role Definitions.

Schedule 5: Service Level Framework

Schedule 5: Service Level Framework includes the following Attachments:

1. Attachment A - Service Levels - Operator Service; and
2. Attachment B - Service Levels - Register ICT Service.

Schedule 6: Implementation and Transition Requirements

Schedule 7: Disengagement Requirements

Schedule 8: Glossary

Note to Tenderer: To be developed based on the Glossary included in the RFT.

Schedule 9: Health Deed of Confidentiality and Privacy

Deed Poll made at _____ on _____

By _____

[Insert name and address of person] (Confidant)

In favour of

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

Recitals

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

Operative provisions

1. Definitions

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

Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of law, and unless stated otherwise, includes Commonwealth, State and Territory Agencies.

Commonwealth means the Commonwealth of Australia.

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

Confidential Information means information that:

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

and includes to the extent that it is confidential:

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

but does not include information which:

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

Deed means this document.

End User means all stakeholders and users of the National Cancer Screening Register either directly or indirectly, including without limitation:

- (a) participants of a National Cancer Screening Program;
- (b) Health Personnel;
- (c) State and Territory personnel;
- (d) healthcare professionals;
- (e) members of the medical community, including General Practitioners, specialists, colonoscopists, histopathologists, pathologists; and
- (f) software developers of medical practice systems.

Health means the Commonwealth of Australia acting through the Department of Health.

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

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

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

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

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

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

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

Service Provider means [insert name and ABN of Service Provider].

Services Agreement means the agreement between Health and the Service Provider for the provision and management of the National Cancer Screening Register dated [insert].

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

2. Interpretation

Unless the contrary intention appears:

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

3. Confidentiality

3.1 Non disclosure

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

3.2 Consent

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

3.3 Conditions on consent

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

3.4 Complying with conditions

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

3.5 Legal disclosure

The Confidant may only disclose Confidential Information and Personal Information:

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

4. Restriction on use

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

5. Uncertainty

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

6. Security

The Confidant will:

- (a) maintain proper and secure custody of all Confidential Information and Personal Information which is in its possession or under its control;
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information or Personal Information by third parties contrary to this Deed;
- (c) immediately notify Health in Writing of any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information contrary to this Deed; and
- (d) give Health all reasonable assistance in connection with any action or proceeding which Health may institute against any person relating to any unauthorised use, copying or disclosure of the Confidential Information or Personal Information, and with any investigation Health may initiate into any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information.

7. Disclaimer

7.1 No warranty

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

7.2 No liability

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

8. Powers of Health

8.1 Delivery and destruction of documents

The Confidant will:

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

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

8.2 Confidential Information and Personal Information beyond possession or control

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

8.3 Meaning of "documents"

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

8.4 Legal proceedings

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

9. Criminal liability

9.1 Criminal offence

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

9.2 Other criminal offences

The Confidant acknowledges that:

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

10. No exclusion of Law

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

11. Waiver

11.1 Separate instances of waivers

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

11.2 Consent in Writing

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

12. Remedies cumulative

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

13. Variations and amendments

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

14. Applicable Law

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

15. Notices**15.1 Deemed service to the Confidant**

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

15.2 Deemed service to Health

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

16. Survival of obligations

The obligations in this Deed are perpetual.

Attachment A – Contact Details

Health

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

Confidant

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED by:

In the presence of:

Signature of Confidant

Signature of witness

Name

Name

Schedule 10: Service Provider Deed of Confidentiality

Deed Poll made at _____ on _____

By _____

[insert name and address of person] (Confidant)

In favour of _____

[insert name, ABN and address of Service Provider] (Service Provider)

Recitals

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

Operative provisions

1. Definitions

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

Agency means:

- (a) a government or government department or other body;
 - (b) a governmental, semi-governmental or judicial person; or
 - (c) a person (whether autonomous or not) who is charged with the administration of a law.
- and unless stated otherwise, includes Commonwealth, State and Territory Agencies.

Commonwealth means the Commonwealth of Australia.

Confidential Information means information that:

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

but does not include information which:

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

Deed means this document.

Health means the Commonwealth of Australia acting through the Department of Health.

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

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

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

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

Service Provider means [insert name and ABN of Service Provider].

Service Provider Personnel means the officers, employees, agents, advisers, directors or subcontractors of the Service Provider or of its subcontractors who are engaged in performing the services or activities associated with the provision of the services under the Services Agreement.

Services Agreement means the agreement between Health and the Service Provider for the provision and management of the National Cancer Screening Register dated [insert].

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

2. Interpretation

Unless the contrary intention appears:

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

3. Confidentiality

3.1 Non disclosure

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

3.2 Consent

The Service Provider may grant or withhold its consent in its absolute and unfettered discretion.

3.3 Conditions on consent

If the Service Provider grants its consent, it may, subject to the Services Agreement, impose

conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Service Provider may require that the Confidant procure the execution of a confidentiality undertaking in these terms and conditions by the person to whom the Confidant proposes to disclose the Confidential Information.

3.4 Complying with conditions

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

3.5 Legal and other disclosure

The Confidant may only disclose Confidential Information:

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

4. Restriction on use

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

5. Uncertainty

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

6. Security

The Confidant will:

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

7. No exclusion of Law

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

8. Disclaimer

8.1 No warranty

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

8.2 No liability

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

9. Powers of the Service Provider

9.1 Delivery and destruction of documents

The Confidant will:

- (a) promptly on the request of the Service Provider or a person authorised by Service Provider (without needing to produce the demand in Writing) deliver up to the Service Provider:

- (i) all of the Confidential Information;
- (ii) all alterations, modifications, developments and enhancements to, copies of, extracts from or notes on, the Confidential Information in whatever form; and
- (iii) all materials related to or in any way associated with the Confidential Information, in the Confidant's possession, power or control;

except to the extent that the Confidential Information has been incorporated into a Commonwealth Record within the meaning of the *Archives Act 1983* (Cth) or equivalent State or Territory record; or

- (b) immediately on the request of the Service Provider or a person authorised by the Service Provider, except to the extent the Confidential Information has been incorporated into a Commonwealth Record within the meaning of the *Archives Act 1983* (Cth) or equivalent State or Territory record:

- (i) destroy the documents mentioned in **paragraph 9.1(a)**, and in the case of computer data, this must be done by a method of erasing it from the media on which it is stored so that it cannot in any way be recovered, reconstructed or reconstituted; or
- (ii) otherwise deal with the document mentioned in **paragraph 9.1(a)** as the Service Provider directs,

and the Confidant will then promptly certify in Writing to the Service Provider that all of the documents mentioned in **paragraph 9.1(a)** have been delivered up, destroyed or dealt with as directed.

9.2 Confidential Information beyond possession or control

If the Service Provider makes a demand under this **paragraph 9**, and the Confidant has placed documents containing the Confidential Information, or is aware that documents containing the Confidential Information are, beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential

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

9.3 Meaning of "documents"

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

9.4 Legal proceedings

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

10. Waiver

10.1 Separate instances of waivers

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

10.2 Consent in Writing

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

10.3 Remedies cumulative

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

10.4 Variations and amendments

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

10.5 Applicable Law

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

11. Notices

11.1 Deemed service to the Confidant

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

11.2 Deemed service to the Service Provider

A notice or other communication which may be given to or served on the Service Provider under this Deed will be deemed to have been duly given or served if it is in Writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or a copy transmitted by facsimile to the

Service Provider at the address or facsimile number (as the case may be) set out in **Attachment A** to this Deed or such other address or facsimile number as may be notified in Writing to the Confidant from time to time.

12. Survival of obligations

The obligations in this Deed are perpetual.

Attachment A – Contact Details

Service Provider

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

Confidant

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

Executed as a deed poll.

SIGNED, SEALED AND DELIVERED by:

In the presence of:

Signature of Confidant

Signature of witness

Name

Name

Schedule 11: Health Supplied Items

The Health Supplied Items are:

[insert]

Schedule 12: Performance Guarantee

PERFORMANCE GUARANTEE

This Deed of Performance Guarantee and Indemnity (Guarantee)

made at _____ on _____

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

(Health)

By [insert name of Guarantor] ABN [insert ABN]

(Guarantor)

Note to Tenderers: Where the Guarantor is a foreign corporation a legal counsel opinion as to the validity and enforceability of the Guarantee will be required.

Background

- A. [insert name of Service Provider] ABN [insert ABN] (Service Provider) and Health are parties to a Services Agreement for the provision and management of the National Cancer Screening Register (Services Agreement) which commences on the Commencement Date.
- B. The Guarantor agrees to provide the guarantees and indemnities below in respect of the performance of the Service Provider's obligations under the Services Agreement on the terms and conditions set out in this Guarantee.

Operative Provisions

- 1. **Performance Guarantee**
- 1.1 The Guarantor unconditionally and irrevocably guarantees to Health the full performance by the Service Provider of the Service Provider's obligations and liabilities under the Services Agreement on the terms and conditions set out in this Guarantee.
- 1.2 Subject to clause 1.3, where the Service Provider fails to execute and perform any of its obligations or liabilities under the Services Agreement the Guarantor will, if required to do so by Health:
 - (a) complete or cause to be completed the obligations set out in, and in accordance with, the Services Agreement and this Guarantee; and
 - (b) discharge or cause all of the Service Provider's liabilities under the Services Agreement to be discharged.
- 1.3 The Guarantor will not be required to take action in accordance with clause 1.2 if the Service Provider has been relieved of performance under the Services Agreement by Health, by Law, or by a decision of a court of competent jurisdiction.
- 1.4 Despite clause 1.2, the obligations and liabilities of the Guarantor under this Guarantee will not exceed the obligations and liabilities of the Service Provider under the Services Agreement.

2. **Indemnity**

2.1 If:

- (a) the Service Provider commits a breach of its obligations under the Services Agreement;
- (b) such breach is not remedied by the Guarantor in accordance with clause 1.2, and
- (c) the Services Agreement is then terminated for default by the Service Provider,

the Guarantor will unconditionally and irrevocably indemnify and keep indemnified Health from and against any and all Loss which may be suffered or incurred by Health as a consequence of:

- (d) default by the Service Provider in performing or observing its obligations or discharging its liabilities under the Services Agreement;
- (e) Health attempting to enforce any of the Service Provider's obligations under the Services Agreement; or
- (f) Health attempting to enforce or preserve any of its rights under this Guarantee.

2.2 Where the Guarantor consists of more than one legal person, each of those persons agree to be bound jointly and severally by this Guarantee, and Health may enforce this Guarantee against any or all of the persons who constitute the Guarantor.

3. **Guarantor's Warranties**

3.1 The Guarantor warrants that:

- (a) the Guarantor is validly existing and in good standing under the laws of **[insert jurisdiction]** and is capable of being sued in its corporate name;
- (b) the Guarantor has the necessary corporate power and authority to execute and deliver this Guarantee and to perform its obligations thereunder;
- (c) the execution and delivery of this Guarantee by the Guarantor and the performance by the Guarantor of the transactions contemplated under this Guarantee have been duly authorised by the Guarantor;
- (d) the execution and delivery of this Guarantee has been authorised by all requisite corporate action;
- (e) the Guarantor has duly executed and delivered this Guarantee;
- (f) this Guarantee is a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, except as such enforceability may be limited by:
 - (i) applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting the enforceability of creditors' rights generally; and
 - (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in Law);
- (g) except as contemplated under this Guarantee, no consent authorisation, approval or other action by, and no notice to or registration with, any governmental authority created or acting under the corporations law in **[insert jurisdiction]** is required for the due execution, delivery or performance by the Guarantor of this Guarantee;

- (h) the choice of Laws of the Australian Capital Territory as the governing Law of this Guarantee will be recognised provided that the choice was made on a bona fide basis and without the primary purpose of avoiding the Laws of another jurisdiction; and
- (i) the submission by the Guarantor to the jurisdiction of the Australian Capital Territory in this Guarantee is binding on it.

4. **Continuing Liability**

4.1 The obligations of the Guarantor in this Guarantee continue in force and effect until:

- (a) the Service Provider has performed, observed and discharged all its obligations under the Services Agreement;
- (b) the Guarantor has completed the undertakings required by this Guarantee; or
- (c) the Guarantor is released by Health.

4.2 Where the Service Provider has failed to perform under the Services Agreement, the obligations and liabilities of the Guarantor under this Guarantee will continue even if the Service Provider has suffered an Insolvency Event.

5. **No Effect**

5.1 Subject to clause 1, the obligations of the Guarantor under this Guarantee are not affected by any circumstance, act or omission which, but for this provision, might operate to exonerate it from that liability in whole or in part.

5.2 Without limitation but subject to clause 1, the Guarantor's obligations and liability under this Guarantee will not be affected by:

- (a) the granting by Health to the Service Provider of time, waiver, indulgence or concession or the making of any composition or compromise (**compromise**) with the Service Provider unless such compromise is effected by a formal amendment to the Services Agreement;
- (b) Health forbearing to enforce or neglecting to exercise any right against the Service Provider;
- (c) any laches, acquiescence or other act, neglect, default, omission or mistake by Health;
- (d) any variation of any of the obligations and liabilities under the Contract, made either with or without the knowledge of the Guarantor;
- (e) any arrangement between the Service Provider and Health, made either with or without the consent of the Guarantor;
- (f) the release of any of the obligations or liabilities under the Services Agreement;
- (g) any failure by Health to disclose to the Guarantor any fact, circumstance or event relating to the Service Provider at any time prior to or during the currency of this Guarantee; or
- (h) any other inference arising out of the conduct between the Service Provider and Health.

5.3 The liability of the Guarantor under this Guarantee is absolute and will not be subject to the execution of this Guarantee or any other instrument or document by any person other than the Guarantor, and will not be subject to the performance of any condition precedent or subsequent.

6. **Novation**

- 6.1 Where the Guarantor is required to perform any obligation under the Services Agreement in accordance with this Guarantee, the Guarantor agrees to the novation of the Services Agreement from the Service Provider to the Guarantor, if requested by Health.

7. **Enforcement of Guarantee**

- 7.1 Health will not be required to make any claim or demand on the Service Provider or to enforce any right, power or remedy against the Service Provider in respect of its obligations and liabilities under the Services Agreement before making any claim or demand on the Guarantor under this Guarantee.

8. **Notices**

- 8.1 Each communication (including each notice, consent, approval, request and demand) under or in connection with this Guarantee:

- (a) must be in writing;
- (b) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (c) must be addressed to the other person to whom it is to be given;
- (d) must be either:
 - (i) delivered or posted by prepaid post to the address; or
 - (ii) if in pdf or other format that is a scanned image of the original communication, including a handwritten signature and attached to an email stating that the attachment is a notice under this Guarantee sent to the email address, of the addressee; and
- (e) is taken to be received by the addressee:
 - (i) in the case of prepaid post sent to an address in the same country, on the third Business Day after the date of posting;
 - (ii) in the case of prepaid post sent to an address in another country, on the fifth Business Day after the date of posting by airmail;
 - (iii) in the case of email, at the time that is 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached notice were not delivered to the addressee's domain specified in the email address; and
 - (iv) in the case of delivery by hand, on delivery,

but if the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

- 8.2 A person's address and email address are those set out below, or as the person notifies the sender:

Health

Address: [insert]

Email: [insert]

Attention: [insert]

Guarantor

Address: [insert]

Email: [insert]

Attention: [insert]

9. Governing Law

- 9.1 This Guarantee will be governed by and construed in accordance with the Laws of the Australian Capital Territory, and the Guarantor agrees to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Guarantee.

10. Costs

- 10.1 Except as otherwise provided in this Guarantee, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Guarantee.

11. Severance

- 11.1 Any provision of this Guarantee which is illegal, void or unenforceable will be ineffective to the extent only of the illegality, voidness or unenforceability without invalidating the remaining provisions of the Guarantee.

12. Variation

- 12.1 No provision of this Guarantee may be changed or amended except by an instrument in writing signed by the Guarantor and Health expressly referring to the provisions of this Guarantee.

13. Interpretation

- 13.1 The defined terms used in this Guarantee have the following meanings:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in the ACT.

Commencement Date means the date of the Services Agreement.

Guarantee means this performance guarantee.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001*) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001*), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

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

Loss or Losses means any loss, damage (whether direct or indirect), liability, cost or expense including legal costs and expenses on a solicitor and own client basis.

Executed as a deed

Note to Tenderers: The execution block below, for the Performance Guarantee assumes that the Guarantor will be a Company under the Corporations Act 2001 (Cth). The execution block will be amended if this is not the case.

Signed sealed and delivered by **[insert Guarantor name and ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signed sealed and delivered for and on behalf of the Commonwealth of Australia as represented by the Department of Health ABN 83 605 426 759 in the presence of:

Signature of witness

Name of witness in full

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full

Signature of authorised representative

Name of authorised representative in full

Schedule 13: Financial Undertaking

FINANCIAL UNDERTAKING

By: [insert Banker's details]

To: The Commonwealth of Australia, acting through and represented by the Department of Health
ABN 83 605 426 759

At the request of [insert] (the **Applicant**) and in consideration of the Commonwealth of Australia acting through and represented by the Department of Health (the **Favouree**) accepting this undertaking in connection with the Services Agreement or agreement entered into between the Favouree and the Applicant in relation to [insert Services Agreement reference], [insert name of Bank] unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Favouree up to a maximum aggregate sum of \$[insert amount in figures] ([insert amount in words]) only Australian Currency (the Sum).

[insert name of Bank] liability under this undertaking ceases on the first to occur of:

[insert name of Bank] receipt of written notification from the Favouree that the Sum or this undertaking is no longer required by the Favouree;

return of this undertaking to [insert name of Bank]; or

payment to the Favouree by [insert name of Bank] of the whole of the Sum.

Demands must be in writing; signed by or for and on behalf of the Favouree; and may be made for the whole or any part or parts of the Sum (and if only for a part, then further demands may be made for the balance).

[insert name of Bank] agrees that payment or payments due to the Favouree will be made forthwith and notwithstanding any notice given by the Applicant to [insert name of Bank] not to pay. Payment will be made by cheque payable to the Favouree or to a bank account in the name of the Favouree as notified by the Favouree.

[insert name of Bank] may at any time without being required to do so pay to the Favouree the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Favouree in writing. If [insert name of Bank] makes that payment then its liability under this undertaking ceases.

The Favouree may not assign its rights under this undertaking without the prior written consent of [insert name of Bank]. If [insert name of Bank] consents to the assignment of this undertaking then, unless the context requires otherwise, the word "Favouree" includes each assignee.

Dated: [insert date document is signed]

Signed as a Deed Poll for [insert name of Bank] by its attorney

SIGNED, SEALED AND DELIVERED for and on
behalf of

By:

.....
Name of signatory

.....
Signature

In the presence of:

.....
Name of Witness (Print)

.....
Signature of witness

.....
Date

.....
Date

Schedule 14: Confidential Information

The Service Provider's Confidential Information

Service Provider's Confidential Information	Reasons for Confidentiality	Period of Confidentiality

Health's Confidential Information:

Health's Confidential Information	Reasons for Confidentiality	Period of Confidentiality

Schedule 15: Escrow Agreement

Note to Tenderers: This Schedule 15 will be updated as part of Services Agreement negotiations to include any agreed escrow arrangements, if any.

Schedule 15 - Attachment A: Escrow Material

Schedule 16: Key Contract Side Deed

Note to Tenderers: The need for a Key Contract Side Deed will be determined based on Health's risk assessment.