



Australian Government
Department of Health and Ageing

MEDICARE LOCALS

DEED FOR FUNDING

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Ageing

ABN 83 605 426 759

and

[Insert Participant's name and ABN]

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Draft Without Prejudice

THIS Deed is made on the _____ day of _____ 2011

BETWEEN the

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

AND

[insert company name] ABN **[insert number]** ACN **[insert number]** (if ACN is not incorporated into the ABN), a company registered under the *Corporations Act 2001*, having its registered office at **[insert address]** ('the Participant').

RECITALS:

- A. The Commonwealth is currently undertaking significant reforms to Australia's health and hospital system in accordance with the National Health and Hospitals Network (NHN) Agreement of April 2010 and the subsequent Council of Australian Governments (COAG) Heads of Agreement – National Health Reform of 13 February 2011. In August 2011, COAG agreed to the National Health Reform Agreement (NHRA) that gives effect to the commitment made by COAG on 13 February 2011, and in doing so, the NHRA supersedes the NHN and the Heads of Agreement – National Health Reform.
- B. As a key component of health reform, Medicare Locals are being established across Australia to improve coordination and integration of primary health care in local communities, to identify local health care needs and address service gaps, and to help patients receive more seamless care across sectors of the health care system.
- C. In establishing a Medicare Local, the Participant commits to achieving improvements in primary health care and ensuring that primary health care services are better tailored to meet the needs of local communities in its Region.
- D. The Commonwealth has agreed to fund the Participant to perform activities which support these objectives and outcomes.
- E. Any time the Commonwealth agrees to provide funding to the Participant, the Commonwealth and the Participant may agree to sign a Program Schedule under this Deed to form a separate agreement in respect of that funding on the following terms and conditions:

THE PARTIES AGREE as follows:

PART 1. GENERAL

1 INTERPRETATION

1.1 In this Deed and each Program Agreement, unless the contrary intention appears:

'Accredited' means the Participant is fully accredited by an accreditation agency approved by the Commonwealth against Standards approved by the Commonwealth;

'Additional Requirements' in respect of a Program means the additional obligations to be met by the Participant for any Program as specified in the Program Schedule covering that Program;

'Aims of a Program' means a Program's objectives and outcomes described in Item A of a Program Schedule for that Program;

'Annual Budget' means an annual budget which has been approved in writing by the Commonwealth pursuant to clause 9 and is current at the relevant date, including any alterations approved by the Commonwealth in writing;

'Annual Plan' means an annual plan which has been approved in writing by the Commonwealth pursuant to clause 9 and is current at the relevant date, including any alterations approved by the Commonwealth in writing;

'Asset' means:

- a) In respect of a Program - Items identified in Item I of the Program Schedule for that Program; or
- b) an item of tangible property purchased, leased, created or otherwise brought into existence, either wholly or in part with the use of the Funds, with a value of \$5,500 or more, inclusive of GST,

but does not include Deed Material;

'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;

'Australian Accounting Standards' means instruments or standards created by the Australian Accounting Standards Board under Section 334 of the *Corporations Act 2001*, or provision of such instruments or standards as they so have effect;

'Australian Auditing Standards' means instruments or standard created by the Auditing and Assurance Standards Board under Section 336 of the *Corporations Act 2001*, or a provision of such instruments or standards as they so have effect;

'Bank Account' means an account maintained with an established financial institution such as a bank, building society or credit union operating in Australia;

'Board' means the governing and management body or directors of the Participant assembled at a meeting to transact business in accordance with the rules or constitution of the Participant consistent with the *Corporations Act 2001*;

'Budget' means the budget as specified in Item B of any Program Schedule for expenditure of the Funds and such Other Contributions as have been identified as at the Date of this Deed, for the purposes of conducting the Program or performing obligations under this Deed;

'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;

'CEO' means a company's principal executive officer responsible for the Participant's day-to-day management, whether referred to as its chief executive officer, general manager, managing director, or by another name;

'Child' means an individual under the age of 18;

'Clinician' means a health professional whose practice is based on direct observation and treatment of a patient, such as an individual qualified in the clinical practice of medicine, psychiatry, or psychology, as distinguished from other types of health workers, such as laboratory technicians and those employed in research;

'Committed' at a particular date, means Funds that the Participant is contractually and presently obliged to pay to a third party from a past event in respect of any part of the activities of the Participant and that can be identified in a written contractual arrangement with that third party and that are measurable and probable;

'Commonwealth' means the Commonwealth of Australia as represented by any Department or agency of the Commonwealth which is from time to time responsible for the administration of this Deed;

'Commonwealth Material' means any Material:

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

'Completion Date' means the date that is the number of days specified in Item C of the Program Schedule for any Program after the Commonwealth has received the final Deliverable required under the Program Agreement;

'Confidential Information' means information that:

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

but does not include information that:

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

'Conflict' includes any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Participant (or the Personnel or any Related Party of the Participant) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Participant in performing under this Deed or any Program fairly and independently;

Criminal or Court Record means any record of any Other Offence;

'Date of this Deed' means the date written on the execution page of this Deed or, if no date or more than one date is written there, then the date on which this Deed is signed by the last Party to do so;

'Deed' means this document and includes Schedule 1 (General Provisions), Schedule 2 (Pro Forma Program Schedule) and any Program Schedule, including any annexure to this Deed or any of those Schedules;

'Deed Manager' means the persons identified in Item I of Schedule 1 (General Provisions) for the purposes of this Deed and for the purposes of any notices under clause 33;

'Deed Material' means all Material:

- a) brought into existence for the purpose this Deed, including performing any Program;
- 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); and

includes the Deed Material described at Item F of any Program Schedule and any Reports;

'Deliverable' means any Annual Plan, Annual Budget, or Report and includes any other Material identified as a Deliverable at Item F of Schedule 1 (General Provisions) or Item D of a Program Schedule;

'Department' includes any department or agency of the Commonwealth which is from time to time responsible for the administration of this Deed;

'Depreciated' means the amount representing the same reduced value of an Asset as calculated for income tax purposes under, and in accordance with, the *Income Tax Assessment Act 1997*;

'Divisions of General Practice Program' means the core funding Program of the Commonwealth under a Deed for Multi-Program Funding for the Divisions of General Practice;

'Divisions Network' means the organisations funded under the Divisions of General Practice Program including, but not limited to, the Australian General Practice Network Limited, State Based Organisations and Divisions of General Practice;

'Financial Statements' means the annual financial statements under section 295 of the *Corporations Act 2001* (or half-year financial statements under section 303 of the *Corporations Act 2001*, where relevant);

'Funds' means:

- a) money paid or payable by the Commonwealth for a Program under or in connection with this Deed;
- b) all proceeds from the sale or disposal of an Asset acquired using the money referred to in (a), (c) and (d) during the Term of this Deed;
- c) money referred to in clauses 23.4 and 34.3; and
- d) interest earned on the money referred to in paragraphs (a) to (c);

'Funds Administrator' means a person appointed by the Commonwealth to perform the functions described in clause 10.10;

'Government Agency' means:

- a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- b) a body established by the Governor-General or by a Minister of State of the Commonwealth, including Departments; or
- c) an incorporated company over which the Commonwealth exercises control;

'Incorporated Material' means all Material not developed with the Funds, including Material in existence prior to the commencement of this Agreement, which:

- a) is incorporated with Deed Material; or
- b) is supplied with Deed Material and is necessary for the proper use of that Deed Material;

'Intellectual Property' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (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 applicable from time to time;

'Liaison Officers' means the persons or position holders specified in Item G of the Program Schedule for a Program or any substitute notified in writing to the other Party;

'Material' means documents, records, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

'Moral Rights' includes the following rights of an author of copyright Material:

- a) the right of attribution of authorship;
- b) the right of integrity of authorship; and
- c) the right not to have authorship falsely attributed;

'National Body' means the body established by the Commonwealth for the purposes of coordinating and assisting Medicare Locals;

'National Health Performance Authority' means the body established by Commonwealth legislation for the purposes of monitoring, and reporting on, the performance of Medicare Locals (amongst other functions);

'Other Contributions' means financial or in-kind resources (with in-kind resources valued at market rates) from third parties or the Participant for any Program, other than the Funds;

'Other Offence' means a crime, offence, conviction, finding of guilt, on-the-spot fine for, or court order relating to:

- a) an apprehended violence or protection order made against the person;
- b) the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or
- c) violence against a person or the injury, but excluding the death, of a person; or
- d) an attempt to commit a crime or offence, or to engage in any conduct or activity, described in paragraphs (a) to (c);

'Personnel' means:

- a) the officers, employees, agents or subcontractors of the Participant; and
- b) the officers, employees, agents or subcontractors of the Participant's subcontractors;
engaged in the performance of any Program, and includes:
- d) Specified Personnel; and
- e) those individuals (if any) engaged in the performance of any Program on a voluntary basis by the Participant or its subcontractors;

'Party' means a party to this Deed;

'Performance Audit' means an audit of financial and supporting documentation, organisational and business management procedures, the accuracy of Reports (including qualitative and quantitative data) and Deed Material as they relate to the Participant including any one or more Programs under this Deed;

'Performance Indicators' means the indicators used to monitor the Participant's progress towards achievement of the activities of a Program as specified in the Schedule covering that Program or in the Annual Plan;

'Performance Requirements' means the activities, aims, objectives, Performance Indicators and targets, and requirements of a Program as specified in the Program Schedule or in the Annual Plan;

'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;

Police Check means a formal inquiry made to the relevant police authority designed to obtain details of an individual's criminal conviction or a finding of guilt in each State or Territory and in all non-Australian jurisdictions that the Participant knows the person has resided in;

'Privacy Commissioner' means the office established under the *Privacy Act 1988* and includes any other person that may, from time to time, perform the functions of that office;

'Program' means any program of activity identified in a Program Schedule to be undertaken by the Participant and the provision of Deed Material for that Program;

'Program Agreement' means the agreement between the Commonwealth and the Participant for the funding of a Program formed upon the execution by both Parties of the Program Schedule in accordance with clause 3;

'Program Guidelines' means the documents that define the parameters of a Program to be undertaken by the Participant as issued by the Commonwealth from time to time for that Program, and referred to in Item L of the Program Schedule;

'Program Period' means the period specified in Item C of a Program Schedule during which the Program must be undertaken;

'Program Schedule' means a document setting out the agreed details of a Program which is substantially in the form of Schedule 2 to this Deed (Pro Forma Program Schedule);

'Qualified Auditor' means a person who is:

- a) registered as a company auditor under the *Corporations Act 2001* or an appropriately qualified member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants;
- b) acting in a professional capacity as an auditor; and
- c) not a principal, member, shareholder, office holder or employee of the Participant;

'Region' means the area in which the Participant's activities under this Deed and any Program Agreement will be undertaken as specified in Item C of Schedule 1 (General Provisions);

'Related Parties' means:

- a) any other entity that, at any time during a financial year, has control or significant influence over the Participant; or
- b) any other entity that, at any time during a financial year, is subject to control or significant influence by the Participant, including any subsidiary of the Participant;
- c) any member of the Board or the CEO of the Participant; or
- d) any member of the Board of any other entity identified as a related party under either paragraphs (a) or (b);

'Report' means Material provided to the Commonwealth in accordance with clause 11 including any additional Reports described in a Program Schedule;

Serious Offence means a crime or offence involving:

- a) the death of a person;
- b) sex-related conduct or activity, including an offence of sexual assault against an adult or minor, child pornography, or an indecent act involving a minor;
- c) a crime or offence involving dishonesty, fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services; or
- d) an attempt to commit a crime or offence, or to engage in any conduct or activity, described in paragraph (a), (b) or (c);

'Six Month Report' means the Six Month Report to be prepared by the Participant as described in clause 11 and Item F of Schedule 1 (General Provisions);

'Specified Personnel' means Personnel specified in Item M of the Program Schedule for a Program;

'Standards' means the standards for performance of the Program as set out in Item L of the Program Schedule for a Program;

'Strategic Plan' means the Strategic Plan to be prepared by the Participant as specified in clause 11 and in Item F of Schedule 1 (General Provisions);

'Term of the Program Agreement' means the period from the commencement of the Program Period for the Program to the Completion Date;

'Term of this Deed' means the period described in clause 2.1;

'Twelve Month Report' means the Twelve Month Report to be prepared by the Participant as described in clause 11 and Item F of Schedule 1 (General Provisions);

'Uncommitted' means Funds that are not Committed;

'Unspent' at a particular date means Funds that have not been spent or Committed by the Participant; and

'Vulnerable Person' means:

- a) a Child; or
- b) an individual aged 18 years or above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by any reason, including age, illness, trauma or disability, pregnancy, the influence, or use, of alcohol, drugs or substance use or any other reason.

1.2 In this Deed and each Program Agreement, unless the contrary intention appears:

- a) words in the singular include the plural, and words in the plural include the singular;

- b) words importing a gender include any other gender;
- c) words importing persons include a partnership and a body whether corporate or otherwise;
- d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- e) all references to dollars are to Australian dollars;
- f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- g) an uncertainty or ambiguity in the meaning of a provision will not be interpreted against a Party just because that Party prepared the provision;
- h) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
- i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and
- j) a reference to a 'clause' is to a clause in this Deed, a reference to an 'Item' is to an Item in the Schedule to this Deed, a reference to 'Schedules' is to the Schedules to this Deed, and a reference to 'Annexures' or 'Attachments' is a reference to documents attached to this Deed.

1.3 If there is any conflict or inconsistency between any of:

- a) the clauses of this Deed;
- b) Schedule 1 (General Provisions);
- c) the Program Schedule; and
- d) any annexure to the Program Schedule;

then the document mentioned in any one of paragraphs (a) to (d) above has precedence over the document mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

1.4 The Laws of [insert relevant State or Territory] apply to this Deed and each Program Agreement. The Parties agree to submit to the non-exclusive jurisdiction of the courts of [insert State or Territory] in respect of any dispute under this Agreement.

1.5 This Deed and each Program Agreement constitute the entire agreement between the Parties with respect to the subject matter of this Deed and each Program Agreement.

1.6 Subject to clauses 4, 6 and 22, no variation of this Deed or a Program Agreement is binding unless agreed in writing between the Parties.

1.7 Any reading down or severance of a particular provision does not affect the other provisions of this Deed or a Program Agreement.

- 1.8 A waiver of any provision of this Deed or a Program Agreement must be in writing.
- 1.9 No waiver of a term or condition of this Deed or a Program Agreement will operate as a waiver of another breach of the same or of any other term or condition contained in this Deed or a Program Agreement.
- 1.10 If a Party does not exercise, or delays in exercising, any of its rights under this Deed or a Program Agreement or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.11 A single or partial exercise by a Party of any of its rights under this Deed or a Program Agreement or at Law does not prevent the further exercise of any right.
- 1.12 The Participant must not assign its rights under this Deed or a Program Agreement without prior approval in writing from the Commonwealth.
- 1.13 The Participant agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of this Deed or a Program Agreement without first consulting the Commonwealth.

2 TERM OF THIS DEED

- 2.1 This Deed commences on the Date of this Deed and, unless terminated earlier, continues for the period specified in Item B of Schedule 1 (General Provisions).
- 2.2 Despite termination or expiration of this Deed:
- a) the terms and conditions of this Deed will continue in force in respect of any Program Agreements which have not terminated or have not expired and which were formed prior to the date of termination or expiration of this Deed; and
 - b) any Program Agreement formed prior to expiration or termination of this Deed will continue in force until it is terminated or expires notwithstanding that this Deed is no longer in force.

PART 2. FORMATION OF PROGRAMS

3 PROGRAM AGREEMENTS

- 3.1 If:
- a) the Commonwealth wishes to provide funding to the Participant under the terms of this Deed; and
 - b) the Parties agree and execute a Program Schedule;

then a separate Program Agreement will be formed between the Commonwealth and the Participant.

- 3.1 The terms of each Program Agreement formed under clause 3.1 will be:
- a) the terms and conditions set out in the executed Program Schedule;
 - b) the terms and conditions set out in Schedule 1 (General Provisions); and

- c) the terms and conditions set out in Part 3 of this Deed (and any other provisions of this Deed necessary to interpret those terms and conditions including the provisions of clause 1).

3.2 For the avoidance of doubt, the Parties acknowledge and agree that the Commonwealth is not prevented by this Deed from at any time funding other persons to perform the same or similar programs of activity on such terms and conditions as may be agreed between the Commonwealth and that other person.

PART 3. TERMS AND CONDITIONS

4 FUNDING AND OTHER CONTRIBUTIONS

4.1 Subject to Parliamentary appropriation, the Commonwealth agrees to pay the Funds to the Participant in accordance with the provisions of these terms and conditions, Item D of Schedule 1 (General Provisions) and with the provisions of any Program Agreement in respect of the Region.

4.2 The funding to be contributed by the Commonwealth for each Program will not exceed the amount of Funds specified in Item E of the relevant Program Schedule.

4.3 Funds for any Program must only be used in the Region for the Program and the Participant must ensure that any payments made out of the Funds provided under this Deed are expended only for:

- a) activities covered by that part of the Annual Plan applicable to the Program; or
- b) activities covered by a Program Schedule; or
- c) long service leave entitlements under clause 4.7; or
- d) purposes agreed in writing by the Deed Manager under clause 4.6.

4.4 The Participant must not use or Commit Funds:

- a) to pay fines or penalties; or
- b) to provide loans, advances, gifts (where the amount is greater than \$100), commissions, bonuses or similar benefits to any person; or
- c) to pay expenses of Board members, except in accordance with the relevant Annual Budget; or
- d) as security for the purposes of obtaining any form of commercial loans nor for the purpose of meeting existing loan obligations; or
- e) to acquire, sell or dispose of real property; or
- f) for building and construction works, except where the amount is less than 5% of the Annual Budget or less than \$250,000 (whichever is the lesser amount) and has been included in the relevant Annual Budget; or

- g) to meet or otherwise contribute to the ongoing operational costs of a member of the Divisions Network, except in relation to payments made under a contract approved under clause 8.1; or
 - h) for the purpose of establishing a subsidiary or other commercial entity, except in relation to the establishment of the [XX] Medicare Local; or
 - i) to the Depreciation of an Asset.
- 4.5 Funds must not be used to purchase or lease any Asset, except where:
- a) the Asset is included in the relevant Annual Budget; or
 - b) the Commonwealth gives prior written approval.
- 4.6 The Participant must not use the Funds for the following purposes unless it has obtained the prior written agreement of the Deed Manager:
- a) for legal and other costs to settle unfair dismissal/grievances and/or settle other claims brought against the Participant and/or meet any order for damages or judgement against the Participant and/or the payment of any amount pursuant to a settlement of a claim; or
 - b) subject to clause 22, for the purposes of redundancy payments; or
 - c) for the purposes of overseas travel by Personnel.
- 4.7 Funds may be set aside or used for the purposes of long service leave entitlements for employees of the Participant. The Participant must:
- a) maintain a register of long service leave entitlements (which is to cover Funds set aside or used for the purposes of long service leave payments for any Program under this Deed) recording for each employee of the Participant for whom Funds have been set aside or used for the purposes of long service leave entitlements, their length of service, the Funds from which those Funds have been used or set aside, the date at or from which Funds were used or set aside, the amount of Funds used or set aside, and the total amount of Funds used or set aside; and
 - b) as and when requested provide copies of the register of long service leave entitlements to the Commonwealth.
- 4.8 Except in relation to clause 4.7, the Participant must not commit any Funds for expenditure that will, or is likely to, occur after the end of the Program Period for the Program without the prior written consent of the Commonwealth.
- 4.9 Pursuant to clause 4.7(a), where Funds have been set aside for the purpose of long service leave entitlements for employees of the Participant and are no longer required, the Participant must return these Funds to the Program.
- 4.10 The Commonwealth may at its absolute discretion:
- a) defer;
 - b) reduce;

c) or not make a payment of:

the whole, or any instalment, of the Funds for any Program where it forms the reasonable opinion that the full payment is not properly required by the Participant because of Unspent and Uncommitted Funds.

4.11 Each payment of Funds is subject to the Participant having complied with its obligations under this Deed and all Program Agreements up to the time the payment is to be made. Without limiting the generality of this subclause, the Commonwealth will be entitled, without derogating from any other right it may have, to defer, reduce or not make a payment of Funds, or any instalment of Funds until:

- a) the submission by the Participant of any Deliverable due to be provided and approved by the Commonwealth prior to the instalment being paid;
- b) the Participant has performed all of its obligations, that are required to be completed prior to the relevant instalment being paid;
- c) the Commonwealth is reasonably satisfied that the Participant has expended the Funds provided in accordance with the requirements of any Program Agreement or Schedule 1 (General Provisions), as the case may be; and
- d) the Participant's constitution or rules are consistent with the requirements of clause 32.1(a) and (p).

4.12 The Participant agrees to submit tax invoices for payment of the Funds in the manner specified in Item E of Schedule 1 (General Provisions) and Item E of any Program Schedule. The amount of the invoice will not exceed the amount of Funds properly required by the Participant for its use in relation to the performance of this Deed and any Program up to the date of the next invoice.

4.13 The Parties agree that there is no facility to carryover deficits of Funds between financial years. Any deficits must be met from the Participant's own Funds.

4.14 Except in relation to payment made under a contract approved under clause 8 or pursuant to clauses 29.4 or 29.5, the Participant must not transfer or make payments of any Funds (including any loans) to any Related Parties.

4.15 The Participant must record all Other Contributions of any value in its Twelve Month Report. In addition, for any Other Contribution with a value greater than \$10,000 (GST Inclusive) or more, the Participant must also record the amount, source and any conditions on use in its Twelve Month Report.

5 TAXES, DUTIES AND GOVERNMENT CHARGES

5.1 Subject to this clause 5, all taxes, duties and government charges ('Taxes') imposed or levied in Australia or overseas in connection with this Deed including any Program Agreement must be paid by the Participant, or as the Participant might arrange.

5.2 Without limiting clause 5.1, the Participant must pay Goods and Services Tax ('GST') on the goods, services and other supplies made under this Deed and any Program Agreement ('the supplies') to the extent that they are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').

- 5.3 In relation to any GST payable under clause 5.2, the Participant must issue the Commonwealth with a tax invoice in accordance with the GST Act prior to the Commonwealth's payment of any Funds.
- 5.4 The Participant represents and warrants it is registered in accordance with the GST Act and agrees to remain registered during the Term of this Deed and any Program Agreement.

6 CONDUCT OF THE PARTICIPANT

- 6.1 In consideration of the provision of the Funds for their Region, the Participant must:
- a) use the Funds allocated only for the performance of the Program Agreement including any Additional Requirements set out in the Program Schedule;
 - b) perform any Program according to the Annual Budget for the Program, within the Program Period for the Program, and according to the terms and conditions set out in this Deed and in any Program Agreement (including the Program Guidelines and any applicable Standards);
 - c) perform all aspects of the Program (including achieving the Aims of a Program) as set out in the Annual Plan, the Strategic Plan and Item A of the Program Schedule;
 - d) provide the Deliverables as specified in this Deed, the Annual Plan, the Strategic Plan and Item F of Schedule 1 (General Provisions) and Items A and D of the Program Schedule;
 - e) meet all Performance Requirements for the Program;
 - f) endeavour in good faith to ensure that all work undertaken under any Program is in support of the expected outcomes and objectives of Medicare Locals as specified in Recitals A, B or C; and
 - g) in all instances, work collaboratively with the National Body who will in turn support and assist the Participant to achieve any Program Objectives and Outcomes.
- 6.2 The Participant must advise the Commonwealth Liaison Officer as specified in Item G of Schedule 1 (General Provisions) as the contact for this purpose in writing at least ten (10) Business Days in advance if a Deliverable will not be provided to the Commonwealth by the due date for that Deliverable, and that advice must provide a justification for the delay.
- 6.3 Without limiting its rights under clause 4.12, the payment of any instalment of Funds by the Commonwealth due on receipt of a Deliverable may be reduced by 5% for each week, or part thereof, that receipt of the Deliverable passes the due date for its delivery if:
- a) the Commonwealth considers that the justification provided under clause 6.2 for the delay is not reasonable; or
 - b) the Participant fails to provide the advice or justification within the timeframe specified under clause 6.2.

- 6.4 Without limiting its rights under clause 4.12, where the Commonwealth does not consider that a Deliverable provided by the Participant meets the requirements of the Deliverable, then the Commonwealth may, at its absolute discretion, write to the Participant providing an opportunity for the Participant to amend that Deliverable to meet those requirements by a specified date. Where the Participant fails to provide a fully compliant Deliverable by that specified date, any instalment of Funds due on receipt of that Deliverable may be reduced by the Commonwealth. In determining the amount of the reduction the Commonwealth will take into account the extent to which the Participant has met the requirements of the Deliverable.
- 6.5 Where the Commonwealth has determined to reduce Funds under clause 4.11, 4.12, 6.3, 6.4 or 7.3; the amount of reduction in Funds will be notified in writing to the Participant's Liaison Officer for the Program or otherwise its Deed Manager as soon as practicable after that determination is made.
- 6.6 Notwithstanding any reduction of the Funds or instalment payable, the Participant must continue to perform its obligations under this Deed and any Program Schedule.
- 6.7 Nothing in this clause 6 prevents the Commonwealth from taking action, at its absolute discretion:
- a) in relation to a failure to meet Performance Requirements under clause 16.3; or
 - b) under clause 22.
- 6.8 Notwithstanding clause 6.2, if for any other reason the Participant is unable to commence or continue work as specified in this Deed or any Program Agreement or forms the opinion that progress will be significantly delayed, the Participant shall as soon as practicable notify the Liaison Officer for the Program or otherwise its Deed Manager in writing and consult with the Commonwealth to attempt to resolve the matter. If no settlement can be agreed, the Commonwealth may take action under clause 22.1 of this Deed.
- 6.9 The Participant must, at the request of the Commonwealth, participate and cooperate in any review, assessment, evaluation, audit or Performance Audit of any Program, or all of the Programs, or of its performance under this Deed. The reviews, assessments, evaluations, audits or Performance Audits will take the form specified by the Commonwealth, and the Participant will provide access to all documentation, including documentation in relation to apportionment of costs between Programs and the overall allocation of the Funds. The Commonwealth is liable only for those costs incurred by the Commonwealth in engaging a third party to perform a review, assessment, evaluation, audit or Performance Audit on the Participant.
- 6.10 The Participant acknowledges and agrees that it will receive the Funds solely to use them for the benefit of the community within its Region including by implementing any Program. The Participant represents, warrants and undertakes to keep administration expenses to a minimum by careful and conservative use of the Funds. Such administration expenses must be necessary to the efficient and effective delivery of the Program Agreement.

7 ACCREDITATION

- 7.1 The Participant represents and warrants that:

- a) upon receiving a written request of the Commonwealth, within six weeks, it will register with an accreditation agency approved by the Commonwealth and specified in that notice;
 - b) if a request under paragraph (a) has been received, then no later than twelve months of the date of that request it will become Accredited and remain so for the remainder of the Term of this Deed; and
 - c) it will otherwise comply with any other Accreditation requirements as directed in writing by the Commonwealth.
- 7.2 The Participant must provide a certificate of currency of Accreditation to the Deed Manager on it becoming Accredited in accordance with clause 7.1 and at each point its Accreditation is renewed.
- 7.3 If the Participant's Accreditation status in accordance with clause 7.1 lapses or terminates at any time during the Term of this Deed, the Participant must notify the Deed Manager within five (5) Business Days. The Commonwealth may defer, reduce or not make payment of Funds should the Participant no longer be Accredited.
- 7.4 If the Participant is no longer Accredited in accordance with clause 7.1, the Commonwealth may at its absolute discretion, and having regard to other circumstances of the Participant, immediately terminate this Deed and/or any and all Program Agreements and require the Participant to repay to the Commonwealth any Funds that remain Unspent and Uncommitted at the time of termination.

8 SPECIFIED PERSONNEL AND SUBCONTRACTING

- 8.1 The Participant may only engage a subcontractor to perform a Program, or any part of it, if:
- a) the subcontractor is identified in Item A of the relevant Program Schedule; or
 - b) the subcontractor is identified in the Annual Plan; or
 - c) the Commonwealth has given the Participant prior written approval to engage the subcontractor for that Program (which the Commonwealth will provide within ten (10) Business Days of receipt of the request of the Participant for such approval); or
 - d) the aggregate value of the subcontract, and all other subcontracts that the Participant has entered into with the subcontractor in relation to the Program, is not greater than \$22,000 (GST inclusive).
- 8.2 The Commonwealth may impose any terms and conditions it considers appropriate when giving its approval under clause 8.1(c), and the Participant must comply with those terms and conditions.
- 8.3 If the Participant engages a subcontractor under clause 8.1(c), the Participant must, no later than twenty (20) Business Days after the commencement of the engagement, disclose to the Commonwealth in writing:
- a) the name of the subcontractor;
 - b) the Program for which the subcontractor has been engaged;

- c) the services to be performed by the subcontractor and when they are to be performed;
 - d) the value of the subcontract; and
 - e) details of any other contracts or arrangements between the Participant and the subcontractor.
- 8.4 Where a subcontractor engaged pursuant to clause 8.1 is unable to perform the work, the Participant agrees to notify the Commonwealth immediately.
- 8.5 Where clause 8.4 applies, the Commonwealth may request the Participant to secure a replacement subcontractor acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 8.6 If the Participant does not comply with any request made under clause 8.5, the Commonwealth may terminate the Program Agreement in accordance with the provisions of clause 22.1.
- 8.7 In respect of a subcontractor pursuant to clause 8.1, the Participant must ensure that the other party to the subcontract is prohibited from further subcontracting without the prior written approval of the Commonwealth.
- 8.8 In respect of all subcontractors, the Participant must ensure that:
- a) the subcontract facilitates compliance by the Participant with its obligations under this Deed including any Program Agreement;
 - b) the subcontract will not conflict with or detract from the rights and entitlements of the Commonwealth under this Deed including any Program Agreement;
 - c) the other party to the subcontract is financially viable, has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to any Program;
 - d) the subcontract contains all the relevant terms of this Deed including any Program Agreement, including those relating to the subcontracting, Intellectual Property, audit and access, privacy, security, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Participant has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded to the Commonwealth by clause 22, in the event of this Deed or the Program Agreement being terminated;
 - e) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Commonwealth Ombudsman under that Act and that the Commonwealth will not be liable for the cost of any such investigation by the Commonwealth Ombudsman in connection with the subject matter of the subcontract or the subcontract matter of the Program Agreement; and
 - f) if requested, the Participant will promptly provide a copy of the relevant subcontract to the Commonwealth.

- 8.9 The Participant must:
- a) ensure that the Specified Personnel for a Program perform the activities identified in Item M for that Program Schedule; and
 - b) notify the Commonwealth immediately if Specified Personnel are unable to, or do not, perform any of those activities.
- 8.10 The Commonwealth may, at its absolute discretion, request the Participant to remove Personnel (including Specified Personnel) from activities in relation to the Project.
- 8.11 This clause 8.11 outlines the requirements relating to Personnel who have contact with any Vulnerable People, during the course of their work:
- a) Before Personnel commences performing a Program, or any part of a Program, the Participant must:
 - i) conduct a Police Check for that Personnel;
 - ii) confirm that the Personnel is not prohibited under a Law from being employed or engaged in any capacity where the Personnel may have contact with a Vulnerable Person; and
 - iii) comply with all Laws relating to the employment of persons or engagement of persons in any capacity where they may have contact with a Vulnerable Person.
 - b) The Participant must ensure that Personnel does not perform a Program, or any part of a Program, if a Police Check for those Personnel indicates that the Personnel has:
 - i) a record of committing a Serious Offence; or
 - ii) a Criminal or Court Record, and the Participant has not conducted and documented a risk assessment for those Personnel.
 - c) The Participant must notify the Commonwealth if it conducts a risk assessment for Personnel with a Criminal or Court Record.
 - d) If Personnel are charged with a Serious Offence, the Participant must immediately notify the Commonwealth and comply with all applicable Laws relating to persons working in, or acting in any capacity where they may have, contact with a Vulnerable Person.
 - e) If any Personnel are convicted of a Serious Offence, the Participant must:
 - i) immediately notify the Commonwealth and ensure that that Personnel does not, from the date of the conviction, perform any work or role relating to a Program; and
 - ii) comply with all applicable Laws relating to persons working in or acting in any capacity where they may have, contact with, a Vulnerable Person.
 - f) If Personnel is charged with, or convicted of, any Other Offence, the Participant must immediately notify the Commonwealth and conduct and

document a risk assessment of that Personnel within 24 hours of becoming aware of the charge or conviction.

- g) The Participant is responsible for:
- i) any decision to permit Personnel to perform a Program, or any part of a Program, who has:
 - (A) a Criminal or Court Record; or
 - (B) been charged with, or convicted of, an Other Offence; and
 - ii) conducting, and assessing the outcome of, the risk assessment for Personnel.
- h) The Participant's risk assessment of Personnel under clause 8.11(b)(ii) or clause 9.2(f) must have regard to:
- i) whether the Personnel's Criminal or Court Record is:
 - (A) directly relevant to; or
 - (B) reasonably likely to impair the Personnel's ability to perform, the function or role the Personnel is, will, or is likely to, perform in relation to the Program;
 - ii) the length of time that has passed, and the Personnel's record of charges, convictions and offences, since the Personnel's commission of the crime or offence giving rise to the risk assessment;
 - iii) the nature and circumstances of the offence(s) on the Personnel's Criminal or Court Record;
 - iv) whether the offence for which the Personnel has been charged or convicted involved a Vulnerable Person;
 - v) the circumstances in which the Personnel has, will have, or is likely to have, contact with a Vulnerable Person in connection with the Program;
 - vi) the Personnel's suitability to perform the function or role that the Personnel is performing, or will, or is likely to perform, in relation to the Program based on their merit, experience and references; and
 - vii) any other relevant matter.
- i) The Participant must:
- i) document the outcome of, and any action the Participant takes as a result of conducting, a risk assessment of Personnel under clause 8.11(b)(ii) or clause 8.11(f); and
 - ii) provide that documentation, and evidence satisfactory to the Commonwealth that the Participant has complied with clause 8.11(h), if the Commonwealth requests it.

9 RESPONSIBILITY OF PARTICIPANT

- 9.1 The Participant agrees to be fully responsible for the performance of this Deed and any Program and for ensuring compliance with the requirements of this Deed and any Program Agreement, and will not be relieved of that responsibility because of any:
- a) involvement by the Commonwealth in the performance of any Program;
 - b) payment made to the Participant on account of any Program;
 - c) subcontracting all or part of the Participant's activities and obligations; or
 - d) acceptance by the Commonwealth of replacement Personnel.
- 9.2 It is agreed that the Participant will prepare and submit to the Commonwealth for approval an Annual Plan and Annual Budget, and Strategic Plan in accordance with the provisions of Item F of Schedule 1 (General Provisions) and any written directions of the Commonwealth issued from time to time. In addition, the Commonwealth may at any time by notice in writing to the Participant, specify the content and a format for the Annual Plan and Annual Budget, and the Strategic Plan (for example, computer software compatibility, using a template provided by the Commonwealth, defined word limits, key aspects to address, delivery mechanisms).
- 9.3 It is also agreed that the Participant will prepare and submit to the Commonwealth for approval any significant alterations to its Annual Plan and Annual Budget. In regard to Annual Budgets, a significant alteration will be an alteration to any Program which is:
- a) more than 10% of an individual Budget item within the Annual Budget; and
 - b) greater than \$10,000 (GST exclusive).

Where a new Program Schedule is signed which specifies that an alteration to the Annual Plan and Annual Budget to incorporate the new Program needs to be completed within a certain timeframe, the Participant agrees to meet that timeframe.

- 9.4 The Commonwealth will review the Annual Plan and Annual Budget or alteration submitted under clause 9.2 or 9.3 and will notify the Participant in writing of any amendment required by the Commonwealth as soon as practicable. The Participant will accommodate all reasonable requests for amendments made by the Commonwealth and provide a revised document to the Commonwealth for final approval within ten (10) Business Days, or as specified by the Commonwealth. If final approval is not achieved within a reasonable time the Commonwealth may terminate this Deed and/or Program Agreement pursuant to clause 22.1.