



Australian Government

Department of Health and Ageing

AGREEMENT

between

COMMONWEALTH OF AUSTRALIA

as represented by the Department of Health and Ageing

and

[NAME OF ORGANISATION]

ABN

CONTENTS

1.	Definitions and interpretation	6
1.1	Definitions	6
1.2	Interpretation	10
2.	Term of the Agreement	11
3.	Planning, design and Approvals	11
3.1	Project Budget and Project Plan	11
3.2	Design of the Works.....	12
3.3	Project Documents.....	13
3.4	Approvals	13
4.	Conduct of the Project	13
4.1	Obligation to perform the Project	13
4.2	Performance of the Works	14
4.3	Specified Personnel Positions.....	14
4.4	Commencement of the Works.....	15
4.5	Subcontracting	15
4.6	Inspection of Works.....	16
4.7	Progress reports.....	17
4.8	Variations to the Works	17
4.9	Practical Completion of the Works	17
4.10	Date for Practical Completion	18
4.11	Defects after Practical Completion.....	18
5.	Assumption of risks for the Works	18
5.1	Responsibility for the Project.....	18
5.2	Acceptance of risk.....	19
6.	The Property	19
6.1	Performing the Project	19
6.2	The Property	19
6.3	Tenure.....	19
6.4	Securities in relation to the Property	19
6.5	Financial securities.....	20
6.6	No encumbrances	21
6.7	Disposal of the Property	21
7.	Designated Use	21
7.1	Use of the Property and the Works for the Designated Use.....	21
7.2	Repayment Amount	22
7.3	Organisation's acknowledgement	22
7.4	Accreditation, registration and licensing.....	22
7.5	External evaluation.....	23
8.	The Funding	24
8.1	Payment of the Funds	24
8.2	Use of the Funds.....	25
8.3	Amounts of Funds	25
8.4	Sufficiency of amounts	25

9.	Management of Funds	25
10.	Other contributions	26
	10.1 Other Contributions.....	Error! Bookmark not defined.
11.	Records, Reports and Acquittals	26
	11.1 Records and accounts	26
	11.2 Organisation must keep records	26
	11.3 Provision of records to the Commonwealth	26
	11.4 Financial records.....	27
	11.5 Reports.....	27
	11.6 Audits	27
	11.7 Acquittals.....	27
	11.8 Retention of records and information	27
	11.9 Participation in Evaluations and Analysis of the Program	28
12.	Liaison	28
	12.1 Commonwealth's Project Contact	28
	12.2 Provision of information.....	28
13.	Access to premises and records	28
	13.1 Access to records and Materials	28
	13.2 Access to hardware and software	29
	13.3 Costs	29
	13.4 Auditor-General and Privacy Commissioner	29
	13.5 Application of this clause.....	29
	13.6 Subcontracts	29
14.	Project Material and Intellectual Property	29
	14.1 Ownership rights in Project Material	29
	14.2 Licensing of rights in Reports	30
	14.3 Licensing of rights in other Project Material	30
	14.4 Project Material	30
	14.5 Intellectual Property warranty.....	30
	14.6 Commonwealth Material	30
	14.7 Moral Rights	30
15.	Acknowledgement and Publications	31
16.	Assets	31
	16.1 Purchasing of Assets	31
	16.2 Use of Assets	31
	16.3 Obligations in relation to Assets.....	31
	16.4 Disposal of Assets.....	32
	16.5 Interest	32
17.	Step in rights	32
	17.1 Rights to step in	32
	17.2 Organisation's obligations on step in	33
18.	Suspension and termination	34
	18.1 Termination for default	34
	18.2 Liability of the Commonwealth	35

18.3	Dealing with Funds on termination	35
18.4	Deemed termination for convenience	36
19.	Repayment of Funds	36
19.1	Repayment of Funds	36
19.2	Failure to repay Funds	36
20.	Indemnities	37
20.1	Organisation agrees to indemnify the Commonwealth	37
20.2	Proportional reduction of liability	37
20.3	Commonwealth's right to be indemnified is additional to other rights	38
20.4	Definition of fault	38
21.	Insurance	38
21.1	Obligation to obtain and maintain insurance	38
21.2	Copies of insurance	38
21.3	Proceeds of Insurance	38
22.	Confidential Information	39
22.1	Organisation not to disclose	39
22.2	Commonwealth disclosure	39
23.	Personal Information	40
23.1	When does this clause apply?	40
23.2	Other definitions relating to Personal Information	40
23.3	Organisation's obligations about Personal Information	40
23.4	Subcontractors	40
24.	Compliance with Laws and policies.....	40
24.1	Obligations	40
24.2	Application of clause 24.3	40
24.3	BCII Act	41
25.	Disputes.....	42
25.1	Dispute resolution	42
25.2	When clause 25.1 does not apply	42
25.3	Obligations continue.....	43
26.	Taxes, duties and government charges	43
26.1	Definitions	43
26.2	Responsibility for Taxes	43
26.3	Funding includes GST.....	43
26.4	Input Tax Credits.....	43
26.5	Tax Invoice.....	43
27.	General.....	44
27.1	Notices	44
27.2	Survival of provisions	44
27.3	Jurisdiction	44
27.4	Entire Agreement	44
27.5	Variation and Waiver	45
27.6	Illegality	45
27.7	Novation and assignment.....	45
27.8	Negation of employment, partnership and agency.....	45

27.9	Management of Conflicts	45
28.	Organisation to comply with all special conditions	46
	Schedule 1 Particulars	47

This Agreement is made on day of 20....

between

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

and

ORGANISATION [ABN/ACN] (the Organisation)

RECITALS:

- A. The Commonwealth administers the GP Super Clinics Program (the Program).
- B. The GP Super Clinics Program supports the establishment of multidisciplinary primary health care clinics which meet the Program Objectives set out in Schedule 1 and are tailored to meet the needs of and priorities of each local community in which a clinic is established and complement and enhance existing public and private health services in the community.
- C. The Organisation is committed to helping to achieve the Program Objectives as set out in Schedule 1 through the conduct of the Project.
- D. The Organisation has been approved to receive funding from the Commonwealth to carry out the Project in support of the Program Objectives on the terms and conditions set out in this Agreement. Particularly, the Commonwealth is providing the Funds to the Organisation for the Organisation to: [construction/refurbishment and property details to be inserted as appropriate to approved proposal].
- E. In consideration of the Commonwealth providing the Funds to the Organisation, the Organisation has agreed to perform the Project in accordance with the terms and conditions of this Agreement.

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

Agreement means this document and includes any Schedules or annexures;

Approval includes any consent, authorisation, registration, filing, agreement, notification, certificate, permission, licence, approval, permit, authority or exemption issued by, from or with any Proper Authority;

Approved Auditor means:

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

Asset means:

- (a) the items identified in Item 10 of Schedule 1 (if any); or
- (b) any item of tangible property purchased or leased either wholly or in part with the use of the Funds, that is not a fixture, with a value at the time of acquisition of \$5,000 or more, excluding GST,

but does not include the Property or the Works;

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

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

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

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

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

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

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

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

Code means the National Code of Practice for the Construction Industry, as amended from time to time, published, as at the Date of this Agreement, by the Commonwealth Department of Education, Employment and Workplace Relations;

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

Committed means expected expenditure backed by an agreement;

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

Commonwealth Material means any Material:

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

Completion Date means the date specified in Item 3.3 of Schedule 1;

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

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

but does not include information which:

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

Conflict means any circumstance in which the Organisation or any of the Organisation's officers, employees, agents or subcontractors has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Organisation's ability to perform the Project, or its obligations under this Agreement, fairly, independently and so as to achieve the Project Aim;

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

Date for Practical Completion means the date specified in Item 3.2 of Schedule 1 by which the Organisation must achieve Practical Completion of the Works;

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

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

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

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

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

Financial Report means a financial report relating to the Organisation's receipt, retention and expenditure of the Funds including, at a minimum:

- (a) a balance sheet, an income statement and a cash flow statement in relation to the Funds;
- (b) a statement identifying any Funds paid by the Commonwealth to the Organisation under this Agreement that were not spent or Committed by the end of the relevant financial year during the term of this Agreement;
- (c) a detailed statement of revenue and expenditure in relation to the Funds received and receivable by the Organisation under this Agreement, which must include a definitive statement as to whether the Organisation's financial accounts in relation to the Funds are complete and accurate, and a statement of the balance of the bank account referred to in clause 9; and
- (d) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds,

prepared in accordance with the Accounting Standards for the relevant financial year and audited by an Approved Auditor;

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

Implementation Guidelines means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (as amended from time to time);

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

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

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

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

Milestone means a milestone set out in the Milestone Schedule;

Milestone Schedule means the milestone schedule set out in the table in Item 5.2 of Schedule 1;

Minister means the Minister of the Commonwealth from time to time responsible for the Department;

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

OHS Accreditation Scheme means the OHS accreditation scheme established by the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

Party means a party to this Agreement;

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

Practical Completion occurs when the requirements of clause 4.9 have been met;

Privacy Act means the *Privacy Act 1988*;

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

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

Program Objectives means the program objectives described in Item 1.3 of Schedule 1 and as set out in the GP Super Clinics *National Program Guide* as published by the Commonwealth Department of Health and Ageing as amended;

Project means the project described in Item 1.1 of Schedule 1 and includes the Works;

Project Aim means the specified intended impact or result of the Project, including the objectives of the Project, as specified in Item 1.2 of Schedule 1;

Project Budget means the budget detailing how the Organisation will expend the Funds, and identifying the Organisation's contributions and other contributions (if any) and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing obligations under this Agreement;

Project Documents means all plans, drawings and other information relating to the Project and the Works that are brought into existence by or on behalf of the Organisation under or in connection with this Agreement or otherwise relating to the Works or the Project, including those documents identified in Item 1.4 of Schedule 1;

Project Manager means an independent, suitably qualified project manager engaged by the Organisation to supervise all construction works who is not an employee or officer of the Organisation;

Project Material means all Material including Reports:

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

Project Plan means the project plan detailing how the Organisation will conduct and complete the Project in accordance with this Agreement, including timeframes for completion of various stages of the Project;

Proper Authority includes any ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council, corporation or other legal entity with legislative authority which has jurisdiction or authority over or in connection with this Agreement, the Works, the Property or the Designated Use;

Property means the property on which the Project is to be undertaken that is detailed in Item 2 of Schedule 1 and includes the land and any improvements on the land, and buildings and improvements to be constructed on the land pursuant to this Agreement, but not including items that would not be regarded as fixtures at law;

Reports means the reports that the Organisation is required to produce and provide to the Commonwealth in accordance with clause 11.5 and Item 5 of Schedule 1;

Specified Personnel Position means a position identified in Item 8 of Schedule 1;

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

Works means that part of the Project which relates to the design, construction, modification, expansion, refurbishment or fit-out (as applicable) and related activities at the Property, as contemplated by the Project Plan acceptable to the Commonwealth in accordance with clause 3.1(c)(i) and also as described in Item 1.1 of Schedule 1.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of

novation and, in the case of a trustee, includes a substituted or an additional trustee;

- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) includes in any form is not a word of limitation;
- (j) a reference to \$ or dollar is to Australian currency; and
- (k) no provision of this Agreement is to be interpreted to the disadvantage of a Party because that Party (or its representative) drafted that provision.

2. Term of the Agreement

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

3. Planning, design and Approvals

3.1 Project Budget and Project Plan

- (a) The Organisation must submit to the Commonwealth a Project Plan and Project Budget on or before the date specified in the Milestone Schedule.
- (b) The Organisation must ensure that the Project Plan and Project Budget:
 - (i) have been prepared diligently, effectively and to a high professional standard;
 - (ii) will, if implemented in accordance with this Agreement, ensure that all timeframes arising under this Agreement will be met and the Works will meet all requirements of this Agreement and, in particular, will be fit for the Designated Use; and
 - (iii) are consistent with the Project Aim.
- (c) The Commonwealth will review the Project Plan and the Project Budget submitted under clause 3.1(a) and notify the Organisation that either:

- (i) the Project Plan and the Project Budget are acceptable to the Commonwealth; or
 - (ii) the Project Plan or the Project Budget (or both as the case may be), in the Commonwealth's opinion, require amendment in order to meet the requirements specified in clause 3.1(b).
- (d) On receipt of notification under clause 3.1(c)(ii), the Organisation must amend the Project Plan and the Project Budget so as to take into account the Commonwealth's comments and resubmit those documents within 20 Business Days of the date of the Commonwealth's notification for re-consideration by the Commonwealth in accordance with clause 3.1(c).
- (e) The Organisation must perform the Project in accordance with the Project Plan and the Project Budget once they are acceptable to the Commonwealth and must not make any amendment to the Project Plan or the Project Budget that would substantively alter the:
- (i) nature of, or the manner of completion of, the Works as provided for in the Project Plan or Project Budget (or both as the case may be);
 - (ii) amount of the Funds to be spent by the Organisation on any aspect of the Works or the nature of items on which the Funds are to be spent as provided for in the Project Budget; or
 - (iii) consistency of the Project Plan or the Project Budget (or both as the case may be) with the Project Aim,
- unless approved in writing by the Commonwealth.
- (f) For the avoidance of doubt, the Commonwealth's review of, or comment on, the Project Plan and the Project Budget do not in any way limit or affect the Organisation's obligations under this Agreement. To the extent of any inconsistency between the Project Plan (that is notified to the Organisation as being acceptable to the Commonwealth) and this Agreement or the Project Budget (that is notified to the Organisation as being acceptable to the Commonwealth) and this Agreement, this Agreement will take precedence.

3.2 Design of the Works

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

- (a) is conducted with the level of skill and care of a prudent and competent design professional;
- (b) complies with the regulatory requirements of the relevant State or Territory and local government in the jurisdiction in which the Works are to be conducted;
- (c) where the Property may be used (in whole or in part) for training purposes at any time during the Designated Use Period, takes into account the standards for training posts developed by the Royal Australia College of

General Practitioners or the Australian College of Rural and Remote Medicine as they are relevant (or both as the case may be);

- (d) will ensure that the Works are fit for the purpose of use for the Designated Use on and from the Date of Practical Completion, and throughout the Designated Use Period; and
- (e) will ensure that a Certificate of Occupancy will be issued in respect of the Works on their completion.

3.3 Project Documents

- (a) The Organisation must develop, prepare and maintain copies of all documents necessary to complete the Works in accordance with this Agreement, including, without limitation, all documents that would be prepared by a prudent and competent design professional, in order to ensure the Works are, on completion, fit for use for the Designated Use, throughout the Designated Use Period.
- (b) The Organisation must deliver the Project Documents identified in Item 1.4 of Schedule 1 to the Commonwealth no later than the date specified in the Milestone Schedule.
- (c) Without limiting or affecting the Organisation's obligations under this Agreement, the Organisation must make copies of the Project Documents available to the Commonwealth for inspection and audit in accordance with clause 13.

3.4 Approvals

- (a) The Organisation must obtain all Approvals for:
 - (i) the construction of the Works; and
 - (ii) the use of the Works for the Designated Use during the Designated Use Period,in accordance with this Agreement and must deliver a copy of each Approval to the Commonwealth promptly on request.
- (b) If the Works must be varied to obtain any Approval, the Organisation must notify the Commonwealth in writing of those variations and, unless the Commonwealth otherwise consents in writing, must ensure that no variation will adversely affect the Project, the Works, the Project Aim and the use of the Works for the Designated Use throughout the Designated Use Period.

4. Conduct of the Project

4.1 Obligation to perform the Project

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

- (a) perform the Project in accordance with the terms and conditions set out in this Agreement;

- (b) complete each of the Milestones identified in Item 5.2 of Schedule 1 (by achieving the criteria for completion of the relevant Milestone specified in the Milestone Schedule) on or before the relevant date for completion of each of those Milestones specified in the Milestone Schedule with time being of the essence; and
- (c) ensure that all work undertaken under this Agreement is consistent with and in furtherance of the Program Objectives and the Project Aims.

4.2 Performance of the Works

- (a) The Organisation must:
 - (i) if specified in Item 8 of Schedule 1, appoint a Project Manager to supervise the Works and notify the Commonwealth of the personal details of the Project Manager within 20 Business Days of that appointment;
 - (ii) where a Project Manager ceases to perform that function for the Organisation for any reason, notify the Commonwealth of the date of cessation and ensure that the role of Project Manager is not left vacant for a period greater than 10 Business Days;
 - (iii) upon appointment of a replacement Project Manager, notify the Commonwealth as provided in clause 4.2(a) (i) hereof;
 - (iv) comply with the timeframes (if any) specified in the Project Plan that is in a form acceptable to the Commonwealth in accordance with clause 3.1(c)(i) and otherwise comply with the timeframes specified in the Milestone Schedule for completion of the Works and the Project more generally; and
 - (v) ensure that the Works are carried out:
 - A. in accordance with the Approvals for the Works;
 - B. in accordance with the Project Plan and Project Budget;
 - C. in accordance with the requirements and standards of all Laws applicable to the Works;
 - D. diligently, effectively and to a high professional standard; and
 - E. so as to ensure that the Works will be fit for the Designated Use.
- (b) For the avoidance of doubt, to the extent of any inconsistency between the timeframes (if any) specified in the Project Plan that is acceptable to the Commonwealth in accordance with clause 3.1(c)(i) and the timeframes specified in Items 3 and 6.2 of Schedule 1, the timeframes specified in Items 3 and 6.2 of Schedule 1 will prevail.

4.3 Specified Personnel Positions

The Organisation must:

- (a) promptly after the Date of this Agreement, appoint a suitably qualified person to each Specified Personnel Position;
- (b) promptly after appointment, notify the Commonwealth of the identity and qualifications of each person appointed to a Specified Personnel Position;
- (c) where requested to do so by the Commonwealth, promptly (and in all cases in the period (if any) required by the Commonwealth) replace a person occupying a Specified Personnel Position in circumstances where the Commonwealth considers it necessary to do so in order for the Organisation to properly comply with its obligations under this Agreement;
- (d) where a person ceases to perform a Specified Personnel Position for any reason, promptly notify the Commonwealth of the date of that cessation and ensure that the Specified Personnel Position is not left vacant for a period of more than 10 Business Days; and
- (e) promptly after appointment, notify the Commonwealth of the identify and qualifications of any person appointed to fill a vacant Specified Personnel Position.

4.4 Commencement of the Works

- (a) Without limiting the Organisation's obligations under clause 4.4(b), the Organisation must not commence the Works until it has:
 - (i) obtained all relevant Approvals required under clause 3.4 that are necessary to enable the commencement of the Works;
 - (ii) obtained all insurances required under clause 21.1;
 - (iii) where applicable, provided financial security to the Commonwealth in accordance with clause 6.5; and
 - (iv) complied with its obligations under clause 6.3(a),
 and it has obtained written confirmation from the Commonwealth (which will not be unreasonably withheld) that the Commonwealth is satisfied that the Organisation has complied with the requirements set out in paragraphs (a) (i) to (a) (iv) (inclusive) above.
- (b) The Organisation must:
 - (i) obtain written confirmation from the Commonwealth under clause 4.4(a); and
 - (ii) commence the Works,
 on or before the date specified for the commencement of the Works in Item 3.1 of Schedule 1 with time being of the essence.

4.5 Subcontracting

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

- (b) In respect of all subcontracts the Organisation must ensure that:
 - (i) the subcontract facilitates compliance by the Organisation with its obligations under this Agreement;
 - (ii) the subcontract will not conflict with or detract from the rights and entitlements of the Commonwealth under this Agreement;
 - (iii) the other party to the subcontract is financially viable, has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work in relation to the Project;
 - (iv) the subcontract contains all the relevant terms of this Agreement including those relating to subcontracting, intellectual property, audit and access, privacy, security, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Organisation has or will secure itself a right to terminate the subcontract on terms no less favourable than those accorded to the Commonwealth by clause 18, in the event of this Agreement being terminated;
 - (v) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Commonwealth Ombudsman under that Act and that the Commonwealth will not be liable for the cost of any such investigation by the Commonwealth Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Agreement.
- (c) If requested, the Organisation must promptly provide to the Commonwealth a copy of any subcontract.

4.6 Inspection of Works

- (a) At all reasonable times during the construction of the Works upon giving reasonable notice and subject to the Organisation's reasonable requirements in relation to safety and security:
 - (i) the Commonwealth or persons authorised by the Commonwealth may enter the Property to inspect and examine the Works; and
 - (ii) the Commonwealth may give notice to the Organisation of any omission, fault or defect in the Works.
- (b) Within 10 Business Days, or such longer time as may be agreed to in writing by the Commonwealth, having regard to the nature of the omission, fault or defect, after the receipt of a notice under clause 4.6(a)(ii), the Organisation must cause all matters specified in that notice to be rectified and must notify the Commonwealth when rectification has been effected.
- (c) Despite the Commonwealth's right to inspect and examine the construction of the Works:

- (i) the Commonwealth is not obliged to check the construction of the Works for any defect, fault or omission; and
- (ii) the Organisation is not relieved of responsibility for any defect, fault or omission in respect of the Works.

4.7 Progress reports

From the Date of this Agreement, the Organisation must promptly on request by the Commonwealth provide notice in writing to the Commonwealth of:

- (a) the status of the Works and the actual status relative to the Project Plan; and
- (b) any material change in the Works that would result in a delay in the Works reaching Practical Completion on the Date for Practical Completion.

4.8 Variations to the Works

- (a) The Organisation must notify the Commonwealth in writing of all proposed variations to the Works that would or might reasonably be expected to have an effect on:
 - (i) the price of the Works;
 - (ii) the timeframes for completion of the Works, including the Date for Practical Completion;
 - (iii) the fitness of the Works for the Designated Use;
 - (iv) the accuracy of the Project Plan or the Project Budget; or
 - (v) the Approvals obtained in relation to the Works.
- (b) The Organisation must not vary the Works in a manner described in paragraph (a) without the consent in writing of the Commonwealth, which will not be unreasonably withheld or delayed.

4.9 Practical Completion of the Works

In order to achieve Practical Completion:

- (a) the Works must be:
 - (i) complete and free from errors, omissions and defects, except for errors, omissions or defects that:
 - A. are of a minor nature;
 - B. the immediate making good of which by the Organisation is not reasonably practicable;
 - C. the existence of which or the making good of which by the Organisation will not significantly inconvenience users of the Property or the Works for the Designated Use; and

- D. which do not cause any legal or physical impediment to the use and occupation of the Property and the Works for the Designated Use; and
- (ii) fit for the purpose of use for the Designated Use;
- (b) the Organisation must have provided to the Commonwealth a copy of the Certificate of Occupancy in respect of the Works;
- (c) the Works must have been commenced to be used by or on behalf of the Organisation for the Designated Use; and
- (d) the Organisation must obtain from:
 - (i) its authorised representative; and
 - (ii) a suitably qualified and independent person engaged for the purposes of inspecting the Works on their completion and determining whether, in the professional opinion of that person, the Works meet the requirements set out in clauses 4.9(a)(i) and 4.9(a)(ii),

written certification that the Works meet the requirements set out in clauses 4.9(a)(i) and 4.9(a)(ii), and provide each such written certification to the Commonwealth.

4.10 Date for Practical Completion

The Organisation must achieve Practical Completion of the Works on or before the Date for Practical Completion with time being of the essence.

4.11 Defects after Practical Completion

The Organisation must promptly rectify any defects, faults or omissions in the Works which:

- (a) are referred to in clause 4.9(a)(i); or
- (b) otherwise become apparent after the Date for Practical Completion and which would, or would reasonably be expected to affect the fitness of the Works or the Property (or both as the case may be) for the purpose of use for the Designated Use.

5. Assumption of risks for the Works

5.1 Responsibility for the Project

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

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

- (c) subcontracting of all or any part of the Works or the Project.

5.2 Acceptance of risk

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

6. The Property

6.1 Performing the Project

The Organisation must perform the Project on the Property identified in Item 2 of Schedule 1.

6.2 The Property

The Organisation must provide to the Commonwealth within 20 Business Days of the Date of this Agreement, and otherwise from time to time upon request:

- (a) details of the ownership of the Property including a title search of the Property identifying the registered proprietors of the Property; and
- (b) details of the nature of the Organisation's tenure of the Property, certified as being true and correct by the Organisation's legal adviser.

6.3 Tenure

- (a) On or before the date specified in Item 6.2 of Schedule 1, the Organisation must have tenure, and must substantiate to the reasonable satisfaction of the Commonwealth that it has tenure over the Property by way of fee simple, lease or otherwise, that is sufficient to enable the Organisation to undertake the Project and comply with its obligations under this Agreement, including without limitation under clause 7.
- (b) Notwithstanding any other clause in this Agreement, the Organisation acknowledges and agrees that it is not entitled to receive, and the Commonwealth is not obliged to pay, any part of the Funds, and, if it has been paid Funds, no Funds are to be expended by the Organisation, unless and until the Organisation has complied with clause 6.3(a).
- (c) If the Organisation has not complied with clause 6.3(a) within the timeframes specified in Item 6.2 of Schedule 1, the Commonwealth may in its absolute discretion terminate this Agreement for default in accordance with clause 18.1.

6.4 Securities in relation to the Property

Without in any way limiting or affecting the Organisation's obligations or the Commonwealth's rights under this Agreement or otherwise at law or in equity, the Organisation irrevocably:

- (a) agrees that the Commonwealth has the right to register and maintain a caveat against the title of the Property, preventing dealings with the Property that the Commonwealth considers are or would be inconsistent with this Agreement, until such time as the conditions imposed under this Agreement have been fully satisfied or discharged;
- (b) charges its rights, title and interest in and to the Property and the Works; and
- (c) agrees to sign all consents as required by the Commonwealth to the lodgement of caveats against the title of the Property in the form required by the Commonwealth from time to time to prevent the lapsing of any caveat.

6.5 Financial securities

If Item 14 of Schedule 1 specifies that the Organisation must provide a financial security, then:

- (a) the Organisation must provide financial security for performance of this Agreement, in the amount specified in Item 14 of Schedule 1 no later than 10 Business Days after the Date of this Agreement;
- (b) the Organisation must ensure that the financial security provided under clause 6.5(a) remains valid and exercisable by the Commonwealth at all times until 60 Business Days after Practical Completion is achieved;
- (c) the financial security must be:
 - (i) unconditional;
 - (ii) on terms satisfactory to the Commonwealth; and
 - (iii) from a Bank acceptable to the Commonwealth;
- (d) the financial security will be released by the Commonwealth within 60 Business Days after the Completion Date or the earlier termination of this Agreement;
- (e) the Commonwealth may, in its absolute discretion and without limiting its rights under this Agreement or otherwise, exercise its rights under the financial security:
 - (i) to obtain compensation for any loss, damage, cost, liability or expense incurred or suffered in the event that the Organisation fails to perform any or all of its obligations under this Agreement as and when they fall due, including upon termination of this Agreement under clause 18.1; or
 - (ii) to recover any debts due to the Commonwealth under or in connection with this Agreement;
- (f) if the Commonwealth exercises any or all of its rights under the financial security provided under clause 6.5(a), the Commonwealth is not liable for, and the Organisation releases the Commonwealth from liability for, any resultant loss, damage, cost, expense or liability of or to the Organisation;

- (g) the rights of the Commonwealth to recover from the Organisation the balance, after draw down or exercise of any rights under the financial security provided under clause 6.5(a), of all loss, damage, cost, expense or liability incurred or suffered by the Commonwealth are not limited by the Commonwealth's exercise of any or all its rights under the financial security; and
- (h) if the Commonwealth exercises any or all of its rights under the financial security provided under clause 6.5(a), the Commonwealth may, in its absolute discretion, require the Organisation to top up that financial security to the amount specified in Item 14 of Schedule 1.

6.6 No encumbrances

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

6.7 Disposal of the Property

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

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

7. Designated Use

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

As a fundamental condition of this Agreement, the Organisation undertakes:

- (a) for the Designated Use Period:
 - (i) to use the Property and the Works, or to ensure that the Property and the Works are used, for the Designated Use;
 - (ii) to ensure the Property and the Works are not left unused or unoccupied for a period in excess of four weeks without first obtaining the written consent of the Commonwealth; and
 - (iii) not to use the Property or the Works, or permit the Property or the Works to be used for any purpose, other than the Designated Use, without first obtaining the written consent of the Commonwealth; and

- (b) at all times during the term of this Agreement:
 - (i) to safeguard the Property and the Works against loss, damage and unauthorised use;
 - (ii) to maintain the Property and the Works in good condition;
 - (iii) to reinstate the Property and the Works if they are damaged or destroyed;
 - (iv) not to grant or dispose of any interest in the Property, or any part of the Property, without first:
 - A. obtaining the Commonwealth's consent in writing (such consent being given or withheld at the Commonwealth's absolute discretion); and
 - B. requiring the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent, to enter into a deed of covenant with the Commonwealth, on terms acceptable to the Commonwealth under which the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent covenants in favour of the Commonwealth to use the Property and the Works for the Designated Use until the expiry of the Designated Use Period.

7.2 Repayment Amount

Without limiting the Commonwealth's rights under this Agreement or otherwise at Law or in equity, if within the Designated Use Period the Commonwealth is satisfied on reasonable grounds that the Organisation has failed to comply with its obligations under clause 7.1, the Commonwealth may by written notice to the Organisation require the Organisation to pay to the Commonwealth, as liquidated damages and not as a penalty, the relevant amount calculated in accordance with Item 12 of Schedule 1. The Organisation must pay to the Commonwealth the amount set out in the notice, within 28 days of the date of the Commonwealth's notice. If the Organisation fails to make payment within 28 days, the Commonwealth may recover the amount specified in its notice as a debt due from the Organisation.

7.3 Organisation's acknowledgement

The Organisation acknowledges and agrees that:

- (a) the amounts payable by the Organisation under clause 7.2 represent a genuine and reasonable pre-estimate of the loss to the Commonwealth; and
- (b) the Organisation releases the Commonwealth from all claims arising out of or in connection with the Commonwealth's rights under clause 7.2.

7.4 Accreditation, registration and licensing

The Organisation must:

- (a) take all reasonable steps to ensure that the services provided as part of the Designated Use meet all relevant industry accreditation standards;

- (b) provide the Commonwealth with evidence in writing that accreditation assessments required for general practitioners and other health care service providers operating from the Property have been undertaken within 36 months of the Date of Practical Completion;
- (c) notify the Commonwealth within 20 Business Days of any change in the Organisation's accreditation status, which notice shall include copies of all relevant correspondence from the relevant accreditation providers; and
- (d) ensure that all general practitioners and other health care service providers operating from the Property are at all times appropriately licensed and registered in accordance with the requirements of relevant regulatory bodies in the jurisdiction in which the Property is situated.

7.5 External evaluation

(a) Engagement and purpose

- (i) The Commonwealth may engage an evaluator to evaluate the performance of the Program, including the Project, at any time during the Term.
- (ii) Each party must bear its own costs of participating in an evaluation under this clause 7.5.
- (iii) The purpose of the evaluation will be to evaluate the performance of the Program, including the Project, and the achievement of the Project Aims and provide a report to the Commonwealth.
- (iv) The Commonwealth may engage the evaluator to perform such other tasks as it determines from time to time.
- (v) The Commonwealth's Project Contact may, on request, provide the Organisation with the terms of reference and evaluation criteria for any evaluation conducted pursuant to this clause 7.5, if any such terms of reference and evaluation criteria exist.

(b) Co-operation

- (i) The Organisation must co-operate, at its own cost, with the Commonwealth's Project Contact and the evaluator in relation to any evaluation conducted pursuant to this clause 7.5.
- (ii) Without limiting subparagraph (i) above, the Organisation must provide the Commonwealth's Project Contact and the evaluator with:
 - A. access to all information, documents, establishments and personnel; and
 - B. all such facilities and all such other assistance,

which are reasonably necessary to enable the evaluation to be conducted in a prompt and thorough manner.

(c) No Limitation and No Liability

- (i) The Commonwealth and the Organisation acknowledge and agree that:
 - A. the evaluation does not in any way affect the parties' rights or obligations, whether under this Agreement or otherwise at law or in equity, in connection with this Agreement and the Project unless the parties agree to vary this Agreement in accordance with clause 27.5;
 - B. neither the evaluation, nor the conduct of either party or the evaluator during or in connection with the evaluation nor the contents of the evaluation report will limit the Commonwealth's rights under this Agreement;
 - C. on no account will the Commonwealth be liable to the Organisation for any act or omission of the evaluator;
 - D. the Organisation will not be relieved of any responsibility or liability under this Agreement as a result of anything which the evaluator may do or fail to do; and
 - E. without limiting the Commonwealth's other rights or the Organisation's other obligations under the Agreement, the Organisation must cooperate with the Commonwealth in the implementation of any recommendations which are made by the evaluator.

8. The Funding

8.1 Payment of the Funds

- (a) Subject to Parliamentary appropriation and to the provisions of this Agreement, the Commonwealth agrees to pay to the Organisation the amount of Funds specified in the Milestone Schedule in respect of a Milestone, after completion of that Milestone by the Organisation. A Milestone will be considered to be completed by the Organisation when the Organisation has satisfied all criteria for completion of the Milestone set out in the Milestone Schedule to the satisfaction of the Commonwealth.
- (b) Notwithstanding any other clause of this Agreement, the Organisation is not entitled to receive, and the Commonwealth is not obliged to pay, or if the Organisation has received any Funds, the Organisation is not entitled to spend, any amount of the Funds if:
 - (i) the Commonwealth has insufficient Program funding available at the time the payment is due to the Organisation;
 - (ii) the Organisation has not complied with its obligations under clauses 4, 6.3(a), 6.5 or 21 of this Agreement to the Commonwealth's reasonable satisfaction; or

- (iii) the Organisation has failed to comply with any provision of this Agreement which otherwise provides that the Organisation will not be entitled to receive any Funds until that provision has been complied with.

8.2 Use of the Funds

Funds provided under this Agreement:

- (a) must only be used for the purposes of carrying out the Project and performing this Agreement;
- (b) may not be applied towards administrative and other general costs of the Organisation that are not directly associated with the performance of the Project (including the Organisation's costs of administering this Agreement) unless any such costs are expressly included in the Project Budget that is acceptable to the Commonwealth in accordance with clause 3.1(c)(i) and are permitted under the GP Super Clinics *National Program Guide* published by the Commonwealth and as amended from time to time; and
- (c) must not, unless the prior written approval of the Commonwealth has been obtained, be used in a manner which is inconsistent with the Project Budget.

8.3 Amounts of Funds

The funding to be contributed by the Commonwealth in relation to the Project will not exceed the amount of Funds specified in Item 6 of Schedule 1. The Commonwealth accepts no liability for any debts incurred by the Organisation, or any of its board members, employees, agents contractors or subcontractors, or for any budget overruns.

8.4 Sufficiency of amounts

The Organisation warrants that the Funds, (together with all other contributions made or received by the Organisation in relation to the Project), will be sufficient to ensure the due and proper completion of the Works and the Organisation's other obligations under this Agreement.

9. Management of Funds

The Organisation must:

- (a) maintain a bank account with a Bank which is controlled solely by the Organisation to hold all Funds under this Agreement;
- (b) immediately deposit all Funds received into that bank account;
- (c) ensure that this bank account does not, at any time during the term of this Agreement, contain any monies other than the Funds and interest earned on the Funds;
- (d) notify the Commonwealth of the identifying details of the bank account and notify the Commonwealth of any changes to those details; and

- (e) every six months, commencing 3 months after the Date of this Agreement, until the Date of Practical Completion, provide to the Commonwealth a statement of the funds in the bank account.

10. Other contributions

The Organisation must:

- (i) promptly notify the Commonwealth in writing of the amount and source of any funding or other contributions for the Project (other than Funds provided under this Agreement) and, if requested by the Commonwealth, must provide to the Commonwealth copies of any written arrangements entered into, or proposed to be entered into, in respect of such other funding or contributions; and
- (ii) ensure that the terms on which any other funding or contributions are provided to the Organisation for or in connection with the Project are not inconsistent with the terms of this Agreement and do not, in any way, limit or affect the Organisation's ability to comply strictly with its obligations, or the Commonwealth's ability to exercise its rights, under this Agreement.

11. Records, Reports and Acquittals

11.1 Records and accounts

The Organisation must:

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

11.2 Organisation must keep records

The Organisation must keep comprehensive written records of the conduct of the Project including, without limitation, progress against the Milestones and the achievements of the Project Aim.

11.3 Provision of records to the Commonwealth

The Organisation must:

- (a) produce reports, information and other Material produced under or in connection with this Agreement and otherwise as reasonably required by the Commonwealth; and
- (b) provide all reports, information and other material to the Commonwealth in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.

11.4 Financial records

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

- (a) all revenue and expenditure related to the Project to be identified in the Organisation's accounts;
- (b) the preparation of a Financial Report; and
- (c) the Audit of these records.

11.5 Reports

Without limiting the Organisation's other obligations under this Agreement, the Organisation must provide to the Commonwealth the Reports specified in Item 5 of Schedule 1:

- (a) at the times specified in Item 5 of Schedule 1; and
- (b) in the format (if any) and including the content specified in Item 5 of Schedule 1; or
- (c) as requested in writing by the Commonwealth.

11.6 Audits

The Organisation must prepare a Financial Report at the end of each financial year in which the Organisation has received, expended or retained Funds pursuant to this Agreement. The Organisation must engage an Approved Auditor to Audit the Financial Reports of the Organisation and prepare a report.

11.7 Acquittals

Within 60 Business Days of the end of each financial year in which the Organisation has received, expended or retained Funds pursuant to this Agreement, or within 60 Business Days of the earlier termination of this Agreement, the Organisation must provide to the Commonwealth:

- (a) a certificate signed by a representative of the Organisation with the authority to make representations on behalf of the Organisation stating whether:
 - (i) the Funds have been used for the purpose for which they were provided; and
 - (ii) all terms and conditions of the Agreement were complied with; and
- (b) The Auditor's Report on the Financial Report (and the Financial Report), referred to in clause 11.6.

11.8 Retention of records and information

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

11.9 Participation in Evaluations and Analysis of the Program

The Organisation must participate at its own cost and as required by the Commonwealth, in studies, evaluations and other activities intended to analyse the success of the Project in achieving the Program Objectives and the Project Aims, on terms required by the Commonwealth. Such participation may, where required by the Commonwealth, include (but is not limited to):

- (a) attendance at conferences held by the Commonwealth regarding the GP Super Clinics Program;
- (b) attendance at forums in which evaluations and analysis relating specifically to the GP Super Clinics Program are being undertaken;
- (c) allowing third parties access to the Property to undertake analysis and evaluation of the Project; and
- (d) making reports, records and other information available to third parties for the purposes of evaluation and analysis.

12. Liaison

12.1 Commonwealth's Project Contact

The Organisation must liaise with and report to the Commonwealth's Project Contact, as nominated in Item 7 of Schedule 1 in relation to the Project, and as reasonably required by the Commonwealth's Project Contact for the purposes of this Agreement.

12.2 Provision of information

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

13. Access to premises and records

13.1 Access to records and Materials

The Organisation acknowledges and agrees that the Commonwealth and any persons nominated by the Commonwealth may, at reasonable times and on giving reasonable notice to the Organisation:

- (a) access and inspect the Organisation's premises to the extent relevant to the performance of this Agreement;
- (b) access and inspect the Property and the Works;
- (c) access and inspect any Assets, wherever they may be located;
- (d) require the Organisation (and its employees, agents and subcontractors) to provide records, Project Documents and information in a data format and storage medium accessible by the Commonwealth;

- (e) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Organisation or its employees, agents or subcontractors relevant to this Agreement or the Project (or both); and
- (f) require assistance in respect of any inquiry into or concerning the Works or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.

The Organisation must comply with all requirements of the Commonwealth under this clause 13.1.

13.2 Access to hardware and software

The Organisation must provide the Commonwealth or its nominees with access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under clause 13.1 and provide the Commonwealth with any reasonable assistance requested by it to use that hardware and software.

13.3 Costs

- (a) Subject to clause 13.3(b), each Party must bear its own costs of any reviews and/or audits conducted pursuant to this clause 13.
- (b) If an audit or review conducted pursuant to this clause 13 identifies a breach by the Organisation of this Agreement, the Commonwealth may recover its costs of conducting that review or audit as a debt due from the Organisation.

13.4 Auditor-General and Privacy Commissioner

The Commonwealth's rights under clauses 13.1 and 13.2 apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's functions or activities.

13.5 Application of this clause

This clause 13 applies for the duration of this Agreement and for a period of seven years from the termination or expiry of this Agreement.

13.6 Subcontracts

The Organisation must ensure that any subcontract entered into for the purposes of this Agreement contains a clause granting the Commonwealth access rights on terms equivalent to clauses 13.1 to 13.5 (inclusive).

14. Project Material and Intellectual Property

14.1 Ownership rights in Project Material

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

14.2 Licensing of rights in Reports

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

14.3 Licensing of rights in other Project Material

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

14.4 Project Material

On termination or expiry of this Agreement, or earlier if requested by the Commonwealth, the Organisation must deliver a copy of all Project Material then in existence to the Commonwealth in an agreed format, or as otherwise directed by the Commonwealth.

14.5 Intellectual Property warranty

The Organisation warrants that anything done by the Organisation in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property rights of any person. The Organisation further warrants that the Commonwealth will not, at any time, be infringing the Intellectual Property rights of any person when it undertakes an activity allowed for under this Agreement or uses Project Material in a manner consistent with the licences granted, or to be granted, to the Commonwealth under this clause 14.

14.6 Commonwealth Material

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

14.7 Moral Rights

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

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

- (b) The Consent referred to in clause 14.7(a) shall be perpetual, irrevocable, and unconditional in nature.

15. Acknowledgement and Publications

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

- (a) in all publications, promotional and advertising materials, public announcements, signs or plaques displayed at the Property, and activities by it or on its behalf in relation to the Project or any products, processes or inventions developed as a result of the Project;
- (b) by inviting representatives of the Commonwealth (including the Minister) to any formal public opening of the GP Super Clinic operating from the Property;
- (c) in respect of publications, promotional and advertising materials, public announcements, signs or plaques in a form approved by the Commonwealth prior to its use; and
- (d) otherwise at the times and in the manner as the Commonwealth directs from time to time.

16. Assets

16.1 Purchasing of Assets

The Organisation must not use Funds towards the purchase of Assets unless the Asset is identified in Item 10 of the Schedule.

16.2 Use of Assets

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

16.3 Obligations in relation to Assets

The Organisation must:

- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this Agreement, without the prior written approval of the Commonwealth which will not be unreasonably withheld;
- (b) maintain all Assets in good working order;
- (c) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
- (d) maintain a register of all Assets, recording the date of purchase or lease, the purchase or lease price, Asset description, Asset location, the proportion of

the Funds used to create or acquire the Asset, the carrying amount of the Asset and (where relevant) details of Asset disposals including the sale price; and

- (e) as and when requested, provide copies of the register of Assets to the Commonwealth.

16.4 Disposal of Assets

The Organisation must obtain prior approval, in writing, from the Commonwealth before selling or otherwise disposing of an Asset. If, at the time of the sale or disposal, the Asset has not been fully Depreciated the Organisation must, at the option of the Commonwealth:

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

16.5 Interest

If the Organisation fails to make or use a payment as required by clause 16.4:

- (a) the Organisation must pay the Commonwealth Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
- (b) the relevant amount, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Organisation.

17. Step in rights

17.1 Rights to step in

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

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

17.2 Organisation's obligations on step in

- (a) The Organisation must do everything necessary to give effect to the Commonwealth's rights under clause 17.1, in accordance with the directions of the Commonwealth including, but not limited to:
 - (i) novating or assigning to the Commonwealth, or its nominee, any contracts with third parties relating to the Project;
 - (ii) authorising the Commonwealth to deal with all Funds held by the Organisation, including authorising the Commonwealth or its nominee to act as a signatory to the Organisation's bank account in which Funds are to be held in accordance with clause 9;
 - (iii) assigning to the Commonwealth, or its nominee, any leases or licences relating to the Project that are, in the Commonwealth's opinion, required for the due and proper completion of the Project;
 - (iv) providing to the Commonwealth, or its nominee, unfettered access to the Property for the purposes of exercising its rights under clause 17.1; and
 - (v) at the Commonwealth's discretion, repaying to the Commonwealth, or paying to the Commonwealth's nominee, all Uncommitted Funds or such part of the Uncommitted Funds identified by the Commonwealth, within the timeframes specified by the Commonwealth or, if no timeframes are specified, promptly.
- (b) For the purposes of this clause 17 "Uncommitted Funds" means all Funds that are, at the time of the Commonwealth's request, unspent or uncommitted, or cannot be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Agreement.
- (c) Without limiting or affecting the Commonwealth's rights under this Agreement, the Commonwealth may recover all its costs associated with exercising its rights under this clause 17 (including costs associated with recovering any amount of Uncommitted Funds from the Organisation) as a debt due from the Organisation.
- (d) The Commonwealth will have no liability whatsoever to the Organisation (or to any third party) arising out of or in connection with the exercise of the Commonwealth's rights under this clause 17.
- (e) The Organisation releases the Commonwealth from, and indemnifies and will continue to indemnify, the Commonwealth against all:
 - (i) loss, damage, costs and expenses suffered or incurred by the Commonwealth, including as the result of claim made in relation to:
 - A. loss of or damage to third party property; or

- B. the injury, illness or death of a third party;
- (ii) loss of or damage to Commonwealth property; or
- (iii) loss, damage, costs and expenses suffered or incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising out of or in connection with the exercise of the Commonwealth's rights under this clause 17.

- (f) The Organisation's liability to indemnify the Commonwealth under clause 17.2(e) will be reduced proportionately to the extent that any negligent or unlawful act or omission or wilful misconduct on the Commonwealth's part contributed to the relevant loss, damage, expense, or liability.

18. Suspension and termination

18.1 Termination for default

If:

- (a) the Organisation fails to provide evidence of the Organisation's tenure over the Property to the satisfaction of the Commonwealth within the timeframes specified in clause 6.3(c);
- (b) the Organisation fails to comply with any timeframe under this Agreement which is stated to be of the essence;
- (c) the Organisation does not commence the Works within the timeframe specified in Item 2.1 of Schedule 1 for the commencement of the Works;
- (d) the Organisation fails to remedy its failure to comply with any term or condition of this Agreement within 10 Business Days (or such longer period as the Commonwealth may at its absolute discretion allow) of receiving notice from the Commonwealth requiring the Organisation to do so;
- (e) the Commonwealth is satisfied on reasonable grounds that any statement, representation or warranty made by the Organisation is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
- (f) the Commonwealth is satisfied on reasonable grounds that a Report given by the Organisation is significantly misleading or substantially incomplete or inaccurate;
- (g) the Organisation:
 - (i) becomes or is likely to become insolvent;
 - (ii) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or

has a receiver, manager or administrator appointed on behalf of debenture holders or creditors; or

- (iii) suffers any execution against its assets which has or will have an adverse effect on its ability to perform the Agreement; or
- (h) the Organisation breaches any condition of any other funding agreement between the Organisation and the Commonwealth;
- (i) the Organisation, by notice in writing given to the Commonwealth, withdraws from this Agreement; or
- (j) the Commonwealth considers it appropriate for any other reason,

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

18.2 Liability of the Commonwealth

- (a) If this Agreement is terminated or Funds for the Project are suspended in accordance with clause 18.1(j), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Organisation, which are directly attributable to the termination or suspension.
- (b) Without limiting any other right the Commonwealth may have under this Agreement or at Law or equity, including rights to recover the Funds, the Commonwealth will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement at the date of termination or remaining unpaid in relation to the Project on discontinuance of the Project.
- (c) Except as provided in this clause, the Commonwealth will not be liable to the Organisation for termination of this Agreement in accordance with clause 18.1(j).

18.3 Dealing with Funds on termination

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

18.4 Deemed termination for convenience

If a purported termination for cause by the Commonwealth under any of subclause 18.1(a) to 18.1(i) (inclusive) is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth will be deemed to be a termination for convenience under clause 18.1(j), which termination has effect from the date of the notice of termination referred to in clause 18.1, and the Organisation's sole rights in such circumstances will be those set out in clause 18.2(a).

19. Repayment of Funds

19.1 Repayment of Funds

If:

- (a) on expiry or on any earlier termination of this Agreement, any or all of the Funds:
 - (i) have not been spent or Committed in accordance with this Agreement; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Organisation and the Project Budget, be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Agreement; or
- (b) at any time the Commonwealth forms the reasonable opinion that any Funds have been used, spent or Committed by the Organisation other than in accordance with this Agreement,

the Commonwealth may by written notice to the Organisation:

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

19.2 Failure to repay Funds

- (a) If the Organisation fails to repay the Funds in accordance with a notice issued under clause 19.1(c) or fails to use Funds as directed under clause 19.1(e):
 - (i) the Organisation must pay the Commonwealth Interest on the amount set out in the notice from the date it was due, for the period it remains unpaid; and

- (ii) the amount set out in the notice, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Organisation.
- (b) The Organisation acknowledges that Interest payable under clause 19.2(a) represents a reasonable pre-estimate solely in respect of the loss incurred by the Commonwealth as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.

20. Indemnities

20.1 Organisation agrees to indemnify the Commonwealth

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

- (a) loss, damage, costs and expenses suffered or incurred by the Commonwealth, including as the result of claim made in relation to:
 - (i) loss of or damage to third party property; or
 - (ii) the injury, illness or death of a third party;
- (b) loss of or damage to Commonwealth property; or
- (c) loss, damage, costs and expenses suffered or incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising from:

- (d) any act or omission by the Organisation, or any of its employees, agents, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (e) any breach by the Organisation or any of its employees, agents, or subcontractors of obligations or warranties under this Agreement;
- (f) any use or disclosure by the Organisation, its officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (g) the use by the Commonwealth of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

20.2 Proportional reduction of liability

The Organisation's liability to indemnify the Commonwealth under clause 20.1 will be reduced proportionately to the extent that any fault on the Commonwealth's part contributed to the relevant loss, damage, expense, or liability.

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

The Commonwealth's right to be indemnified under clause 20.1 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

20.4 Definition of fault

In this clause 20, "fault" means any negligent or unlawful act or omission or wilful misconduct.

21. Insurance

21.1 Obligation to obtain and maintain insurance

- (a) Prior to commencing the Works, the Organisation must obtain (and ensure its subcontractors maintain) the insurances specified in Item 8.1 of Schedule 1 as being required during the Construction of the Works (which must be obtained on the terms specified in Item 8.1 of Schedule 1) and all other appropriate types and amounts of insurance to cover the Organisation's (or its subcontractors' (as the case may be)) activities under or in connection with this Agreement. Unless specified otherwise in Item 9 of Schedule 1, the Organisation must maintain these insurances until Practical Completion of the Works.
- (b) Prior to the Commencement of the Designated Use Period, the Organisation must obtain (and ensure its subcontractors maintain) the insurances specified in Item 9.1 of Schedule 1 (which must be obtained on the terms specified in Item 9.1 of Schedule 1) and all other appropriate types and amounts of insurance to cover the Organisation's (or its subcontractor's (as the case may be)) activities under or in connection with this Agreement. Unless specified otherwise in Item 9 of Schedule 1, the Organisation must maintain these insurances throughout the Designated Use Period.

21.2 Copies of insurance

The Organisation must, on request, promptly provide to the Commonwealth any relevant insurance policies and certificates of currency for inspection.

21.3 Proceeds of Insurance

If during the term of this Agreement:

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

then the Organisation must:

- (c) claim and obtain payment of any insurance moneys to which it is entitled under the relevant insurance policy in respect of the relevant loss, damage or destruction;
- (d) apply all relevant insurance proceeds in:
 - (i) if required by the Commonwealth, reinstating the Works or the Property (or both as the case may be); or
 - (ii) otherwise, paying the Commonwealth:
 - A. an amount calculated in accordance with Item 12 of Schedule 1; or
 - B. where the insurance proceeds are less than the amount calculated in accordance with Item 12 of Schedule 1, the total insurance proceeds.

22. Confidential Information

22.1 Organisation not to disclose

- (a) The Organisation must not disclose to any person other than the Commonwealth any Confidential Information without prior approval in writing from the Commonwealth.
- (b) The Commonwealth may at any time by notice or in writing to the Organisation, require the Organisation to give, and to arrange for its officers, employees, agents and subcontractors undertaking activities under or in connection with the performance of this Agreement to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Confidential Information. The Organisation must promptly comply with all such requirements of the Commonwealth.

22.2 Commonwealth disclosure

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

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

23. Personal Information

23.1 When does this clause apply?

This clause 23 applies only if the Organisation deals with Personal Information when it conducts the Project.

23.2 Other definitions relating to Personal Information

In this clause 23, the terms ‘agency’ and ‘Information Privacy Principles’ (or ‘IPPs’) have the same meaning as they have in section 6 of the Privacy Act, and ‘subcontract’ and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

23.3 Organisation's obligations about Personal Information

The Organisation agrees that:

- (a) if it obtains Personal Information while conducting the Project or otherwise performing its obligations under this Agreement it will use or disclose that Personal Information only for the purposes of this Agreement;
- (b) it will comply with the Information Privacy Principles (**IPPs**) as if the Organisation were an agency under the Privacy Act; and
- (c) it will otherwise comply with the Privacy Act.

23.4 Subcontractors

The Organisation must ensure that any subcontract entered into by it in relation to this Agreement places the same obligations about Personal Information on the subcontractor as this clause 23 places on the Organisation.

24. Compliance with Laws and policies

24.1 Obligations

The Organisation must, in carrying out this Agreement, comply with the provisions of any relevant Laws, and requirements of any Commonwealth, State, Territory or local authority and any policies notified to the Organisation in writing by the Commonwealth.

24.2 Application of clause 24.3

If the Funding provided under this Agreement is

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

then the Organisation must comply with clause 24.3. In all other cases, the Organisation must use reasonable endeavours to comply with clause 24.3.

24.3 BCII Act

- (a) In the performance of the Project, the Organisation must comply with the requirements of the Code and the Implementation Guidelines.
- (b) Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, the Organisation must ensure that any contract will not be entered into with a builder for building work, as defined in section 5 of the BCII Act, relating to the Project, if the builder is not accredited under the OHS Accreditation Scheme, at the time the contract for building work is to be entered into.
- (c) The Organisation must ensure that any building contract to which clause 24.3(b) applies requires the builder to remain accredited under the OHS Accreditation Scheme while carrying out the building work relating to the Project.
- (d) Compliance with the Code and the Implementation Guidelines, or the OHS Accreditation Scheme does not limit or affect the Organisation's obligations under this Agreement, or otherwise arising out of or in connection with the Project.
- (e) The Organisation must ensure that adequate records are created and maintained in respect of compliance with the Code, the Implementation Guidelines and the OHS Accreditation Scheme in relation to the Project.
- (f) The Organisation must permit (and must ensure that each subcontractor and builder permits) the Commonwealth or any person authorised by the Commonwealth, including the Office of the Australian Building and Construction Commissioner and the Office of the Federal Safety Commissioner, to have access to any construction sites or places (including privately funded construction sites or places) to which the Code, the Implementation Guidelines or the OHS Accreditation Scheme apply, to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project or this Agreement;
 - (iii) interview any person; and
 - (iv) request the Organisation to produce any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post,

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

- (g) If the Organisation does not ensure compliance with the requirements of the Code, the Implementation Guidelines, or the OHS Accreditation Scheme in the performance of this Agreement such that a sanction is applied by the Code Monitoring Group, then the Commonwealth, without prejudice to any rights that would otherwise accrue, is entitled to record that non-compliance and take it into account in the evaluation of any future tenders or applications for funding that may be lodged by the Organisation

or any of its related entities in respect of work for or funding from any part of the Commonwealth or its agencies.

- (h) Notwithstanding any other provision of this Agreement, the Organisation must not appoint a contractor, subcontractor, consultant or supplier in relation to the Project where the appointment would breach a sanction imposed by the Code Monitoring Group.
- (i) The Organisation must ensure that all subcontracts impose obligations on the subcontractors equivalent to the obligations under this clause 24.3 utilising the form set out in the "Model contract clauses: agreements with contractors" set out in the document titled "Model Tender and Contract Documentation" which is available at www.workplace.gov.au/building.

25. Disputes

25.1 Dispute resolution

- (a) Subject to clause 25.2, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.
- (b) The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
 - (i) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - (ii) the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution; and
 - (iii) if within 30 Business Days from the date of the notice issued under paragraph (b)(i):
 - A. there is no resolution of the dispute;
 - B. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - C. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,

then, either Party may commence legal proceedings.

25.2 When clause 25.1 does not apply

Clause 25.1 does not apply where:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by the Commonwealth under, or purportedly under, clauses 8, 13, 18 or 19; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Organisation.

25.3 Obligations continue

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

26. Taxes, duties and government charges

26.1 Definitions

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

26.2 Responsibility for Taxes

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

26.3 Funding includes GST

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

26.4 Input Tax Credits

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

26.5 Tax Invoice

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

27. General

27.1 Notices

- (a) A Party giving notice under this Agreement must do so in writing, including by facsimile, that is:
 - (i) directed to the Party's addressee specified in Item 7 of Schedule 1; and
 - (ii) hand delivered or sent by pre-paid post or facsimile to that address.
- (b) A notice given in accordance with clause 27.1 is received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post on the third Business Day after the date of posting; and
 - (iii) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

27.2 Survival of provisions

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

- (a) any rights of either Party against the other which:
 - (i) accrued prior to the time of termination or expiry; or
 - (ii) otherwise relate to or may arise at any future time from any breach of non-observance of obligations under this Agreement which arose prior to the time of termination or expiry; and
- (b) the provisions of this Agreement which by their nature survive expiry or termination, including clauses 5, 11.2, 11.8, 13, 14, 18.2, 18.3, 19, 20, 21 23 and 27.8.

27.3 Jurisdiction

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

27.4 Entire Agreement

To the extent permitted by Law:

- (a) This Agreement represents the entire understanding of the Parties, and constitutes the entire agreement between the Parties in relation to its subject matter; and
- (b) Supersedes any prior written or other agreement between the Parties.

27.5 Variation and Waiver

- (a) This Agreement may only be varied by a document signed by each party.
- (b) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise of enforcement of, a right, power or remedy provided by Law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Agreement.
- (c) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (d) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

27.6 Illegality

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

27.7 Novation and assignment

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

27.8 Negation of employment, partnership and agency

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

27.9 Management of Conflicts

If during the term of this Agreement, a Conflict arises, or appears likely to arise the Organisation must:

- (a) immediately notify the Commonwealth in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Organisation proposes to take to resolve or otherwise deal with the Conflict; and
- (b) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with that Conflict.

28. Organisation to comply with all special conditions

The Organisation must comply with each special condition set out in Item 11 of Schedule 1. A breach by the Organisation of a special condition constitutes a fundamental breach of this Agreement.

Schedule 1 Particulars

1. Project

1.1 The Project

The Project consists of the construction on the Property of a building and the refurbishment or extension of existing buildings on the Property (the Works) from which multidisciplinary health care services will operate during the Designated Use Period for the Designated Use.

1.2 The Project Aim

The Project Aim is to deliver, through the construction of the Works and use of the Works and the Property for the Designated Use throughout the Designated Use Period, multidisciplinary health care services that operate so as to best achieve the Program Objectives.

1.3 Program Objectives

The GP Super Clinic Program Objectives are as follows:

- GP Super Clinics provide their patients with ***well integrated multidisciplinary patient centred care***. GP Super Clinics will support their patients, particularly those with, or at risk of, chronic disease(s), with the option of receiving the full range of health services they need in a coordinated manner, where possible and appropriate, in a single convenient location. Underpinning this care will be integrated models of clinical governance and shared care protocols, as well as a strong focus on supporting patient self management.
- GP Super Clinics are ***responsive to local community needs and priorities, including the needs of Aboriginal and Torres Strait Islander people***. Ensuring GP Super Clinics will address local needs and priorities and have local community support will be a key element of the establishment process. As part of a demonstrated long term commitment to local health care services, organisational governance arrangements for the clinics will need to provide for ongoing community engagement and input.
- GP Super Clinics will provide ***accessible, culturally appropriate and affordable care*** to their patients. While health professionals will retain their autonomy over billing, GP Super Clinics will be strongly encouraged to bulk bill MBS funded services.
- GP Super Clinics will provide ***support for preventive care***, including promotion of healthy lifestyles, addressing risk factor and lifestyle modification to prevent chronic disease and improving early detection and management of chronic disease.
- GP Super Clinics will demonstrate ***efficient and effective use of Information Technology***. This would include an electronic clinical information system that can make patients' medical records available (with patient consent) to all practitioners (including allied health professionals) at the GP Super Clinic and to external providers as appropriate.

- GP Super Clinics will provide a ***working environment and conditions which attract and retain their workforce***. This could entail a range of models, including scope for health professionals to contribute clinical sessions and teaching activities, possibly on a salary basis, without needing to consider routine administrative and practice management activities. As workplaces of choice, GP Super Clinics also provide support for primary health care research to complement clinical service delivery.
- GP Super Clinics will be centres of ***high quality best practice care*** and will be expected to meet industry accreditation standards, including accreditation against the Royal Australian College of General Practitioners' Standards for General Practice (3rd edition), and accreditation for training, where this is applicable. Where appropriate, GP Super Clinics would also be encouraged to participate in the Australian Primary Care Collaboratives Program.
- Post establishment, GP Super Clinics will ***operate with viable, sustainable and efficient business models***, drawing revenue from existing programs and initiatives (including provision of health services under usual fee for service arrangements), and potentially other sources such as community partners.
- The GP Super Clinics initiative will ***support the future primary care workforce*** by providing high quality education and training opportunities supported by infrastructure for trainee consulting rooms, teaching rooms and training facilities to make general practice attractive to students, new graduates, GP trainees and registrars and other health professionals
- GP Super Clinics will ***integrate with local programs and initiatives***, demonstrating enhanced co-ordination with other health services and a partnership approach to local health service planning and coordination. This will further strengthen local general practice and the broader primary local primary health care services.

These characteristics are collectively referred to in this Agreement as the 'Program Objectives'.

1.4 Project Documents

The Organisation must provide the following Project Documents:

- (i) drawings and specifications for the Works which contain sufficient details and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity; and
- (ii) site plan including ingress and egress arrangements for pedestrians and motor vehicles.

2. The Property

The Property for the purposes of this project is (insert as appropriate)

3. Timeframes

2.1 Commencement of the Works

The Organisation must commence the Works within 6 months after the Date of this Agreement.

2.2 Date for Practical Completion

The Date for Practical Completion is [to be completed with details appropriate to the approved proposal].

2.3 Completion Date

The Completion Date is the date that is 60 days after the Commonwealth has received the operations phase Final Report referred to in Item 5 of this Schedule 1 and all deliverables required under this Agreement.

3. Designated Use

3.1 Designated Use Period

The Designated Use Period is the period commencing on the date that the Organisation achieves Practical Completion of the Works and expiring twenty (20) years after that date.

3.2 Designated Use

The Designated Use is the provision of multidisciplinary health care services from the Property for access and use by patients located in the [locality of the GP Super Clinic to which this Invitation to Apply is relevant]. The Works are to operate as a GP Super Clinic housing general practitioners and other health professionals who will provide patients in the [locality of the GP Super Clinic to which this Invitation to Apply is relevant] with multidisciplinary care services that are responsive to local community needs and priorities and that operate so as to best achieve the Program Objectives.

4. Reports

4.1 Reports

In addition to the Audited Financial Statements required under Clause 11.7 of this Agreement and Item 5.2 of this Schedule, the Organisation must provide the following reports from the Date of this Agreement until the Date of Practical Completion in accordance with the requirements set out below:

Report No	Report title and content and format requirements	Date for delivery of report
1.	A report on progress against construction milestones in a format specified by the Commonwealth.	Commencing with the Construction Phase, every 3 months until 3 months after the date of Practical Completion
2.	A construction phase Final Report including a comprehensive report on the expenditure of the	Within three months after the date that the

	Funds for the purposes of the Project and how the objectives of the Project have been supported by the completion of the Works	Organisation achieves Practical Completion of the Works in accordance with clause 4.9
3.	Operational details including, but not limited to, a description of the multidisciplinary care services delivered and the policies, practices and processes used to deliver those services as they relate to the Program Objectives.	Commencing on a date 12 months from the date of Practical Completion and then annually until the expiry of the Designated Use Period.
4.	An operations phase Final Report which includes a comprehensive report on whether the objectives of the Project were achieved and if not, why not.	Within three months of the expiry of the Designated Use Period

4.2 Audited Financial Statements

For each financial year that ends during the term of this Agreement the Organisation will provide the Commonwealth with the acquittal documentation required by clause 9(e) by no later than 30th September in the next financial year.

For any final part financial year during the term of this Agreement, the Organisation will provide to the Commonwealth the acquittal documentation required by clause 9, at the time that it delivers the operations phase Final Report referred to in the table above.

5. Funds

5.1 Maximum Amount of Funds

The maximum amount of Funds payable by the Commonwealth under this Agreement will be the lesser of the amount required to complete the Project and [to be completed with details appropriate to the approved proposal] (inclusive of GST).

5.2 Milestone Schedule

The Milestone Schedule is to be completed with details relevant to the Approved Proposal.

6. Project Contact

- (a) The Commonwealth's Project Contact will be the person(s) occupying the positions of:

To be completed with appropriate details.

- (b) The Organisation's Project Contact will be the person occupying the position of:

To be completed with appropriate details.

7. Specified Personnel Positions

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

[to be completed with details relevant to the approved proposal].

8. Insurance

8.1 The construction of the Works

(a) The Organisation must obtain and maintain the following insurance up until Practical Completion of the Works in accordance with clause 21.1:

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

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

and the Organisation must ensure that the policy specified in this Item 9.1(a)(i) notes the interest of the Commonwealth;

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

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

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

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

Professional Service Provider	Professional indemnity coverage
Architect	\$10 million
Builder	\$20 million
Fire Services	\$2 million
Electrical	\$10 million
Hydraulic	\$5 million
Civil	\$10 million
Mechanical	\$10 million

8.2 The Designated Use Period

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

9. Other contributions

9.1 Organisation's contribution

To be completed with details as appropriate to the approved proposal.

10. Assets

The Organisation must acquire the following Assets with the Funds:

To be completed with details to be inserted as appropriate to the approved proposal.

11. Special conditions

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

To be completed with details relevant to the approved proposal.

12. Repayment amount

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

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

where:

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

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

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

13. Financial Security

To be completed with details relevant to the approved proposal.