

10 MANAGEMENT OF FUNDS AND BANK ACCOUNT

10.1 The Participant must:

- a) identify the receipt and expenditure of the Funds separately within its accounting records using a cost centre or ledger account that is established solely for the purposes of accounting for, and administering, any Funds paid by the Commonwealth to the Participant under this Deed or any Program Agreement; and
- b) keep financial accounts and records relating to the Funds and prepare Financial Statements in accordance with Australian Accounting Standards.

10.2 The Participant must keep proper accounts and records of its use of the Funds, separately from other accounts and records of the Participant.

10.3 The Participant must ensure that the receipt and expenditure of Funds in relation to each Program can be separately identified as relating to that Program in all Reports and Financial Statements, including the receipt and expenditure of any Interest as required by clause 10.4.

10.4 The Participant must use and deal with any Interest earned on the Funds for the funded activity as if that money earned were part of the Funds and must ensure that any Interest earned on the Funds is only expended on the funded activity, and not dispersed among other activities, including other Programs.

10.5 If in the opinion of the Commonwealth the Participant fails to provide Reports and Financial Statements that comply with clauses 10.2 and 10.3, the Commonwealth may, in its absolute discretion, and without in any way limiting the other rights the Commonwealth has under this Deed or a Program Agreement or at Law or in equity, require the Participant to:

- a) open and maintain separate Bank Accounts controlled solely by the Participant for each Program;
- b) transfer all Funds received and Interest earned on those Funds into the Bank Account opened for that Program;
- c) notify the Commonwealth of the identifying details of the Bank Accounts; and
- d) ensure that the Bank Account for each Program shall not contain any monies other than the total Funds for that Program, and Interest earned on those Funds,

and the Participant shall immediately comply with the requirements of the Commonwealth.

10.6 The Commonwealth can appoint a Funds Administrator if the Commonwealth considers that:

- a) the Participant is unable to properly manage the Funds;
- b) there is a significant or continuing breach of this Deed or any Program Agreement;

- c) the Participant requires professional assistance or advice; or
 - d) the whole or any part of a Program is, or may be, compromised because of the Participant's management or governance.
- 10.7 The Commonwealth can appoint a Funds Administrator for any period that the Commonwealth considers appropriate, and on any terms and conditions.
- 10.8 The Commonwealth will give the Participant notice of the appointment of a Funds Administrator that specifies:
- a) the proposed period of the appointment;
 - b) the roles and responsibilities of the Funds Administrator; and
 - c) a summary of the reasons why the Commonwealth has made the appointment, if the Commonwealth considers the summary practicable and appropriate.
- 10.9 Within 10 Business Days of receiving that notice the Participant may provide a written response to the Commonwealth that contains:
- a) how the Participant proposes to resolve the issues that gave rise to the appointment of the Funds Administrator; and
 - b) details of any training and other assistance that the Participant will obtain to resume responsibility for the matters to be undertaken by the Funds Administrator.
- 10.10 A Funds Administrator will perform the functions that the Commonwealth determines. These functions may include:
- a) administering and controlling all or part of the Funds;
 - b) advising the Participant on:
 - i) the Participant's financial management;
 - ii) the Participant's corporate governance and constitutional issues;
 - iii) the management of a Program;
 - iv) the management of Personnel,and, with the Participant's consent, assisting the Participant with any of those matters; and
 - c) providing any other advice to the Participant that the Commonwealth requires.
- 10.11 The Participant must:
- a) consider in a timely manner and in good faith, all advice given to the Participant by a Funds Administrator;

- b) co-operate actively, fully and in good faith with, and provide all assistance, Material and facilities reasonably required by a Funds Administrator; and
- c) comply with all directions given by a Funds Administrator relating to the administration of Funds.

10.12 A Funds Administrator that provides a Report to the Commonwealth:

- a) does so independently of the Participant; and
- b) does not reduce the Participant's obligations to provide Reports under this Deed or any Program Agreement.

10.13 Funds Administrators are not appointed to act, and do not act, as a member or shadow member of the Board and cannot incur debts on the Participant's behalf without the express authority of the Participant.

11 RECORDS AND REPORTS

Record Keeping

11.1 The Participant must keep comprehensive written records of the conduct of its activities under this Deed, including:

- a) performance against Guidelines and Standards for a Program;
- b) progress against the Aims of the Program and the objectives and outcomes of the Program;
- c) the creation of Deed Material; and
- d) the acquisition and disposal of Assets for any Program.

11.2 The Participant must keep separate financial records relating to each Program so as to enable:

- a) all income and expenditure related to each Program to be identified separately in the Participants' accounts;
- b) the preparation of Financial Statements in strict accordance with Australian Accounting Standards; and
- c) the audit of these records in strict accordance with Australian Auditing Standards.

Reports

- 11.3 The Participant must provide the Commonwealth with Reports in accordance with this clause 11 and with the general requirements for Reports set out in Item F of Schedule 1 (General Provisions), including future Reporting requirements there described, any specific Reporting requirements set out in the relevant Program Schedule 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 a Report or Reports (for example, computer software compatibility, using a template provided by the Commonwealth, defined word limits, key aspects to address, delivery mechanisms). If a timeframe is not already specified in Item D of Schedule 1 (General Provisions) or the relevant Program Schedule, the Commonwealth must provide such notice at least twenty (20) Business Days before a Report is due. The Participant must ensure that each such Report is presented in the format specified.
- 11.4 If the Participant is late with the submission of any Report, the due date of any subsequent Report remains unchanged unless varied in writing by the Parties.
- 11.5 All Reports and other documentation required to be prepared or lodged by the Participant must be complete and accurate to the satisfaction of the Commonwealth. If the Commonwealth is not satisfied with any Report or other documentation, it may take action under clause 22.1(f) of this Deed.

Six Month Reports

- 11.6 In accordance with the timetable set out in Item F of Schedule 1 (General Provisions), the Participant must submit a Six Month Report which covers the requirements of all Programs under this Deed.
- 11.7 The Six Month Report referred to in clause 11.7 must include in relation to each Program (unless an exception is stated in the relevant Program Schedule) all requirements as specified in Item F of Schedule 1 (General Provisions).

Twelve Month Reports

- 11.8 In accordance with the timetable set out in Item F of Schedule 1 (General Provisions), the Participant must submit a Twelve Month Report which covers the requirements of all Programs under this Deed.
- 11.9 The Twelve Month Report referred to in clause 11.9 must include in relation to each Program (unless an exception is stated in the relevant Program Schedule) all requirements as specified in Item F of Schedule 1 (General Provisions).

12 DISCLOSURE

- 12.1 It is a condition of each Program Agreement that:
- a) the Participant has disclosed in writing to the Commonwealth prior to the commencement of the Program Period for a Program:

- i. any litigation, arbitration, mediation, conciliation or proceedings whatsoever including any investigations ('Proceedings') that are taking place, pending or threatened, against the Participant; or
- ii. matters relating to the commercial, technical or financial capacity of the Participant or of any Personnel proposed to be engaged or currently engaged in respect of any Program Agreement including the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Participant or any Personnel,

being Proceedings or matters that could have an adverse effect on the Participant's ability to perform any of its obligations under any Program Agreement;

- b) the Participant will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened including matters of the kind described in 12.1(a) during the Program Period which could have an adverse effect on the Participant's ability to perform any of its obligations under any Program Agreement; and
- c) to the extent that it is not inconsistent with any Law, the Participant will promptly notify the Deed Manager if any act or omission or change of circumstance of the Participant has or is likely to have an adverse effect on the proper management of Commonwealth resources or damage the reputation of the Commonwealth in the community.

13 LIAISON

- 13.1 The Participant must liaise with and Report to the Commonwealth's Deed Manager as reasonably required by that Deed Manager for the purposes of this Deed.
- 13.2 The Participant must liaise with and Report to the Commonwealth's Liaison Officer in respect of each Program Agreement as reasonably required by that Liaison Officer for the purposes of that Program Agreement.
- 13.3 Upon receipt of written notice, the Participant must within the timeframe specified in the notice, or within a reasonable timeframe if no timeframe is stipulated in the notice, provide any information in relation to this Deed and any Program requested by the Commonwealth for the purposes of this Deed or the Program Agreement, including monitoring and evaluation.

14 ACCESS TO PREMISES AND MATERIALS

- 14.1 The Participant must give the Auditor-General, the Privacy Commissioner, the Ombudsman, and persons authorised in writing by the Commonwealth (referred to in this clause 14 collectively as 'those permitted') access to premises at which records and Materials associated with any Program Agreement and this Deed are stored or work under this Deed or any Program Agreement is undertaken.
- 14.2 The Participant must give to those permitted access in order to be able to inspect and copy Materials, in the Participant's possession or control, for the purposes associated with this Deed or any Program Agreement or any review of performance under this Deed or any Program Agreement, including compliance with contractual obligations, or any Performance Audit referred to in clause 15. The Participant must also give

those permitted access to any Assets, wherever they may be located, and reasonable access to the Participant's Personnel for the same purpose.

- 14.3 The rights referred to in clause 14.1 are, wherever practicable, subject to:
- a) the provision of reasonable prior notice by the Commonwealth (except where it believes that there is an actual or apprehended breach of the Law);
 - b) access being sought during reasonable times (except where those permitted believe that there is an actual or apprehended breach of the Law); and
 - c) the Participant's reasonable security procedures.
- 14.4 The Participant agrees to provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning this Deed or any Program Agreement, or a Performance Audit referred to in clause 15.
- 14.5 The Participant must ensure that any subcontract entered into for the purposes of this Deed or any Program Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 14.
- 14.6 Nothing in this Deed limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Ombudsman, or the National Health Performance Authority or their respective delegates. The rights of the Commonwealth under this Deed are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Ombudsman, or the National Health Performance Authority, or their respective delegates.
- 14.7 This clause 14 survives the expiration or earlier termination of this Deed or any Program Agreement for a period of seven years, whichever occurs last.

15 PERFORMANCE AUDITS

- 15.1 As part of an ongoing quality assurance process, the Commonwealth and/or the National Health Performance Authority may undertake Performance Audits of the Participant in any financial year. These Performance Audits will be paid for by the Commonwealth and/or the National Health Performance Authority respectively.
- 15.2 The Participant must give all reasonable assistance to the personnel authorised to undertake the Performance Audit in accordance with clause 14.
- 15.3 Should the outcome of the Performance Audit show significant underperformance in compliance with the requirements of this Deed or any Program Agreement, then the Commonwealth may appoint a Funds Administrator pursuant to clause 10.6 (in which case the rest of clause 10 will apply to that appointment) and/or terminate this Deed and/or any Program Agreement pursuant to clause 22.1.

16 PERFORMANCE MONITORING

- 16.1 The Participant acknowledges and agrees that its performance under this Deed and any Program Agreements and the success or otherwise of any Program Objectives will be critical factors for the Commonwealth in deciding whether to make any further funding available to the Participant.
- 16.2 The Commonwealth will monitor the performance of the Participant against the Performance Requirements using information from:
- a) the Participant's Reports, including Performance Indicators;
 - b) Performance Audits;
 - c) the National Health Performance Authority, including the Healthy Community Reports;
 - d) other information the Participant is required to provide under this Deed and any Program Agreement; and
 - e) any other information available to the Commonwealth.
- 16.3 Without limiting its rights under this Deed or any Program Agreement, if the Participant fails to meet the Performance Requirements, the Commonwealth may:
- a) require the Participant to perform any activities described in the Program Schedule, or annexure to the relevant Program Schedule;
 - b) require the Participant to perform other reasonable additional activities, including additional Reporting requirements, as notified in writing to the Participant;
 - c) defer, reduce or not make payment of Funds;
 - d) appoint a Funds Administrator pursuant to clause 10.6; or
 - e) terminate the Program Agreement and/or this Deed.

17 DEED MATERIAL AND INTELLECTUAL PROPERTY

- 17.1 Any Intellectual Property rights and title to, or in relation to, the Deed Material will vest, upon creation, in the Participant.
- 17.2 The Participant grants to the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Deed Material.
- 17.3 This clause 17 does not affect ownership of any Intellectual Property in any Incorporated Material. However, the Participant grants, or undertakes to arrange for a third party to grant to the Commonwealth, a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Incorporated Material, but

only in conjunction with the other Deed Material with which it is incorporated or supplied related to all activities under this Deed and any Program Schedule.

- 17.4 The Participant represents and warrants that anything done by the Participant in the course of a Program or otherwise under this Deed, including in developing the Reports, will not infringe on the Intellectual Property rights of any person.
- 17.5 The Participant agrees that any Deed Material developed by the Participant for the purposes of the Program, and using Funds for the Program, will be made available freely to and at no cost (except reasonable costs for additional production or dissemination) to the Commonwealth to disseminate to relevant bodies.
- 17.6 For this clause, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:
- a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Deed Material, with or without attribution of authorship;
 - b) supplementing the Deed Material with any other Material; and
 - c) using the Deed Material in a different context to that originally envisaged;
- but does not include false attribution of authorship.
- 17.7 The Participant represents and warrants that:
- a) the author of any Deed Material has given, or will give, written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth;
 - b) the author of any Incorporated Material has given, or will give, a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to the Commonwealth's licensed use of such Material; and
 - c) it will, upon request provide to the Commonwealth a copy of each such consent.
- 17.8 Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth.
- 17.9 The Commonwealth grants to the Participant a royalty-free and licence fee-free, world-wide, non-exclusive licence (including a limited right of sub-licence to sub-licence to a subcontractor specified in Item A of a Program Schedule or approved by the Commonwealth under clause 8.1) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material provided for a Program for the purposes of the Program. The Participant agrees to ensure that all Intellectual Property in Commonwealth Material is used strictly in accordance with any conditions or restrictions specified by the Commonwealth.

17.10 As part of the final Twelve Month Report if specified in Item D of a Program Schedule, or on the early termination of this Deed or any Program Agreement, the Participant must deliver a complete copy of the Deed Material, and all of the Commonwealth Material provided under this Deed or for any Program, to the Commonwealth, or deal with it as otherwise directed by the Commonwealth.

17.11 This clause 17 survives the expiration or earlier termination of this Deed or any Program Agreement.

18 ACKNOWLEDGEMENT AND PUBLICATIONS

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

- a) by taking all reasonable steps to trade under a common naming system that incorporates 'Medicare Locals' to ensure a strong and consistent national branding identity, as directed by the Commonwealth;
- b) by adhering to a common 'Medicare Locals' branding system (logo and tagline) in respect of publications, promotional and advertising Materials, website, public announcement, signs or plaques, in a form approved by the Commonwealth prior to its use and set out in Item H of the Program Schedule for a Program;
- c) in all publications, promotional and advertising Materials, public announcements and activities by it or on its behalf or in relation its activities under this Deed or any Program or any products, processes or inventions developed as a result of those activities or the Program;
- d) by inviting representatives of the Commonwealth (including the Minister for Health and Ageing) to any formal public opening of the Medicare Local and to any subsequent formal functions held at the Medicare Local; and
- e) otherwise at the times and in the manner as the Commonwealth directs from time to time.

18.2 Where the Participant has been provided with Funds to produce any publication, the Participant must, on completion of the Program Period, provide to the Commonwealth the number of copies set out in Item F of the Program Schedule for the Program.

18.3 This clause 18 survives the expiration or earlier termination of this Deed or any Program Agreement, whichever occurs last, for a period of seven years.

19 ASSETS

19.1 The Participant must use Assets acquired for any Program in accordance with the requirements for performance of the Program. Notwithstanding the foregoing, during the Term of this Deed, the Participant may use such Assets for other Programs under this Deed but only if such use is not to the detriment of the Program for which they were acquired.

19.2 The Participant must:

- a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 19, without the prior written approval of the Commonwealth;
- b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
- c) maintain all Assets in good working order. If any of the Assets are lost, damaged or destroyed, the Participant will promptly reinstate the Assets, including from the proceeds of any relevant insurance, and this clause continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of any relevant insurance, which reflects the proportion of the cost of the Asset that was purchased using the Funds, will be notified to the Commonwealth and accounted for and used as part of the Funds under this Deed;
- d) maintain all appropriate insurances in respect of any Assets;
- e) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
- f) maintain a register of Assets (which is to cover Assets acquired for any Program under this Deed) recording the Program in relation to which the Asset was acquired, the date of purchase or lease, the purchase or lease price, Asset description including a serial number, Asset location, the proportion of the Funds used to create or acquire the Asset, the Depreciated value of the Asset and (where relevant) details of Asset disposal including the sale price; and
- g) as and when requested, provide copies of the register of Assets to the Commonwealth.

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

- a) pay to the Commonwealth within twenty (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 twenty (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 Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of sale or disposal of the Asset; or
- c) use the amount specified in a) or b) above for a purpose approved in writing by the Commonwealth.

19.4 If, on the expiration or early termination of this Deed or any Program Agreement, an Asset has not been fully Depreciated the Participant must, at the option of the Commonwealth:

- a) pay to the Commonwealth within twenty (20) Business Days after expiry or early termination of this Agreement, 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) sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within twenty (20) Business Days of the date of sale the proceeds of sale, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of disposal of the Asset; or
- c) use the Asset on such terms and conditions as may be approved in writing by the Commonwealth.

19.5 If the Participant fails to make payment as required by either clause 19.3 or 19.4:

- a) the Participant 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 Participant.

19.6 Assets acquired under the previous Divisions of General Practice Multi-Program Funding Agreement between a member of the Divisions Network and the Commonwealth that evolved to become or is otherwise connected with the Participant may be used for the purposes of this Deed and any Program Agreements and must be treated as an Asset for the purposes of clause 19.

19.7 This clause 19 survives the expiration or earlier termination of this Deed and any Program Agreement.

20 NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

20.1 The Participant is not, by virtue of this Deed or a Program 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.

20.2 The Participant must not represent itself, and must use its best endeavours to ensure that the Personnel 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.

21 ISSUES MANAGEMENT

21.1 The Commonwealth agrees to consider in good faith any reasonable concern the Participant raises with the Deed Manager or a Commonwealth Liaison Officer in relation to this Deed or any Program Agreement, and where it is deemed appropriate by the Commonwealth, will provide advice to the Participant in relation to the reasonable concern raised.

21.2 The Participant agrees to notify the Commonwealth of any significant areas of governance, management or financial accountability where the Participant has sought, or proposes to seek external expert advice in order to remedy areas of concern.

21.3 The Commonwealth agrees to raise with the Participant any material concerns it has about the performance of this Deed or any Program as soon as reasonably practicable after the Deed Manager or Commonwealth Liaison Officer for the relevant Program becomes aware of those concerns. However, failure to do so will not prevent the Commonwealth from taking action, at its absolute discretion under any other provision of this Deed or any Program Agreement.

22 SUSPENSION AND TERMINATION

22.1 If:

- a) the Commonwealth is satisfied on reasonable grounds that the terms and conditions of this Deed or any Program Agreement have not been complied with by the Participant; or
- b) the Commonwealth is satisfied on reasonable grounds that the Participant is unable or unwilling to satisfy the terms of this Deed or a Program Agreement; or
- c) the Commonwealth, by notice in writing, requests the Participant to take action to meet a timeframe or perform an activity in accordance with this Deed or any Program Agreement and, after ten (10) Business Days from the date of the notice (or such longer period as is specified in the notice), the Participant has failed to take such action; or
- d) the Commonwealth is satisfied on reasonable grounds that any statement made by the Participant is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for any Program; or
- e) the Commonwealth is not satisfied on reasonable grounds that the purposes and activities of the Participant remain compatible with:
 - i) the Aims of a Program; or
 - ii) the objectives and outcomes of Medicare Locals as specified in Recitals A, B or C; or
- f) the Commonwealth is satisfied on reasonable grounds that a Report given by the Participant is not complete or accurate; or
- g) the Participant:
 - i) becomes bankrupt or insolvent or is wound-up; or
 - 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) goes into liquidation or passes a resolution to go into liquidation or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to the supervision of a court either voluntarily or otherwise; or

iv) suffers any execution against its Assets having adverse effect on its ability to perform this Deed or any Program Agreement; or

h) the Participant, by notice in writing given to the Commonwealth, withdraws from this Deed or any Program Agreement; or

i) the Commonwealth considers it appropriate for any other reason,

the Commonwealth may, by written notice to the Participant, terminate this Deed and/or any Program Agreement or require the Participant to immediately suspend dealings with the Funds.

- 22.2 For the avoidance of doubt, the Commonwealth has unfettered discretion to terminate this Deed and/or any Program Agreement in accordance with clause 22.1(i).
- 22.3 If this Deed and/or any Program Agreement is terminated in accordance with clause 22.1(i), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Participant, which are directly attributable to the termination. This will include all reasonable damages, costs and expenses incurred in connection with the termination or redundancy of the Participant's Personnel or the termination of the Participant's subcontracts. The Commonwealth will not be liable to pay any amount in excess of the amount of Funds for the Program remaining unpaid under any Program Agreement at the date of termination. Any Funds which are held by the Participant at the time of termination which are Unspent and Uncommitted in the manner described in clause 23 must be repaid to the Commonwealth in accordance with that clause.
- 22.4 On termination of this Deed and/or any Program Agreement, or for the duration of any suspension of dealings with the Funds for any Program, the Participant must hold the Funds in utmost good faith for use only in accordance with the directions of the Commonwealth and will cease all other dealings with the Funds.
- 22.5 The Commonwealth may end the suspension of dealings with the Funds for any Program by written notice to the Participant, subject to such preconditions (including variations to the Program Agreement) which the Commonwealth may require.
- 22.6 Subject to clause 22.3, the Commonwealth will not be obliged to pay any part of the Funds for a Program to the Participant after the termination of the Program Agreement or during any period of suspension of dealings with the Funds for the Program.
- 22.7 Except as provided in this clause, the Commonwealth will not come under any liability to the Participant for termination of this Deed or any Program Agreement in accordance with clause 22.1.
- 22.8 If purported termination for cause by the Commonwealth under any of the clauses 22.1(a) to (h) 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 22.1(i) which termination has effect from the date of the notice of termination referred to in clause 22.1.

23 REPAYMENT OF FUNDS

23.1 If:

- a) At the end of each financial year of a Program Agreement, or on the expiry or earlier termination of this Deed or any Program Agreement, any Funds:
 - i) remain Unspent and Uncommitted; or
 - ii) cannot, by reconciliation between the accounts and records maintained by the Participant (as Reported to the Commonwealth by the Participant in the Financial Statements provided under clause 11.2) and the Annual Budgets be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Deed or the relevant Program Agreement; or
- b) at any time the Commonwealth forms the reasonable opinion that any Funds have been used, spent or Committed by the Participant other than in accordance with this Deed or the relevant Program Agreement;

the Commonwealth may, by written notice to the Participant, require the Participant to repay that part of the Funds, and the Participant must repay to the Commonwealth the amount specified in the notice, within twenty (20) Business Days of the date of the notice. The Commonwealth agrees not to exercise this right in relation to Unspent and Uncommitted Funds at the end of a financial year which are carried over into the next financial year, or are offset pursuant to clauses 23.2 and 23.3.

23.2 Subject to clause 23.3, if there are likely to be Unspent and Uncommitted Funds for a Program at the end of any financial year during the relevant Program Period, the Participant must request in writing from the Commonwealth in a format specified by the Commonwealth, approval to carryover the Unspent and Uncommitted Funds into the next financial year. This request must be made with the submission of the Annual Plan and Annual Budget as specified in Item D of Schedule 1 (General Provisions). In considering the request, the Commonwealth may take into consideration factors specified in Item H of Schedule 1 (General Provisions). The Commonwealth will give written notice to the Participant, in which the Commonwealth may in its absolute discretion:

- a) approve the Participant's request to retain all or part of those Funds for use in a specified Program or Programs, as the Commonwealth sees fit; or
- b) require the Participant to offset all or part of the Unspent and Uncommitted Funds as specified by the Commonwealth against the next instalment of Funds; or
- c) require the Participant to repay to the Commonwealth the level of Unspent and Uncommitted Funds, within twenty (20) Business Days of the date of the notice.

23.3 Clause 23.2 will not apply where the Unspent and Uncommitted Funds are equal to or less than 5% of the Annual Budget (GST exclusive) or are equal to or less than \$10,000 (GST exclusive) (whichever is the greater amount) for any Program. Where Unspent and Uncommitted Funds are within this threshold, these Funds may be

carried over into the next financial year for activities covered by the Annual Plan for the relevant activity without the consent of the Commonwealth. The automatic carryover applies from one financial year to the next, and Funds must be spent within that next financial year or be repaid to the Commonwealth. Where Unspent and Uncommitted Funds exceed this threshold, the Participant must apply to carry over the entire amount pursuant to clause 23.2, and not just the Unspent and Uncommitted Funds over the threshold amount. The automatic carryover does not apply upon termination or cessation of this Deed or any Program Agreement.

- 23.4 Without limiting clause 4.11, if the Participant's audited Financial Statements provided with the Twelve Month Report as required under Item F of Schedule 1 (General Provisions) demonstrates a level of Unspent and Uncommitted Funds for any Program which is:
- a) in excess of the automatic carryover threshold referred to in clauses 23.3; or
 - b) in excess of the carryover amount approved under clause 23.2

the Commonwealth may by written notice to the Participant, offset some or all of the Unspent and Uncommitted Funds against the next instalment of Funds.

Within ten (10) Business Days of receiving that notice, the Participant may make a written request to the Commonwealth to retain the Funds specified in the notice and use those Funds for purposes agreed to by the Commonwealth. If the Commonwealth accepts that request, the Participant must use those Funds within that financial year for the purposes agreed to by the Commonwealth, subject to any terms and conditions that the Commonwealth specifies.

- 23.5 The Commonwealth accepts no responsibility and will not provide any additional Funds where the Participant over-estimates the carryover amount for any Program.

- 23.6 The Participant must separately identify carryover amounts (including automatic carryovers) as Income in the Annual Budget for the next financial year.

- 23.7 The Commonwealth may:

- a) where it is satisfied on reasonable grounds that the Participant has not fulfilled its obligations under this Deed or a Program Agreement, revoke its approval under clause 23.2 for the Participant to carry over any Unspent or Uncommitted Funds into the next financial year; and
- b) at its absolute discretion, revoke the ability of the Participant to automatically carry over any amounts of Unspent and Uncommitted Funds under clause 23.3.

- 23.8 If the Participant fails to repay the Funds in accordance with a notice issued under clause 23.1 and 23.2, then:

- a) the Participant must pay the Commonwealth Interest on the amount specified in the notice from the date it was due, for the period it remains unrepaid; and
- b) the amount specified in the notice, and Interest owed under this clause will be recoverable as a debt due to the Commonwealth by the Participant.

23.9 The Participant acknowledges that interest payable under clause 23.8(a) represents a reasonable pre-estimate 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.

23.10 This clause 23 survives the expiration or earlier termination of this Deed and any Program Agreement.

24 SERVICE CONTINUITY

24.1 On termination or expiration of any Program Agreement for any reason, the Participant must, in good faith, cooperate and reasonably assist the Commonwealth and any new provider of the services selected by the Commonwealth, to achieve an efficient transition of the provision of the services from the Participant to the new provider.

25 INDEMNITY

25.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Participant under or in connection with this Deed or any Program Agreement.

25.2 The Participant indemnifies the Commonwealth, its officers, employees and agents ('those indemnified') from and against any:

- a) loss or liability incurred by the Commonwealth;
- b) loss of or damage to property of the Commonwealth; or
- c) loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursement paid by the Commonwealth.

arising from:

- d) any act or omission by the Participant or the Personnel in connection with this Deed or any Program Agreement, where there was fault (including, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
- e) any breach by the Participant of its obligations or warranties under this Deed or any Program Agreement.

25.3 The Participant's liability to indemnify the Commonwealth under clause 25.2 will be reduced proportionally to the extent that any negligent act or tortious act or omission of the Commonwealth contributed to the relevant liability, loss, damage or expense.

25.4 The right of the Commonwealth to be indemnified under this clause 25:

- a) is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
- b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

25.5 The Participant agrees that the Commonwealth will be taken to be acting as agent or trustee for or on behalf of the Commonwealth's officers, employees and agents from time to time.

25.6 This clause 25 survives the expiration or earlier termination of this Deed and any Program Agreement.

26 INSURANCE

26.1 The Participant represents and warrants that it has taken out or will take out, and will maintain for the period specified in clause 26.2 or 26.3 as applicable, all appropriate types and amounts of insurance to cover the Participant's obligations under this Deed and any Program Agreement, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item J of Schedule 1 (General Provisions) and any additional insurance required by Item J of the Program Schedule for a Program.

26.2 If the Participant takes out a 'claims made policy', which requires all claims and any fact, situation or circumstance that might result in a claim to be notified within the period of insurance, the Participant must maintain the policy during the Term of this Deed and any Program Agreement, and a policy in like terms for seven years after the expiry or earlier termination of the Program Agreement.

26.3 If the Participant takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of an event can occur at any time subsequently, the Participant must maintain the policy during the Term of this Deed and any Program Agreement.

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

26.5 This clause 26 survives the expiration or earlier termination of this Deed and any Program Agreement.

27 CONFIDENTIALITY

27.1 The Participant agrees not to disclose to any person other than the Commonwealth any Confidential Information relating to this Deed and any Program Agreement or Program without prior approval in writing from the Commonwealth.

27.2 The Commonwealth may impose any conditions it considers appropriate when giving its approval under clause 27.1 and the Participant agrees to comply with those conditions.

27.3 The Commonwealth may at any time by notice in writing to the Participant, require the Participant to give, and to arrange for the Personnel engaged in the performance of this Deed or a Program to give, written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Confidential Information.

27.4 If the Participant receives a request under clause 27.3, it agrees to promptly arrange for all such undertakings to be given.

27.5 The obligations on the Participant under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.

- 27.6 The Commonwealth gives no undertakings to treat Participant information, or this Deed or any Program Agreement, as confidential. The Participant acknowledges that the Commonwealth may disclose information relevant to this Deed or any Program Agreement, or this Deed or any Program Agreement itself, to any person:
- a) to the extent required by Law or by a lawful requirement of any government or government body, authority or agency;
 - 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.

27.7 The obligations contained in this clause 27 are in addition to those set out in clause 28 and will survive the expiration or earlier termination of this Deed and any Program Agreement.

28 PROTECTION OF PERSONAL INFORMATION

28.1 This clause 28 applies only where the Participant deals with Personal Information when, and for the purposes of, performing under this Deed and a Program under any Program Agreement.

28.2 In this clause 28, the terms:

- a) agency;
- b) approved privacy code (APC);
- c) contracted service provider;
- d) Information Privacy Principles (IPPs);
- e) National Privacy Principles (NPPs);
- f) health service; and
- g) health information;

have the same meaning as they have in section 6 of the *Privacy Act 1988* (the 'Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B (4) of the Privacy Act.

28.3 The Participant acknowledges that it may be treated as a contracted service provider and agrees in respect of performing under this Deed and a Program under a Program Agreement:

- a) to use or disclose Personal Information obtained during the course of performing under this Deed and a Program under a Program Agreement, only for the purposes of the Program Agreement and this Deed, as the case may be;

- b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an IPP;
- c) to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- d) to notify individuals whose Personal Information the Participant holds, that complaints about acts or practices of the Participant may be investigated by the Privacy Commissioner who has power to award compensation against the Participant in appropriate circumstances;
- e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP (particularly NPPs 7 to 10) or an APC where that section, NPP or APC is applicable to the Participant, unless:
 - (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, in the performance of this Deed or a Program under a Program Agreement; or
 - (ii) in the case of an NPP or an APC, the activity or practice is authorised under this Deed or by the Program Agreement and engaged in for the purpose of performing under this Deed or a Program under the Program Agreement, and the activity or practice is inconsistent with the NPP or APC;
- f) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Deed or a Program Agreement (if any) that are inconsistent with an NPP or an APC binding on a party to this Deed or the Program Agreement);
- g) to immediately notify the Commonwealth if the Participant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 28, whether by the Participant or any subcontractor;
- h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 28; and
- i) to ensure that any officers, employees or agents of the Participant who are required to deal with Personal Information for the purposes of this Deed and any Program Agreement are made aware of the obligations of the Participant set out in this clause 28.

28.4 The Participant agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Deed or any Program Agreement imposes on the subcontractor the same obligations as the Participant has under this clause 28, including the requirement in relation to subcontracts.

28.5 The Commonwealth may at any time require the Participant to give, and to arrange for its Personnel engaged in the performance of this Deed or a Program to give undertakings in writing in a form required by the Commonwealth, relating to the non-disclosure of Personal Information.

- 28.6 If the Participant receives such a request under clause 28.5, it agrees to promptly arrange for all such undertakings to be given.
- 28.7 The Participant agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Participant under this clause 28, or a subcontractor under the subcontract provisions referred to in clause 28.4.
- 28.8 The Participant's obligations under this clause 28 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised or registered under any Law including any such privacy codes or principles that would apply to the Participant but for the application of this clause 28.
- 28.9 Notwithstanding any other provisions in this clause 28, where the Participant provides a health service to an individual it will:
- a) comply with the NPPs in relation to the use and disclosure of health information about the individual; and
 - b) transfer health information to another health service provider when directed to do so by the Commonwealth.
- 28.10 This clause 28 survives the expiration or earlier termination of this Deed and any Program Agreement.

29 CONFLICT OF INTEREST

- 29.1 The Participant represents and warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Deed and subsequently any Program Schedule, no Conflict exists or is likely to arise in the performance of obligations under this Deed or any Program Agreement by the Participant, or by the Personnel.
- 29.2 If during the Term of this Deed or the Term of the Program Period a Conflict arises, or appears likely to arise, in respect of the Participant or any of the Personnel, the Participant 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 Participant 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 the Conflict.
- 29.3 The Participant agrees that it will not, and will use its best endeavours to ensure that any Personnel do not, engage in any activity or obtain any interest during the Term of this Deed or the Term of any Program Agreement that is likely to Conflict with or restrict the Participant in performing this Deed or the Program fairly and independently.
- 29.4 The Participant must obtain written consent from the Commonwealth prior to the payment of any Funds to a Related Party (not including the reasonable remuneration, reimbursements and allowances to the CEO or Board member in their capacity of