



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/ACN]

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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

[NAME OF ORGANISATION] [ABN/ACN] (the Organisation)

RECITALS:

- A. The Commonwealth administers the GP Super Clinics Program (**the Program**) in accordance with the National Program Guide.
- B. The GP Super Clinics Program supports the establishment of primary health care clinics which deliver integrated, multidisciplinary services which meet the Program Objectives set out in Schedule 1 and are tailored to meet the needs and priorities of each local community in which a clinic is established and complement and enhance existing public and private health services in that community.
- C. The Organisation is committed to helping to achieve the Program Objectives and the Project Aim 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 and the National Program Guide. Particularly, the Commonwealth is providing the Funds to the Organisation for the Organisation to

[Note: Delete options which do not apply]

[Option A] purchase the Property

[Option B] construct on, and operate from, the Property a multidisciplinary primary health care clinic which will operate so as to provide integrated health services to achieve the Program Objectives;

[Option C] [extend / refurbish / renovate] an existing building on the Property in order to establish a multidisciplinary primary health care clinic which will operate so as to provide integrated health services and so as to achieve the Program Objectives.

- 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 and annexures;

Approval includes all relevant consents, authorisations, registrations, filings, agreements, notifications, certificates, permissions, licences, approvals, permits, authorities or exemptions 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 11 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 \$20,000 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 [NB: if the Organisation is a state government entity, clauses relating to "Audit" will need to be altered];

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;

Capital Works Funding means that component of the Funds that the Commonwealth will provide under this Agreement to the Organisation to support the construction of the Works, as set out in Item 6.2 of Schedule 1;

Cash flow projection means a financial statement that is prepared using various assumptions to indicate how cash is expected to flow in and flow out over a specified period of time and verifies that projected cash receipts will be sufficient to cover projected cash disbursements;

Certificate of Occupancy means a certificate issued by the relevant 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 1997 as published by the Commonwealth Department of Education, Employment and Workplace Relations (the Code can be downloaded from deewr.gov.au/building);

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 that is 60 days after the Commonwealth has received all Deliverables required under this Agreement;

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;

Construction Progress Report means a Report on progress against construction milestones in accordance with the Project Plans and Budget which must be provided by the Organisation in accordance with the Deliverables and Milestones Schedule and in a format specified by the Commonwealth;

Construction Phase Final Report means a Report which must include a comprehensive Report on the expenditure of the Funds for the purposes of the Project and how the Objectives and outcomes of the Project have been supported by the completion of the Works, which must be provided by the Organisation in accordance with the Deliverables and Milestones Schedule;

Construction 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;

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 5 of Schedule 1 by which the Organisation must achieve Practical Completion of the Works;

Deliverable means all deliverables required to be provided by the Organisation to the Commonwealth under this Agreement, including those set out in the Deliverables and Milestones Schedule;

Deliverables and Milestones Schedule means the table of that name at Annexure A to this Agreement, as varied from time to time by the Commonwealth;

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 3.2 of Schedule 1;

Designated Use Period means the period specified in Item 3.1 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 Acquittal means a certificate signed by a representative of the Organisation with the authority to make representations on behalf of the Organisation:

- (a) detailing income and expenditure by the Organisation and the Project Parties for the period which can be acquitted against the Project Budget;
- (b) stating whether the Funds have been used by the Project Parties for the purpose they were provided; and
- (c) stating whether all terms and conditions of the Agreement were complied with;

Financial Report means an end-of-financial-year report which must at a minimum, include:

- (a) 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;
- (b) a detailed statement of revenue and expenditure in relation to the Funds received and receivable by the Organisation and the Project Parties under this Agreement which can be acquitted against the Project Budget, which must include a definitive statement as to whether the financial accounts in relation to the Funds are complete and accurate, and a statement of the balance of the bank account(s) referred to in clause 9;
- (c) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds; and
- (d) a copy of the Organisation's annual financial report;

and which must be prepared in accordance with the Accounting Standards for the relevant financial year and audited by an Approved Auditor and submitted in accordance with the timeframe in the Deliverables and Milestones Schedule.

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

Guidelines means the Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry, August 2009 (the Guidelines can be downloaded from deewr.gov.au/building);

Identified Third Party Contributor means an organisation or individual which contributes or is intended to contribute towards the establishment of the GP Super Clinic through the provision of property, capital, goods, services or personnel.

Implementation Guidelines means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry 2009;

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 the end of a stage that marks the completion of a sub-project, or phase, of the Project Plan or of this Agreement, as set out in the Deliverables and Milestones Schedule;

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*;

National eAuthentication Framework means the framework as available at <http://www.finance.gov.au/e-government/security-and-authentication/authentication-framework.html>.

National e-health Transition Authority means the body established by the Australian, State and Territory governments to develop better ways of electronically collecting and securely exchanging health information.

National Program Guide means the GP Super Clinics *National Program Guide 2010* and addendums published by the Department and as amended from time to time;

Non-capital Works Funds means that component of the Funds that the Commonwealth will provide under this Agreement to the Organisation to support business set-up costs, as set out in the National Program Guide;

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

Operational Phase Annual Report means the annual operational phase Report specified in the Deliverables and Milestones Schedule which must contain details of the use of the Works for the Designated Use, and must include, but is not limited to, a description of the multidisciplinary care services delivered and the policies, practices and processes used to deliver those services, and a detailed report against each element of the Final Operational Plan and against the Program Objectives. The Operational Phase Annual Report must include the relevant insurance Certificates of Currency and certifications set out in clause 21 and Item 9 of Schedule 1.

Operational Phase Final Report means the operational phase final Report specified in the Deliverables and Milestones Schedule which must include a comprehensive report on whether the objectives and outcomes of the Project were achieved and if not, why not, a detailed report against each element of the Final Operational Plan and a copy of the Assets register.

Operational Plan means the final Operational Plan, which must document the start-up arrangements for the GP Super Clinic, including detailing how the

- (a) clinical and organisational governance frameworks;
- (b) anticipated workforce;
- (c) proposed services (particularly those that focus on services to people with, or at risk of chronic disease(s));
- (d) affordable access (billing practices; hours of operation; transport and parking arrangements);
- (e) preventive care services;
- (f) information management / information technology arrangements;
- (g) working environment and conditions including recruitment and retention strategies;
- (h) business model (to be set out as a 3 year Cash Flow Projection);
- (i) training and education facilities; and
- (j) co-ordination with existing public and private health providers in the community,

will operate so as to ensure the clinic will meet the Program Objectives, to be developed by the Organisation in accordance with clause 3.5. In addition, the Operational Plan must include a Risk Management Plan.

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;

Privacy Impact Assessments means an assessment of the arrangements for transmitting patient data in accordance with the Office of Privacy Commissioner's Privacy Impact Assessment Guide available at <http://www.privacy.gov.au>.

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 Evaluation means any independent assessment of the Program, undertaken as specified in clause 7.5, to determine the Program's performance against its aims and the Program Objectives;

Program Objectives means the program objectives described in Item 1.3 of Schedule 1 and as set out in the National Program Guide;

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

Project Aim means the required outcomes of the Project, including the objectives and outcomes of the Project, as specified in Item 1 of Schedule 1;

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 the Schematic Design and design iterations (consisting of drawings and other documents illustrating the scale and relationships of the project components; a site plan, floor plan and building plans, sections and elevations) that form part of Project Plans and Budgets, including documents identified in the Deliverables and Milestones Schedule;

Project Parties means all contractors, Subcontractors, consultants and employees who perform on-site work in relation to the Works;

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 and Budget means the:

- (a) **Preliminary** Project Plan and Budget that must:
 - (i) document the Works at Schematic Design stage, providing a statement of how and when the Works are to be achieved, by showing the major sub-projects, milestones, activities and resources (including professional indemnity insurances) required for the Works against a detailed timeline and that will guide the Works;
 - (ii) identify the sum and whether this sum is GST inclusive or exclusive, established by the Organisation as available for the entire project, including the estimated construction budget, land costs (including stamp duties on purchase where applicable), costs of furniture, furnishings, and equipment; financing requirements and costs; fees for professional services; cost of Organisation furnished goods and services; contingency allowance; and similar established or estimated costs associated with the Works and the Clinic start-up that can be identified in accordance with the provisions of the National Program Guide regarding capital funding, non-capital funding, recurrent funding and relocation incentive payments; and
 - (iii) include a Risk Management Plan,

- (b) **Construction Ready Project Plan and Budget** that must:
- (i) update the Preliminary Project Plan documenting the changes (if any), including those required as a result of Approvals from relevant authorities, to the completion timeframe, site plans including ingress and egress arrangements for pedestrians and motor vehicles, floor plans, parking arrangements, milestones, activities, resources, etc and documenting sufficient detail and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity;
 - (ii) update the Preliminary Project Budget, further detailing actual costs and refining estimated costs associated with the Works and the clinic start-up and that can be identified in accordance with the provisions of the National Program Guide regarding capital funding, non-capital funding, recurrent funding and relocation incentive payments; and
 - (iii) include a Risk Management Plan, and
- (c) any further revisions of the Project Plan and Budget that are requested by the Commonwealth, which must be numbered sequentially;

which must each be developed by the Organisation in accordance with clause 3.1 and the Deliverables and Milestones Schedule and must facilitate communication between the Commonwealth and the Organisation regarding the Works and 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;

Recurrent Funds means that component of the Funds (if any) that the Commonwealth will provide under this Agreement to the Organisation to cover additional personnel costs incurred within four years of the date of this Agreement, associated with the implementation of integrated, multidisciplinary, team based approaches to the delivery of health services in the GP Super Clinic once it is constructed, as detailed in The National Program Guide and as set out in Item 6.3 of Schedule 1;

Relocation Incentives means that component of the Funds (if any) that the Commonwealth will provide under this Agreement to the Organisation to support relocation costs as set out in the National Program Guide as set out in Item 6.4 of Schedule 1;

Reports means the reports that the Organisation is required to produce and provide to the Commonwealth in accordance with clause 11.5 and the Deliverables and Milestones Schedule;

Risk Management Plan means a document which is guided by *Risk Management Principles and Guidelines AS/NZS ISO 31000:2009*, that captures the Organisation's risks arising from and/or related to establishing the GP Super Clinic including (but not limited to) meeting the requirements of this Agreement, procurement of a builder and other professional services, information management/communications, management of sub-contracts and implementing the clinic's business model;

Schematic Design means the documents that establish the conceptual design of the Works, illustrating the scale and relationship of the Works components. The Schematic Design documents must include a conceptual site plan, floor plan and preliminary building plans, sections and elevations;

Services Report means a report indicating the number of general practitioners, nurses, allied health professionals, specialists and/or student placements; the number of services delivered to meet local health needs including GP attendance services, preventive health care activities and chronic disease management services; and the extended hours of service;

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

Subcontract means any contract the Organisation enters into with a third party under which that third party is paid Funds by the Organisation to undertake activities relating to the Project and **Subcontractor** has a corresponding meaning;

Tender Plan means a document that sets out the timeframe, scope, terms and conditions (including proposed contract) and method for selecting a builder for the Works;

Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, expires on the Completion Date, as set out in clause 2; and

Threat and Risk Assessment means an assessment of the information management/information technology system security conducted by an Infosec Assessor licensed under the Infosec-Registered Assessor Program, details of which are available at <http://irap.securelink.com.au/index.php>.

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 and Budget acceptable to the Commonwealth in accordance with clause 3.1(d)(i) and also as described in Item 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 Plans and Budgets

- (a) The Organisation must submit to the Commonwealth each Project Plan and Budget detailed in clause 3.1(b) on or before the relevant date specified in the Deliverables and Milestones Schedule.
- (b) The Project Plan and Budgets that the Organisation must submit are as follows:
 - (i) A Preliminary Project Plan and Budget that must:
 - A. document the Works at Schematic Design stage, providing a statement of how and when the Works are to be achieved, by showing the major sub-projects, milestones, activities and resources (including professional indemnity insurances) required for the Works against a detailed timeline and that will guide the Works;
 - B. identify the sum established by the Organisation as available for the entire project, including the estimated construction budget, land costs (including stamp duties on purchase where applicable), costs of furniture, furnishings, and equipment; financing

requirements and costs; fees for professional services; cost of Organisation furnished goods and services; contingency allowance; and similar established or estimated costs associated with the Works and the Clinic start-up that can be identified in accordance with the provisions of the National Program Guide regarding capital funding, non-capital funding, recurrent funding and relocation incentive payments; and

- C. include a Risk Management Plan,
- (ii) A Construction Ready Project Plan and Budget that must:
 - A. update the Preliminary Project Plan documenting the changes (if any), including those required as a result of Approvals from relevant authorities, to the completion timeframe, site plans including ingress and egress arrangements for pedestrians and motor vehicles, floor plans, parking arrangements, milestones, activities, resources, etc and documenting sufficient detail and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity;
 - B. update the Preliminary Project Budget, further detailing actual costs and refining estimated costs associated with the Works and the clinic start-up and that can be identified in accordance with the provisions of the National Program Guide regarding capital funding, non-capital funding, recurrent funding and relocation incentive payments; and
 - C. include a Risk Management Plan;
- (iii) any further revisions of the Project Plan and Budget that are requested by the Commonwealth.
- (c) The Organisation must ensure that each Project Plan and Project Budget:
 - (i) has 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;
 - (iii) is sequentially numbered and dated; and
 - (iv) is consistent with the Project Aim.
- (d) The Commonwealth will review each Project Plan and Budget submitted under clause 3.1(a) and notify the Organisation that either:

- (i) the Project Plan and Budget are acceptable to the Commonwealth; or
 - (ii) the Project Plan and Budget, in the Commonwealth's opinion, require amendment
- (e) On receipt of notification under clause 3.1(d)(ii), the Organisation must amend the relevant Project Plan and 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(d).
- (f) Subject to clause 3.1(g), the Organisation must perform the Project in accordance with the each Project Plan and Budget once they are acceptable to the Commonwealth.
- (g) Where the Organisation proposes to change the scope, design, timeline, costs or other material elements set out in an approved Project Plan and Budget, the Organisation must submit a revised Project Plan and Budget which must:
 - (i) meet the requirements of clause 3.1(c);
 - (ii) include a Risk Management Plan which includes risks associated with achieving the timeline and costs set out in the approved Project Plan and Budget and provides mitigation strategies to address those risks;
 - (iii) identify the proposed changes to the approved Project Plan and Budget and document the rationale for these proposed changes.
- (h) The Commonwealth will review the revised Project Plan and Budget and Risk Management Plan submitted under clause 3.1(g) and notify the Organisation that either:
 - (i) the revised Project Plan and Budget is acceptable to the Commonwealth; or
 - (ii) the revised Project Plan and Budget, in the Commonwealth's opinion, require amendment in order to meet the requirements specified in clause 3.1(g) .
- (i) On receipt of notification under clause 3.1(h)(ii), the Organisation must amend the revised Project Plan and 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(h)(i).
- (j) The Organisation must perform the Project in accordance with the revised Project Plan and Budget once they are acceptable to the Commonwealth in accordance with clause 3.1(h)(i).

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) without limiting or affecting the Organisation's other obligations under this Agreement, complies with the regulatory requirements of the relevant State or Territory and local government in the jurisdiction 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) complies with all Laws and required Approvals;
- (e) is such that the Funds and all other contributions made or received by the Organisation will be sufficient for the completion of the Works (clause 8.4 requires the Organisation to warrant that the Funds, together with all other contributions made or received by the Organisation will be sufficient to ensure the completion of the Works);
- (f) 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
- (g) 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 and components thereof to the Commonwealth no later than the date specified in the Deliverables and Milestones 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.

3.5 Operational Plan

- (a) The Organisation must submit to the Commonwealth an Operational Plan as detailed in clause 3.5(b), on or before the relevant date specified in the Deliverables and Milestones Schedule.

- (b) The Operational Plan must document the start-up and operational arrangements for the GP Super Clinic, including the:

- (i) clinical and organisational governance frameworks;
- (ii) anticipated workforce;
- (iii) proposed services (particularly those that focus on services to people with, or at risk of chronic disease(s));
- (iv) affordable access (billing practices; hours of operation; transport and parking arrangements);
- (v) preventive care services;
- (vi) information management / information technology arrangements;
- (vii) working environment and conditions including recruitment and retention strategies;
- (viii) business model (to be set out as a 3 year Cash Flow Projection);
- (ix) training and education facilities; and
- (x) co-ordination with existing public and private health providers in the community,

will operate so as to ensure the GP Super Clinic will meet the Program Objectives. In addition, the Operational Plan must include a Risk Management Plan.

- (c) The Organisation must ensure that the Operational Plan:

- (i) have been prepared diligently, effectively and to a high professional standard;
- (ii) include all the matters specified in the Deliverables and Milestones Schedule as being relevant to that Plan; and

- (iii) are consistent with the Program Objectives.
- (d) The Commonwealth will review the Operational Plan submitted under clause 3.5(a) and notify the Organisation that the Operational Plan is either:
 - (i) acceptable to the Commonwealth; or
 - (ii) in the Commonwealth's opinion, requires amendment in order to meet the requirements specified in clause 3.5(c).
- (e) On receipt of notification under clause 3.5(d)(ii), the Organisation must amend the Operational Plan so as to take into account the Commonwealth's comments and resubmit the documents within 20 Business Days of the date of the Commonwealth's notification for re-consideration by the Commonwealth in accordance with clause 3.5(d)(d).
- (f) Either Party may request an amendment to the approved Operational Plan at any time during the Term of this Agreement. Where an amendment to an Operational Plan is requested by the Organisation, the Organisation will submit a revised Operational Plan to the Commonwealth for approval, taking into account the request for amendment, in accordance with the procedure set out in clause 3.5(d). The Commonwealth's approval to the amendment may be given or withheld at its discretion.
- (g) The Organisation is required to report on its performance against the requirements of the Operational Plan in the Operational Phase Reports as specified in the Deliverables and Milestones Schedule.

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) provide each of the Deliverables identified in the Deliverables and Milestones Schedule on or before the relevant date for provision of those Deliverables specified in that 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 Aim.

4.2 Performance of the Works

The Organisation must:

- (a) appoint a Construction Project Manager to supervise the Works and to provide certification regarding the conduct of the Works as and if required to do so by the Commonwealth;
- (b) comply with the timeframes (if any) specified in the approved Project Plan and otherwise comply with the timeframes specified in the

Deliverables and Milestones Schedule for completion of the Works and the Project more generally; and

- (c) ensure that the Works are carried out:
 - (i) in accordance with the Approvals for the Works;
 - (ii) in accordance with the Project Plan and Project Budget;
 - (iii) in accordance with the requirements and standards of all Laws applicable to the Works;
 - (iv) diligently, effectively and to a high professional standard; and
 - (v) so as to ensure that the Works will be fit for the Designated Use.

4.3 Specified Personnel Positions

The Organisation must:

- (a) 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 15 Business Days; and
- (e) promptly after appointment, notify the Commonwealth of the identity and qualifications of any person appointed to fill a vacant Specified Personnel Position.

4.4 Commencement of the Works

- (a) The Organisation must obtain the Commonwealth's approval to commence the construction of the Works. The Commonwealth may give or withhold its approval at its discretion but will only provide such approval after the Organisation has delivered, to the Commonwealth's satisfaction, the relevant Deliverables set out in the Deliverables and Milestones Schedule.
- (b) Without limiting clause 4.4(a) or the Organisation's obligations under clause 4.4(c), 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(a);
- (iii) complied with its obligations under clause 6.3(a); and
- (iv) where applicable, provided financial security to the Commonwealth in accordance with clause 6.6,

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 above.

- (c) 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 4 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) The Organisation must ensure that all Subcontracts it enters into in respect of the Project:
 - (i) are consistent with and will not in any way limit or affect the Organisation's compliance with its obligations, or the Commonwealth's rights, under this Agreement, including without limitation the Commonwealth's right to terminate this agreement pursuant to clause 18;
 - (ii) contain all terms that this Agreement requires those Subcontracts to contain (whether expressly or impliedly), including without limitation rights of novation of any arrangement required to give effect to the Commonwealth's rights under clause 17.2(a)(i) and clause 18.
- (c) If requested, the Organisation must promptly provide to the Commonwealth a copy of any Subcontract to the Commonwealth.

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 Works status updates to be provided on request

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 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 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 as set out in Item 5 of Schedule 1, 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 the Deliverables and Milestones Schedule, 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:

- (i) the Organisation has complied with clause 6.3(a); or
 - (ii) the expenditure of Funds for a specified purpose is authorised in writing by the Commonwealth in accordance with clause 6.3(d) .
- (c) If the Organisation has not complied with clause 6.3(a) within the timeframes specified in the Deliverables and Milestones Schedule, the Commonwealth may in its absolute discretion terminate this Agreement for default in accordance with clause 18.1.
- (d) The Organisation may expend Funds prior to complying with clause 6.3(a), where, and only where, the Commonwealth gives its prior approval in writing for such expenditure. Such approval may be given or withheld in the Commonwealth's absolute discretion and may be subject to conditions, including as to the amount and type of expenditure. The Organisation must comply with any conditions so specified.

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 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.

6.6 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 and in accordance with the timeframe specified in that Item;
- (b) the Organisation must ensure that the financial security provided under clause 6.6(a) remains valid and exercisable by the Commonwealth at all times until 20 Business Days after Practical Completion is achieved unless otherwise determined by the Commonwealth;
- (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 relation to this Agreement;
- (f) if the Commonwealth exercises any or all of its rights under the financial security provided under clause 6.6(a), the Commonwealth is not be 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 6.6(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 6.6(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.

6.7 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 disponent to enter into a deed of covenant with 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. 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 use the Property and the Works, or to ensure that the Property and the Works are used, consistently with the Operational Plan (as approved at that time);
 - (iii) 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
 - (iv) 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 disponente 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 13 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 of its application for accreditation with accreditation providers for general practice as well as accreditation providers for other health care service types offered in the Property within 12 months of the Date of Practical Completion;
- (c) 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;
- (d) 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
- (e) 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) The Commonwealth may engage an evaluator to evaluate the performance of the Program, including the Project, at any time during the Term.
- (b) Each party must bear its own costs of participating in an evaluation under this clause 7.5.
- (c) The purpose of the evaluation will be to evaluate the performance of the Program, including the Project, and the achievement of the Project Aim and provide a report to the Commonwealth.
- (d) The Commonwealth may engage the evaluator to perform such other tasks as it determines from time to time.
- (e) 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
- (f) 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.
- (g) Without limiting subparagraph (f) above, the Organisation must provide the Commonwealth's Project Contact and the evaluator with:
 - (i) access to all information, documents, establishments and personnel; and
 - (ii) 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.
- (h) The Commonwealth and the Organisation acknowledge and agree that:
 - (iii) 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;
 - (iv) 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;
 - (v) on no account will the Commonwealth be liable to the Organisation for any act or omission of the evaluator;
 - (vi) 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
 - (vii) 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 column 4 of the Deliverables and Milestones Schedule, upon provision by the Organisation to the Commonwealth's satisfaction of all Deliverables set out in column 2 of the Deliverables and Milestones Schedule for that stage, and as set out in Items 6.3 and 6.4 of Schedule 1, if applicable
- (b) Instalments of Funds will be paid by the Commonwealth 28 calendar days after acceptance by the Commonwealth of all Deliverables for that stage and following receipt by the Commonwealth of a correctly rendered Tax Invoice.
- (c) Notwithstanding any other clause of this Agreement:
 - (i) the Commonwealth may, at its absolute discretion defer, reduce or not make a payment of Funds;
 - (ii) the Organisation is not entitled to receive, and the Commonwealth is not obliged to pay, any amount under this Agreement; and
 - (iii) if the Organisation has received any Funds, the Organisation is not entitled to spend those Funds,
if at any time:
 - (iv) the Commonwealth has insufficient Program funding available at the time the payment is due to the Organisation;
 - (v) the Commonwealth has become entitled to terminate this Agreement under clause 18.1;
 - (vi) the Commonwealth forms the opinion on reasonable grounds that the full payment is not properly required by the Organisation to carry out the Project or because of Project surpluses or underspends;
 - (vii) the Organisation has not complied, to the reasonable satisfaction of the Commonwealth with all its obligations under clauses 4, 6.3(a), 6.6 or 21 of this Agreement; or
 - (viii) the Organisation has not complied with any provision of this Agreement which provides that the Organisation will not be entitled to spend or receive any Funds until that obligation has been complied with.

8.2 Use of the Funds

- (a) Funds provided under this Agreement must only be used for the purposes of carrying out the Project and performing this Agreement.
- (b) Capital Works Funds must only be used for the construction of the Works and such other activities as are described in the *National Program Guide*.
- (c) Recurrent Funds must be used for the additional personnel costs associated with the implementation of integrated, multidisciplinary, team based approaches to the delivery of health services from the completed Works, and as detailed in The National Program Guide.
- (d) Funds provided under this Agreement 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(d)(i).
- (e) Funds provided under this Agreement 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(s) in the name of the Organisation, with a Bank acceptable to the Commonwealth which is controlled solely by the Organisation to hold all Funds under this Agreement;
- (b) ensure that the bank account(s) does not, at any time during the Term of this Agreement, contain any monies other than the Funds and interest earned on the Funds;
- (c) immediately deposit all Funds received into the bank account(s);
- (d) notify the Commonwealth of the identifying details of the bank account(s) and notify the Commonwealth of any changes to those details; and

- (e) every three months, commencing three months after the Date of this Agreement, until the Date of Practical Completion, provide to the Commonwealth a:
 - (i) detailed statement of income and expenditure in relation to the Funds received and receivable by the Organisation under this Agreement, which must include a clear statement detailing names of payees to whom Funds were paid, the amount of each payment and that part of the Project Budget approved by the Commonwealth pursuant to clause 3.1(d)(i) to which the payments relate; and
 - (ii) a statement of the current cash at bank.

10. Other contributions

10.1 Organisation's contribution

- (a) Where specified in Item 10.1 of Schedule 1, the Organisation must contribute moneys specified in Item 10.1 of Schedule 1 for the purposes of the Project. The Organisation must make contributions in the amounts and on the dates specified (if any) in Item 10.1 of Schedule 1.
- (b) Where the Commonwealth considers that the Organisation has failed to make payment of any or all of the Organisation's contribution in accordance with this clause 10.1, the Commonwealth may in its absolute discretion deduct an amount equivalent to the Organisation's contribution from payments due to the Organisation under this Agreement.

10.2 Identified Third Party Contributors

- (a) Within 40 Business Days of the Date of this Agreement, the Organisation must provide evidence in writing to the Commonwealth that:
 - (i) it has obtained written undertakings from all Identified Third Party Contributors, under which the Identified Third Party Contributors are legally obliged to make the contributions to the Project as set out in Item 10.2 of Schedule 1; and
 - (ii) the terms on which the Identified Third Party Contributors will make their contributions 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.
- (b) The Organisation must, within 20 Business Days of the Date of this Agreement, provide to the Commonwealth copies of all written arrangements which it has entered, or proposes to enter, into with the Identified Third Party Contributors in relation to the Project.

10.3 Additional third party contributors

The Organisation must:

- (a) 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 or contributions made by the Identified Third Party Contributors);
- (b) obtain written undertakings from any additional third party contributors, under which the additional third party contributors are legally obliged to make contributions to the Project;
- (c) within 20 Business Days of entering into any arrangements with any additional third party contributors, provide to the Commonwealth copies of such written arrangements with any additional third party contributors; and
- (d) 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 extent to which the Project is achieving the Project Aim and Program Objectives.

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 the Financial Acquittal and Financial Reports; and
- (c) the Audit of these records.

11.5 Reports

- (a) Without limiting the Organisation's other obligations under this Agreement, the Organisation must provide to the Commonwealth the Reports specified in the Deliverables and Milestones Schedule:
 - (i) at the times; and
 - (ii) in the format (if any) and including the content;specified in the Deliverables and Milestones Schedule.
- (b) In addition to paragraph (a), the Commonwealth may at any time, and from time to time, during the Term of this Agreement, require the Organisation to provide reports and other information in addition to the reports required under clause 11.5(a) (**Additional Reports**). Where the Commonwealth requires an Additional Report, it will issue a direction in writing to the Organisation requiring an Additional Report to be provided and specifying the Commonwealth's requirements in relation to the:
 - (i) format;
 - (ii) content;
 - (iii) information and substantiating documentation to be submitted; and
 - (iv) auditing or certification (if any),for that Additional Report. The Organisation must comply with a direction of the Commonwealth under this clause 11.5(b) by submitting the requested Additional Report which complies with all requirements of the Commonwealth as set out in its direction, within 20 Business Days of receiving the Commonwealth's direction or within such longer period (if any) as the Commonwealth may allow.

11.6 Financial Acquittal and Financial Reports

The Organisation must provide the Financial Acquittal and audited Financial Reports:

- (a) at the times; and
 - (b) in the format (if any) and including the content;
- specified in the Deliverables and Milestones Schedule.

11.7 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 after its creation or such longer period as may be required by Law.

11.8 Subcontractors and financial information

- (a) The Organisation must ensure that a detailed statement of revenue and expenditure in relation to the Funds received and receivable by:
- (i) any Subcontractor under this Agreement; and
 - (ii) any subcontractor to a Subcontractor,
- including a definitive statement as to whether the Subcontractor's (or subcontractor to the Subcontractor's) financial accounts in relation to the Funds are complete and accurate is:
- (iii) included in the Financial Reports; and
 - (iv) otherwise made available to the Commonwealth upon request by the Commonwealth, within such timeframe as the Commonwealth may specify or otherwise within a reasonable timeframe.
- (b) The Organisation must ensure that any Subcontracts entered into for the purposes of this Agreement contains clauses:
- (i) which place on Subcontractors equivalent obligations to the obligations that are contained in clauses 11.2 and 11.7; and
 - (ii) which may be otherwise necessary for the Organisation to comply with its obligations under clause 11.8(a), including, without limitation, clauses which require the Subcontractor to place obligations on its subcontractors to provide the information set out in clause 11.8(a).

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 (subject to the Organisation's reasonable requirements for safety and security);
- (c) access and inspect any Assets, wherever they may be located;
- (d) require the Organisation (and its employees, agents and Subcontractors) to provide records 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 control of the Organisation or 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, the Project 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 promptly 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

- (a) 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.
- (b) 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 of Commonwealth support

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 and to any subsequent formal functions held at the GP Super Clinic;
- (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:

- (a) the Asset is identified in Item 11 of the Schedule; or
- (b) it obtains the prior written consent of the Commonwealth.

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, or its nominee, 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 cost 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 to the Commonwealth of the Organisation having tenure over the Property that is satisfactory and the Commonwealth within the timeframes specified in clause 6.3(a);
- (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 clause 4.4(c) of this Agreement;
- (d) the Organisation fails to remedy its failure to comply with any term or condition of this Agreement (which is not referred to in paragraphs (a) to (c) above) 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) At all times after the termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Organisation must only 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(d) 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 Practical Completion or on expiry or 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 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 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 9.2 of Schedule 1 (which must be obtained on the terms specified in Item 9.2 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 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 13 of Schedule 1; or
 - B. where the insurance proceeds are less than the amount calculated in accordance with Item 13 of Schedule 1, the total insurance proceeds.

21.3 Copies of insurance

- (a) On an annual basis and as soon as practicable after renewal of the relevant insurance:
 - (i) The Organisation must provide the Commonwealth with the certificates of currency relating to the insurances required to be held during construction of the Works, as set out in Item 9.1 of Schedule 1 ;
 - (ii) The Organisation must provide the Commonwealth with the certificates of currency relating to the insurances required to be held during the Designated Use Period, as set out in Item 9.2 of Schedule 1; and
 - (iii) The Organisation must provide the Commonwealth with a certification that the Organisation has verified the currency of the insurances held by each health professional working at the Property as required under Item 9.2 of Schedule 1.
- (b) The Organisation must provide the Commonwealth on request certificates of currency relating to any other relevant insurance policies.

22. Confidential Information

22.1 Organisation not to disclose

- (a) The Organisation must not to 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 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 to any person:

- (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.

23.5 Privacy Impact Assessments

The Organisation must ensure that a Privacy Impact Assessment is conducted by independent external assessors in accordance with the Office of Privacy Commissioner's Privacy Impact Assessment Guide.

23.6 System Security Assessment

The Organisation must, following implementation of the information management/technology systems, ensure that a System Security Assessment is conducted by independent external assessors to assess the implementation of controls to mitigate the risk identified within a security Threat and Risk Assessment.

23.7 Authentication Arrangements

The Organisation must ensure that authentication arrangements implemented in the facility is guided by the National eAuthentication Framework.

23.8 National E-Health Transition Authority

The Organisation must adhere to the National E-Health Transition Authority specifications and Standards Australia Health Informatics Standards within 24 months of publication.

23.9 Personally Controlled Electronic Health Record

In the event that a Personally Controlled Electronic Health Record becomes operational, the Organisation must ensure the use of a Personally Controlled Electronic Health Record for consumers who have given consent to do so, within 24 months of the Personally Controlled Electronic Health Record becoming operational

24. Compliance with Laws and policies

24.1 Obligations

The Organisation must, in carrying out this Agreement, comply with:

- (a) the provisions of any relevant Laws statutes, regulations, by-laws, and requirements of any Proper Authority; and
- (b) 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) a Proper Authority 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.

OPTION

The Organisation acknowledges and agrees that the Funds payable under this Agreement do not include an amount in respect of GST on any Taxable Supplies under this Agreement as the Organisation is a holder of an Australian Taxation Office GST Concession.

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.

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, 11.7, 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 jurisdiction in which the Project is undertaken. 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, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement, negotiations, understanding, representations or communications of 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

- (a) 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.
- (b) 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 12 of Schedule 1.

Schedule 1 Particulars

1. Project

1.1 The Project

[Note: Choose an option and delete those which do not apply. Renumber other paragraphs accordingly. Expand on the description of the Project if possible]

The Project consists of:

- (a) **[Option A]** the purchase of the Property by the Organisation;
- (b) **[Option B]** the construction on the Property of a multidisciplinary primary health care clinic (**GP Super Clinic**) which will operate so as to provide integrated health services to members of the **[insert name of district]** community so as to achieve the Program Objectives;
- (c) **[Option C]** the **[extension / refurbishment / renovation]** of an existing building on the Property in order to establish a multidisciplinary primary health care clinic (**GP Super Clinic**) which will operate so as to provide integrated health services to members of the **[insert name of district]** community so as to achieve the Program Objectives.

[Option D] The Organisation must ensure that the GP Super Clinic complements the existing services being provided by the Organisation from **[the Property / buildings which are near the Property]** which include:

- (i) **[insert details of existing services of the Organisation]**

1.2 The Project Aim

The Project Aim is to deliver, through the **[insert option used in item 1.1 above]** completion of the Works and the use of the Works and the Property for the Designated Use throughout the Designated Use Period so as to achieve the Project Aim.

1.3 Program Objectives

The Program Objectives are as follows:

- (a) 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.
- (b) GP Super Clinics are *responsive to local community needs and priorities, including the needs of Aboriginal and Torres Strait Islander peoples and older Australians in Residential Aged Care Facilities and community based settings*. 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.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.

2. The Property

[Option A] The Property is [Block X Section X District / Lot X on Deposited Plan X District] commonly known as [insert street address].

[Option B] The area comprising [x] square metres in the building currently known as [insert name of existing building] situated on [Block X Section X District / Lot X on Deposited Plan X District] commonly known as [insert street address] and as shown in [Subleasing Plan Number XXX / the plan / survey] which is Schedule [x] to this Agreement.

[Note: If the site includes buildings or areas which are not part of the GP Super Clinic, the specific part of the site where the GP Super Clinic will be located must be explicitly identified as the “Property”. Otherwise, the Commonwealth may inadvertently be imposing an obligation for the entire site to be used as a GP Super Clinic.]

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 20 years after that date.

3.2 Designated Use

The Designated Use is the provision of multidisciplinary health services from the Property for access and use by patients that operates in a way that best achieves the Program Objectives.

[Note: Expand on the Designated Use description if possible]

4. Commencement of the Works

The Organisation must commence the Works on or before [Insert]

5. Date for Practical Completion of the Works

The date by which Practical Completion of the Works must be achieved is on or before [Insert]

6. Funds

6.1 Total Amount of Funds

(a) 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 [\$ insert] (inclusive/exclusive of GST)..

6.2 Capital Works Funds

(a) The Commonwealth will pay [\$ insert] (inclusive/exclusive of GST) to the Organisation in the form of Capital Works Funds to support the

construction of the Works, payable in the instalments specified in the Deliverables and Milestone Schedule.

- (b) The Commonwealth will pay the Capital Works Funds in accordance with clause 8.1.

6.3 Recurrent Funds [delete if not applicable]

- (a) The Commonwealth will pay [**\$ insert**] (inclusive/exclusive of GST) to the Organisation in the form of Recurrent Funds to cover additional personnel costs (incurred within four years of the date of this Agreement) associated with the implementation of integrated, multidisciplinary, team based approaches to the delivery of health care services from the GP Super Clinic and as detailed in The National Program Guide.
- (b) The procedures and requirements for the payment of the Recurrent Funds are as follows:
 - (i) The Organisation must submit a correctly rendered invoice for payments of Recurrent Funds. Such invoices must detail the expenses incurred by the Organisation for which payment of Recurrent Funds is sought (refer clause 8.2(c)); and
 - (ii) The Organisation must provide a statement of verification by the Organisation's Project Contact that the expenses in the invoice have been properly incurred by or on behalf of the Organisation in accordance with this Agreement and meet the requirements of clause 8.2 and The National Program Guide.
 - (iii) Invoices for Recurrent Funds must be provided quarterly unless otherwise agreed with the Commonwealth.
 - (iv) The Commonwealth may require the Organisation to provide further information or substantiating evidence relating to an invoice for Recurrent Funds and the Organisation must comply with such request within the timeframe required by the Commonwealth.
- (c) The Commonwealth will not pay to the Organisation any amounts of Recurrent Funds after the day which is four (4) years from the date of this Agreement.

6.4 Relocation Incentives [delete if not applicable]

- (a) The Commonwealth will pay [**\$ insert**] (inclusive/exclusive of GST) to the Organisation in the form of Relocation Incentives to cover the cost of relocation incentive payments for allied health professionals, nurses, mental health workers and/or Aboriginal and Torres Strait Islander health workers to relocate to work in private practice at the GP Super Clinic within the first 12 months of the GP Super Clinic's operation.
- (b) The Commonwealth will pay the Relocation Incentives in two instalments, half on confirmation of relocation occurring and the remainder at the end of 12 months of service of the relevant person at the GP Super Clinic. The payments will be in accordance with clause 8.1(b),

of the *National Program Guide* and the following processes and requirements:

- (i) The Organisation must submit a correctly rendered invoice for payment of Relocation Incentives. Such invoices must detail the person who has relocated, the person's profession, the person's city of origin and the terms and conditions under which the person has relocated.
- (ii) The Organisation must provide a statement of verification by the Organisation's Project Contact that the expenses in the invoice have been properly incurred by or on behalf of the Organisation in accordance with this Agreement and the *National Program Guide*.
- (iii) The Commonwealth may require the Organisation to provide further information or substantiating evidence relating to an invoice for Relocation Incentives and the Organisation must comply with such request within the timeframe required by the Commonwealth.

7. Project Contact

- (a) The Commonwealth's Project Contact will be the person(s) occupying the positions of:
[insert]
- (b) The Organisation's Project Contact will be the person occupying the position of:
[insert]

8. Specified Personnel Positions

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

Construction Project Manager

Architectural Services

[Note: insert further Specified Personnel Positions if appropriate having regard to the particular nature of the Project]

9. Insurance

[Note: The types of insurance listed below are those which may be required in the different phases of the Project. You will need to confirm which types of insurance are required for each Project.]

9.1 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

Professional Service Provider	Professional indemnity coverage
[Optional] Electrical	\$5 million
[Optional] Hydraulic	\$5 million
[Optional] Civil	\$5 million
[Optional] Mechanical	\$5 million

9.2 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.

At a minimum the Organisation must ensure that it and each health professional working at the Property obtains the levels of insurance described in the tables below prior to the Commencement of the Designated Use Period and maintains these insurances throughout the Designated Use Period.

Insurance levels for the Organisation

Type of Insurance	Level of cover
Professional Indemnity	\$10 million
Public Liability	\$10 million
Workers Compensation	To an amount required by law

Insurance levels for health professionals

Type of Insurance	Level of cover
Professional Indemnity	\$10 million
Public Liability	\$10 million
Workers Compensation	To an amount required by law

10. Other contributions

10.1 Organisation's contribution

[Option A] The Organisation must contribute the sum of \$ **[insert]** (GST inclusive). The total amount of the Organisation's contribution must be made on or before **[insert]**.

[Option B] No Organisation contribution to be made.

[Note: Delete the Option that does not apply]

10.2 Identified Third Party Contributors

[Option A] There are no Identified Third Party Contributors.

[Option B] The Identified Third Party Contributors are set out below:

Name of Identified Third Party Contributor	Amount and nature of contribution to the Project
[insert]	[insert]
[insert]	[insert]
[insert]	[insert]

[Note: Delete the Option that does not apply]

11. Assets

The Organisation must acquire the following Assets with the Funds:

- (a) [insert details]

12. Special conditions

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

[Note: Delete any special conditions which are not required for a particular Project. Insert any other special conditions which apply to the particular Project].

12.1 **[Option A] Existing services**

- (a) The Organisation and the Commonwealth acknowledge that the Organisation currently operates a health care facility (**Facility**) on land **[that includes the Property and which will include the Works once completed / on land near the Property]** which is known as **[insert common name of the existing facility]**.
- (b) The Organisation acknowledges and agrees that the Commonwealth considers it fundamental to the due and proper completion of the Project (including the use of the Works and the Property for the Designated Use

during the Designated Use Period) that the Facility continues to be operated for the purposes of health care or purposes substantially similar to, or complementary to, health care at all times during the Designated Use Period.

- (c) If, at any time prior to the end of the Designated Use Period, the Organisation proposes to:
- (i) cease to operate the Facility for health care (or substantially similar or complementary purposes);
 - (ii) dispose of the Facility or any part of the land on which the Facility is located (including any part of the Property); or
 - (iii) otherwise deal with, or operate, the Facility or the land in a manner which would, or would be considered reasonably likely to, adversely affect the Organisation's ability to fulfil its obligations under this Agreement (including the use of the Works and the Property for the Designated Use during the Designated Use Period),

the Organisation must notify the Commonwealth in writing of that proposal and provide the Commonwealth with full details of the nature of such action and the reasons for which the Organisation proposes to take such action.

- (d) In order to protect the Commonwealth's interests, and in consideration of the investment made by the Commonwealth under this Agreement, the Organisation agrees to comply with such directions of the Commonwealth in relation to the proposal referred to in special condition 12.1(c) above, as the Commonwealth may, in its absolute discretion, require.
- (e) The Organisation acknowledges and agrees that the directions of the Commonwealth under 12.1(d) above may include (without limitation) the Commonwealth requiring the Organisation to deal with the Facility or the land on which the Facility is located in the manner proposed by the Organisation, subject to the Commonwealth (or its nominee) being granted an interest in the Property sufficient, in the Commonwealth's opinion, to enable the Works and the Property to be used for the Designated Use until the completion of the Designated Use Period.
- (f) If the Organisation fails to comply with its obligations under these special conditions, the Commonwealth will, without limitation to any other rights it has under this Agreement or at Law, be entitled to recover from the Organisation an amount calculated in accordance with the formula set out under the heading Repayment Amount in Item 13 of this Schedule 1.

12.2 [Option B] Purchase of the Property

- (a) As part of the Project, the Organisation agrees to purchase the Property using the Funds within [X] Business Days after the first payment of funds referred to in the Deliverables and Milestones Schedule is made to the Organisation.

- (b) The Organisation must not expend any Funds to purchase the Property, unless and until the Commonwealth gives the Organisation notice in writing that it is satisfied on reasonable grounds that:
- (i) the Property is suitable for the construction of the Works;
 - (ii) the Property is permitted to be used by the Organisation for the Designated Use on terms and conditions satisfactory to the Commonwealth;
 - (iii) the Property represents value for money; and
 - (iv) the Property will meet the Project Aim and the present and future needs of the Program.
- (c) Without limiting special condition 12.2(b), the Commonwealth may not be satisfied of any or all of the matters referred to in special condition 12.2(b) if it is not satisfied in relation to one or more the following:
- (i) reports and information about the Property;
 - (ii) site inspection or survey reports;
 - (iii) searches of the Property including land titles office searches, contaminated waste and zoning searches;
 - (iv) present and future town planning issues such as permitted use of the Property, roads, sewers and easements;
 - (v) a valuation of the Property;
 - (vi) building inspection reports about the condition of the Property;
 - (vii) pest inspection reports;
 - (viii) the location of the Property;
 - (ix) the cost of acquiring the Property; and
 - (x) tenure arrangements for the Property.
- (d) Within **[X]** Business Days after the Date of this Agreement, the Organisation must provide to the Commonwealth all information which the Commonwealth requires in order to assess the matters specified in special conditions 12.2(b) and (c) and any other information which the Commonwealth reasonably requires.
- (e) If the Commonwealth is not reasonably satisfied about any matter referred to in special condition 12.2(b), the Commonwealth may, by written notice to the Organisation, terminate this Agreement and clause 19 will apply.
- (f) The fact that the Commonwealth has notified the Organisation that it is satisfied with the Property under this special condition 12.2 does not relieve the Organisation of responsibility for any defect, fault, omission or other liability in respect of the Property or otherwise affect the Organisation's obligations under this Agreement.

- (g) The Organisation warrants and undertakes to the Commonwealth that:
 - (i) the transfer of the Property to the Commonwealth will be legally effective; and
 - (ii) all documents which it has provided or will provide to the Commonwealth under this special condition 12.2 are accurate.

12.3 [Option C] Mortgages/Borrowings

[This clause can be amended if necessary to cater for the particular situation]

- (a) The parties acknowledge that the Organisation has or intends to obtain finance (which must be on terms satisfactory to the Commonwealth) from the [**Borrower**] to supplement the Funds advanced by the Commonwealth under this Agreement, in an amount of [**Insert**].
- (b) Notwithstanding clauses 6.5 and 6.7 of this Agreement, the Commonwealth acknowledges that the Organisation has or will grant a first ranking registered mortgage over the Property owned or to be purchased by the Organisation, in favour of [**Borrower**] as security for loan money advanced or to be advanced to the Organisation as contemplated by paragraph (a).
- (c) The Organisation agrees to grant to the Commonwealth a second registered mortgage over the Property owned or to be purchased by the Organisation in favour of the Commonwealth as security for the Organisation's obligations under this Agreement.

13. 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.

[Note: The formula above assumes that the obligation to repay funds applies throughout the whole Designated Use Period. If repayment is only required during part of the Designated Use Period (eg the first 10 years of a Designated Use Period) then this formula must be amended by replacing "DUP" with the relevant number of years (eg 10).]

14. Financial Security

[Option A] The Organisation is required to provide financial security in accordance with clause 6.6. The financial security must be provided as follows:

Within 20 Business Days of each Milestone payment (as set out in the Deliverables and Milestones Schedule) being received, the Organisation must provide to the Commonwealth a Bank Guarantee in an amount equivalent to that Milestone payment or such other amount as the Commonwealth specifies.

or

[Option B] The Organisation is not required to provide financial security.

[Note: Delete the Option that does not apply. It may be appropriate to require financial security where:

- **the funding recipient is considered high risk; and/or**
- **a greater amount of funding (eg over \$10 million) is being provided.]**

Executed as a deed.

**Executed by Commonwealth of
Australia as represented by the
Department of Health and Ageing ABN
83 605 426 759** by and in the presence of:

Signature of Witness

Signature of Authorised Person

Name of Witness in full

Name of Authorised Person in full

[Insert execution block for the Organisation]

Annexure A

Deliverables and Milestones Schedule

[Note: The Deliverables and Milestones in the table below may be amended if necessary or appropriate for a particular case]

In addition to the Deliverables listed below, the Organisation must ensure that the Project Contact maintains regular communication with the Commonwealth, and the Commonwealth may establish and require the Organisation to follow, various communications protocols in the this regard.

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
Funding Agreement Execution	<p>Execution of the Funding Agreement between the Organisation and the Commonwealth.</p> <p>The Organisation must provide the Commonwealth with details of the bank account(s) in the name of the Organisation which any grant Funds and interest will be held (clauses 9(a) and 9(d)).</p> <p>The Organisation must, in accordance with clause 6.3(d), provide the Commonwealth with details of the proposed expenditure of the Funds paid against this Deliverable.</p>		[\$Insert]
Tenure	<p>The Organisation must provide the Commonwealth with evidence of tenure (clause 6.3(a)) in the form of:</p> <ul style="list-style-type: none"> • a certified copy of a certificate of title or current title search demonstrating that the Property is owned as freehold title by the Organisation without encumbrance; or • a certified copy of a dated, unconditional contract of sale, executed by the vendor and purchaser, with the Organisation as the purchaser, together with a current title search demonstrating that the property is owned as freehold title by the vendor; or • a lease between the land owner and the Organisation which substantiates that the Organisation has tenure over the Property that is sufficient to enable the Organisation to undertake the Project and comply with its obligations under this Agreement; and • details of the local Council zoning for the Property. 	[Date to be inserted]	

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
	Other forms of tenure may be accepted but must be discussed with the Commonwealth.		
Project Commencement	<p>The Organisation must provide the Commonwealth with:</p> <ol style="list-style-type: none"> 1. the Preliminary Project Plan and Budget (clause 3.1(b)(i)); 2. a Risk Management Plan; 3. Certificates of Currency for Professional Indemnity Insurance for Architect and any other consultants (clause 21.1(a) and Item 9.1(b) of Schedule 1); 4. contract for Architectural services; 5. details of the independent Construction Project Manager (clause 4.2(a)). 	[Date to be inserted]	
Seeking regulatory Approvals	<p>The Organisation must notify the Commonwealth:</p> <ol style="list-style-type: none"> 1. that the Organisation is ready to seek Development Approval 2. whether and, if so, what variations have been made or are necessary to make to the Works to the Preliminary Project Plan and Budget (clause 4.8) 	[Date to be inserted]	
Construction Tender	<p>The Organisation must:</p> <ol style="list-style-type: none"> 1. provide the Construction Ready Project Plan and Budget (clause 3.1(b)(ii)); 2. provide the Commonwealth with a copy of the Development Approval (clause 3.4); 3. notify the Commonwealth that the Organisation is ready to release the tender for the Works; 4. notify the Commonwealth whether and, if so, what variations have been made or are necessary to make to the Works and the Preliminary Project Plan and Budget (clause 4.8) 5. provide the Commonwealth with a quantity 	[Date to be inserted]	[\$Insert]

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
	<p>surveyor's estimate; and</p> <p>6. provide evidence that the proposed building contract contains the required clauses relating to the BCII requirements (clause 24.3).</p>		
Award of tender	<p>The Organisation must provide the Commonwealth with:</p> <ol style="list-style-type: none"> 1. the details of the selected building contractor; 2. a certified copy of the executed building contract; 3. the building contractor's construction program; 4. Certificates of Currency for the builder's professional indemnity insurance (clause 21.1(a) and Item 9.1(b) of Schedule 1); and 5. evidence of the building contractor's compliance with the BCII requirements (clause 24.3). 	[Date to be inserted]	
Approval to Commence Construction	<p>The Organisation must provide the Commonwealth with:</p> <ol style="list-style-type: none"> 1. a copy of the Building Permit or Certificate to Commence; 2. Certificate of Currency for: <ul style="list-style-type: none"> • the Contract Works Insurance (clause 21.1(a) and Item 9.1(a)(i) of Schedule 1); • the Organisation's public liability insurance (clause 21.1(a) and Item 9.1(a)(ii) of Schedule 1); 3. Certification by Organisation that construction Subcontractors meet requirements of funding agreement (clause 4.5(b)); and 4. site signage samples to meet the requirements of clause 15. 	[Date to be inserted]	[\$Insert]
Construction Commencement	<p>The Organisation must provide the Commonwealth with notification that construction has commenced, including:</p> <ol style="list-style-type: none"> 1. Evidence of commencement of construction of 	[Date to be inserted]	

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
	<p>Works;</p> <ol style="list-style-type: none"> 2. Site photographs including photographs of site signage; and 3. Confirmation that there are no soil contamination issues. <p>Where there is soil contamination found, the Organisation must provide the Commonwealth with:</p> <ul style="list-style-type: none"> • A copy of the soil investigation plan (to include development of soil remediation options / strategy during investigation); • details of arrangements with environmental services and laboratory; and • a revised Risk Management Plan which takes into account soil contamination and remediation. 		
Financial Acquittals and Report	<p>The Organisation must provide the Commonwealth with:</p> <ol style="list-style-type: none"> 1. a Construction Progress Report (clause 11.5); 2. a Financial Acquittal (clause 11.6); and 3. a statement of the bank account(s) balance (clause 9(e)). 	[Date to be inserted – 3 months after the date of this Agreement]	
Midpoint of construction	<p>The Organisation must provide the Commonwealth with:</p> <ol style="list-style-type: none"> 1. certification by the Construction Project Manager that the midpoint of construction has been achieved (clause 4.2(a)); 2. confirmation that no extensions of time have been sought by building contractor (if an extension of time has been sought, the Organisation must additionally provide the Commonwealth with: <ul style="list-style-type: none"> • a copy of the extension of time request; and • a revised Risk Management Plan which deals with extension of time issues; 	[Date to be inserted]	[\$Insert]

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
	3. Site photographs.		
Financial Acquittals and Report	The Organisation must provide the Commonwealth with: <ol style="list-style-type: none"> 1. a Construction Progress Report (clause 11.5); 2. a Financial Acquittal (clause 11.6); and 3. a statement of the bank account(s) balance (clause 9(e)). 	[Date to be inserted – 6 months after the date of this Agreement]	
Start up and operational arrangements	The Organisation must provide the Commonwealth with: <ol style="list-style-type: none"> 1. the Operational Plan (clause 3.5); 2. the clinical and administrative personnel recruitment strategy and timeline for workforce commencement; and 3. the communication strategy for the GP Super Clinic which meets the requirements of clause 15 and must include: <ul style="list-style-type: none"> • the proposed name and signage for GP Super Clinic; • a marketing plan for the GP Super Clinic; • website details for the GP Super Clinic; and • the commencement of services / formal launch timeline. 	[Date to be inserted]	[\$Insert]
Financial Acquittals and Report	The Organisation must provide the Commonwealth with: <ol style="list-style-type: none"> 1. a Construction Progress Report (clause 11.5); 2. a Financial Acquittal (clause 11.6); and 3. a statement of the bank account(s) balance (clause 9(e)). 	[Date to be inserted – 9 months after the date of this Agreement]	
Notification of Practical Completion	The Organisation must provide the Commonwealth with: <ol style="list-style-type: none"> 1. Certification of practical completion (clause 4.9) by a 	[Date to be inserted]	[\$Insert]

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
	<p>suitably qualified and independent person;</p> <ol style="list-style-type: none"> 2. a copy of the Certificate of Occupancy (clause 4.9(b)); 3. Certificates of Currency for insurances (clause 21.1(b) and Item 9.2 of the Schedule); 4. internal and external site photographs; and 5. the fit-out and occupation timeline. 		
Report of Completion of Works	The Organisation must provide the Commonwealth with a Construction Phase Final Report which must include a comprehensive Report on the expenditure of the Funds for the purposes of the Project and how the Objectives and outcomes of the Project have been supported by the completion of the Works (clause 11.5).	Within three months after the date that the Organisation achieves Practical Completion of the Works	
Services Report	The Organisation must provide the Commonwealth with a report indicating: <ol style="list-style-type: none"> 1. the number of general practitioners, nurses allied health professionals, specialists and/or students on clinical placements; 2. the services delivered to meet local health needs including GP attendance services, preventive health care activities and chronic disease management services; and 3. the extended hours of service. 	Quarterly in the first 12 months of operation and as requested by the Commonwealth from time to time	
Financial Acquittals and Report	The Organisation must provide the Commonwealth with: <ol style="list-style-type: none"> 1. a Financial Acquittal (clause 11.6); and 2. a Financial Report (clause 11.6) <p>for the preceding financial year.</p>	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	

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>	<i>Column (4)</i>
Process stage	Description of Deliverables for this stage	Date by which all Deliverables for stage must be provided	Associated Payment Amount (if any) (GST Inclusive)
		within 60 Business Days of the earlier termination of this Agreement	
Operational Phase Annual Reports	The Organisation must provide the Commonwealth with the Operational Phase Annual Report (clause 11.5).	The Operational Phase Annual Reports must be provided on each anniversary of the Date of Practical Completion during the Term.	
Operational Phase Final Report	The Organisation must provide the Commonwealth with the Operational Phase Final Report (clause 11.5).	The Operational Phase Final Report must be provided within 60 Business Days after the expiry of the Designated Use Period, or within 60 Business Days of the earlier termination of this Agreement	