

# Services Agreement

The Parties

*Primary Care Gold Coast Limited*  
*(trading as Gold Coast Primary Health Network)*

*ACN 152 953 092*

Level 1, 14 Edgewater Court, Robina QLD 4226

(GCPHN)

and

*Entity name*

*(trading as [redacted])*

*ABN [redacted]*

*[redacted]*  
Address

(Contractor)

**Please Note:**

This Agreement comprises of two parts:

- Standard Terms and Conditions and Service Agreement Service Details
- Service Schedule

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## Introduction

Gold Coast Primary Health Network (GCPHN) requires the provision of Services.

The Contractor is a supplier of such Services and has represented that it has the requisite skills, resources and experience necessary to supply them.

The Contractor agrees to supply the Services to GCPHN in accordance with the Terms (as defined in the Service Agreement Service Details and Service Schedule) and conditions of this Agreement.

**It is agreed:**

### 1. Definitions and interpretations

#### 1.1. Definitions

In this Agreement:

- (1) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or payment is to be made.
- (2) **Claim** includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at law or in equity, including for payment of money (including damages) or for an extension of time, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability, breach or for restitution.
- (3) **Commencement Date** means the date specified in Item 1 of the Service Agreement Service Details.
- (4) **Confidential Information:**
  - (a) means all information of whatever description, including but not limited to information which relates to processes, equipment and techniques used by GCPHN in the course of GCPHN's business, including but not limited to all information, data, drawings, specifications, documents, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as client and patient lists, financial information and business plans, whether in permanently recorded form or not and whether or not belonging to a third party, which is:
    - (i) by its nature confidential; or
    - (ii) is designated by GCPHN as confidential; or
    - (iii) a party knows or ought to know is confidential.
  - (b) but does not include information:
    - (i) that is independently created or rightfully known by, or in the possession or control of, the other party and not subject to an obligation of confidentiality on the other party; or
    - (ii) which is or becomes public knowledge (otherwise than as a result of a breach of this Agreement or any other confidentiality obligation); or
    - (iii) required to be disclosed by Law.
- (5) **Contractor Material** means Material:

- (a) used by the Contractor for the purpose of performing the Services; and
  - (b) which has been:
    - (i) created before the Commencement Date; or
    - (ii) created after the Commencement Date but not for the purpose of, or as a result of, performing the Services,
- including the Material specified in Item 9 of the Service Schedule.
- (6) **Contract Material** means any Material created by the Contractor on or following the Commencement Date for the purpose of, or as a result of, performing its obligations under this Agreement and includes any modifications that may be required under Clause 7.5 (2)(b).
  - (7) **Day** means a calendar day.
  - (8) **Deliverable Date** means any fixed date to be met by the Contractor in performing any of its obligations under this Agreement, as specified in Item 7 of the Service Schedule as extended in accordance with this Agreement.
  - (9) **Deliverables** means any Contract Material or other item or element of the Services to be supplied by the Contractor to GCPHN under this Agreement including as specified in Item 6 of the Service Schedule.
  - (10) **End Date** means the date specified in Item 1 of the Service Agreement Service Details.
  - (11) **Establishment Date** means the date specified in Item 2 of the Service Schedule.
  - (12) **Service Schedule** means the schedule attached to this Agreement.
  - (13) **Intellectual Property Rights or IPR** means all intellectual property rights, including:
    - (a) plant breeder's right, patents, copyright, processes, know-how, rights in circuit layouts, registered designs, trade marks (including goodwill in those marks), domain names and any right to have confidential information kept confidential;
    - (b) any application or right to apply for registration of any of those rights referred to in (a); and
    - (c) all rights of similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
  - (14) **Jurisdiction** means the law of Queensland.
  - (15) **Law** means:
    - (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the Jurisdiction or local or other government in force in the Jurisdiction, irrespective of where enacted; and
    - (b) the common law and the principles of equity as applied from time to time in the Jurisdiction.
  - (16) **Losses** means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).

- (17) **Material** includes software, firmware, documented methodology or process, property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
- (18) **GCPHN Deed** means the "Primary Health Networks Deed for Funding" entered into between the Commonwealth of Australia and GCPHN.
- (19) **GCPHN Material** means any material provided to the Contractor by GCPHN, including the material (if any) specified in Item 9 of the Service Schedule.
- (20) **GCPHN Representations** means any representations (including by silence) made by GCPHN to the Contractor in respect of the scope or nature of the Services or any matters which are the subject of this Agreement.
- (21) **Moral Rights** has the meaning given by the *Copyright Act 1968* (Cth).
- (22) **Notice** has the meaning given in Clause 21.10.
- (23) **Payment** means funds payable in accordance with Clause 15 and Item 4 of the Service Schedule.
- (24) **Performance Criteria** means the requirements set out in Item 6 of the Service Schedule for each Service and Deliverable.
- (25) **Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth) being: Personal information means information or an opinion about an identified individual or individual who is reasonably identifiable.
- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.
- (26) **Personnel** means any natural person who is an employee, officer, agent or professional adviser of a party or, in the case of the Contractor, a subcontractor.
- (27) **Police Check** means a formal inquiry made to the relevant police authority in each State or Territory to obtain details of an individual's criminal convictions or findings of guilt in each State or Territory and in all non-Australian jurisdictions in which the relevant person is known to have resided.
- (28) **Prior Services** means any early services in respect of the subject matter of this Agreement performed by the Contractor before the Commencement Date and includes any services described as "Prior Services" in Item 3 of the Service Agreement Service Details.
- (29) **Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).
- (30) **Schedule Start Date** means the date specified in Item 2 of the Services Schedule.
- (31) **Services** means the services described in Item 3 of the Service Schedule and includes any deliverables.
- (32) **Special Conditions** means the special conditions (if any) for the Funding or Services, specified in the Service Agreement Service Details that relates to the Funding or Services;
- (33) **Specified Personnel** means the Contractor's subcontractors or personnel specified in Item 3 of the Service Schedule.
- (34) **Term** has the meaning given in Clause 2.1.

- (35) **Variation** means any change to services, including any addition, increase, decrease, omission or deletion in, to or from the services.
- (36) **Vulnerable Person** means:
- (a) an individual aged under 18 years; 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 for any reason, including age, illness, trauma or disability, pregnancy, the influence, or part or existing use, of alcohol, drugs or substance use, or any other reason.

## 1.2 Interpretation

- (1) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (2) If an act must be done on a specified day that is not a Business Day, it must be done on or by the next Business Day.
- (3) Words in the singular include the plural and vice versa.
- (4) Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (5) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (6) Headings are inserted for convenience and do not affect the interpretation of this Agreement.
- (7) To the extent that the parties have not completed items in the Service Schedule, unless otherwise stated in the Service Schedule, that item will be taken to be 'not applicable' for the purpose of this Agreement.
- (8) A reference to:
- (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (b) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (c) a right includes a benefit, remedy, discretion or power;
  - (d) time is to local time in the place where GCPHN's contact person as defined in Item 2 of the Service Agreement Service Details is located;
  - (e) "\$" or "dollars" is a reference to Australian currency;
  - (f) the word "includes", and any variants of that word, will be read as though followed by the words "without limitation";
  - (g) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (h) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and

- (i) this Agreement includes all Service Schedule and Annexures to it.

## 2. Term of Agreement

- 2.1 Subject to Clause 2.3, this Agreement begins on the Commencement Date and ends on the End Date unless terminated earlier in accordance with Clauses 17 or 19.3 (**the Term**).
- 2.2 Notwithstanding Clause 2.1, all Prior Services are deemed to form part of the services and:
- (1) all warranties and acknowledgments that apply to the services will apply to the Prior Services; and
  - (2) all Prior Services undertaken and money paid in respect of the Prior Services will be deemed to have been performed and paid pursuant to this Agreement.
- 2.3 If the Contractor not less than three (3) months prior to the End Date gives written notice to GCPHN that it wishes to renew this Agreement, and has at all times complied punctually with its obligations under this Agreement, GCPHN may, in its absolute discretion, by Notice to the Contractor, extend the Term for one additional period of one year. For the sake of clarity, GCPHN is not obliged to grant such extension.

## 3. Performance of Services

- 3.1 The Contractor must carry out the services:
- (1) with due care and skill and to the best of the knowledge and expertise of the Contractor for the benefit of GCPHN;
  - (2) in accordance with the Performance Criteria;
  - (3) in a professional manner and in accordance with any applicable ethical codes or standards;
  - (4) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;
  - (5) using the Specified Personnel (if any);
  - (6) in accordance with:
    - (a) all applicable Law; and
    - (b) all applicable governmental policy of which a prudent and experienced Contractor providing the services should have been aware;
  - (7) in accordance with any reasonable directions in relation to the services given by GCPHN from time to time;
  - (8) in accordance with all applicable legislative requirements, standards and policies and requirements that relate to the health and safety of any person;
  - (9) in good faith in all dealings with GCPHN, and must not do anything that may be harmful to the reputation or interests of GCPHN;
  - (10) so as to meet the Deliverable Dates and where no Deliverable Dates are specified, promptly and without delay; and
  - (11) otherwise in accordance with the provisions of this Agreement.

3.2 The Contractor represents and warrants that:

- (1) it has the right and authority to enter into this Agreement;
- (2) it has all rights, title, licences, interests and property necessary to lawfully perform the services and grant the rights to GCPHN specified in this Agreement;
- (3) it and its subcontractors and personnel, including its specified personnel, have the necessary experience, qualifications, licences and permits, skill, knowledge and competence to perform the Services;
- (4) all information, reports and contract Material given to GCPHN under this Agreement will be correct, complete and not misleading;
- (5) if the Contractor is a trustee, it enters into this Agreement personally and in its capacity as trustee; neither it nor any of its personnel, agents or subcontractors (including specified personnel) has any actual, perceived or potential conflict of interest as defined in GCPHN's Conflict of Interest (COI) Procedure, located online at this web address - [www.GCPHN.org.au/COI](http://www.GCPHN.org.au/COI)
- (6) or anticipates such a conflict, relevant to the performance of the services;
- (7) it will promptly, but within 24 hours of becoming aware, notify and fully disclose to GCPHN any actual or threatened event, or occurrence, or actual, perceived or potential conflict of interest arising during the Term which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Agreement;
- (8) it will promptly, but within 24 hours of becoming aware, notify GCPHN and fully disclose all material information if it becomes subject in any way to the operation of the Law relating to insolvency or bankruptcy;
- (9) no litigation, arbitration, mediation, conciliation or proceedings including any investigations are taking place, pending; or to the knowledge of any of its officers after due inquiry, are threatened, which, if adversely decided, could have an adverse effect on its ability to perform its obligations under this Agreement;
- (10) in accordance with the requirements of all relevant work, workplace health and safety legislation or regulation, or regulation in relation to the provision of the services, it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any government agency, including in any tender or application process or in any other agreement; and
- (11) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Commonwealth or any government agency which would adversely affect its ability to perform this Agreement.
- (12) It has exercised its own judgement in entering into this Agreement and has not relied on any warranty or representation made by GCPHN, its officers, employees or agents, as specifically set out in this Agreement.

The Contractor acknowledges that GCPHN is entering into this Agreement reliant on these warranties and representations.

- 3.3 If it becomes evident to the Contractor or GCPHN that anything, including an act or omission of GCPHN or an employee, other contractor, or agent of GCPHN, may delay the carrying out of the Services, that party must promptly notify the other party in writing with details of the possible delay and the cause. GCPHN may, at any time, by Notice to the Contractor, extend the time for carrying out



the services or any Deliverable Date for any reason. GCPHN is not required to exercise its discretion under this Clause 3.3 for the benefit of the Contractor.

3.4 The Contractor must report to GCPHN as set out in the Service Agreement Service Details and Service Schedule, and must provide ad-hoc reports as reasonably directed by GCPHN with respect to all aspects of the Services.

### 3.5 Variations to the Services

(1) GCPHN may:

- (a) at any time by mutual agreement instruct the Contractor to carry out a Variation by a written document titled "Variation Order"; and
- (b) carry out any services, omitted under paragraph (a), either itself or by engaging third parties.

(2) The Contractor:

- (a) must not effect a Variation unless that Variation is directed by GCPHN in accordance with Clause 3.5(1); and
- (b) will have no Claim against GCPHN if, contrary to Clause 3.5(2)(a), it does affect a purported Variation that is not directed by GCPHN in accordance with Clause 3.5(1).

(3) GCPHN will:

- (a) consult with the Contractor in good faith on any necessary adjustment to the Fee resulting from any Variation (with such adjustment being reasonable and proportionate having regard to the Variation); and
- (b) adjust the Fee as necessary and acting reasonably, by notice in writing to the Contractor.

(4) Nothing in this Clause 3.5 limits GCPHN's rights under Clause 21.7(2).

### 3.6 Damage to Property

(1) The Contractor must report immediately to GCPHN any damage caused by the Contractor or its employees to any property facilities and equipment whether owned by GCPHN or any third party. The Contractor agrees that it must, at its own cost and expense, make good any damage resulting from performance of the services or otherwise caused or contributed to, directly or indirectly, by the Contractor or its employees. Any such repair shall be carried out by contractors acceptable to GCPHN without undue delay and in all case subject to the terms and conditions of this Agreement. The Contractor's use of any of GCPHN's property, facilities, or equipment is at the Contractor's risk.

## 4. Probity Checks

4.1 If required by GCPHN, the Contractor must obtain from each of the personnel proposed to perform any aspect of the Services, consents to undertake, and to provide all information and assistance required for:

- (1) a Police Check; and
- (2) any other check or investigation required by Law or government policy in respect of Vulnerable Persons.

- 4.2 The personnel must not perform any aspect of the Services until GCPHN has conducted such probity checks as required by GCPHN and are of a type referred to in Clause 4.1 and determined in writing and acting reasonably, that each of the personnel is of suitable character to perform the Services.
- 4.3 Notwithstanding anything else in this Agreement, the Contractor is responsible for all costs associated with compliance with this Clause 4.

## **5. Specified Personnel and Subcontracting**

### **5.1 Subcontractors**

- (1) The Contractor must not subcontract any aspect of the provision of the Services without the prior written approval of:
- (a) GCPHN, approval may be given or withheld in accordance with GCPHN's sole and absolute discretion; and
  - (b) where required, the Commonwealth.
- (2) The Contractor must ensure that any subcontractor, personnel and specified personnel approved under this Agreement comply with:
- (a) all applicable Laws;
  - (b) Clause 3.2(6) and (7) (Conflict of Interest);
  - (c) Clause 11 (Confidentiality);
  - (d) Clause 12 (Protection of Personal Information); and
  - (e) Clauses 20.1 to 20.4 (Commonwealth Requirements).
- (3) The Contractor is fully responsible for the performance of the Services even if the Contractor subcontracts any aspect of the provision of the Services.

### **5.2 Specified Personnel**

- (1) Except as otherwise specifically agreed in writing by GCPHN, the components of the Services to be performed by members of the Specified Personnel must be performed exclusively by those members of the Specified Personnel.
- (2) If any of the Specified Personnel become unavailable or refuse to provide the Services, the Contractor must inform GCPHN as soon as possible after becoming aware. Within five (5) Business Days of the Contractor becoming aware that a Specified Personnel is unavailable or refuses to provide the Services, the Contractor must appoint a replacement person of equivalent expertise who must:
- (a) meet the requirements of this Agreement; and
  - (b) be approved by GCPHN in writing.
- (3) The Contractor will provide GCPHN, upon request in writing, with full particulars as to the qualifications and relevant experience of any proposed replacement person.
- (4) The Contractor warrants that the persons engaged in the performance of the Services are or will be, while they perform those Services, employed or contracted by it and that such persons shall be suitably qualified for the performance of the duties allocated to them in connection with this Agreement.

- (5) GCPHN may at any time require the Contractor to remove any of its personnel, including Specified Personnel, from performing any of the Services.

## **6. Performance Assessment**

- 6.1 Each element of the Services is subject to assessment by GCPHN against the relevant Performance Criteria.
- 6.2 Without limiting any other rights of GCPHN under this Agreement, if GCPHN considers at its sole discretion that all or part of the Services do not meet the Performance Criteria, GCPHN must notify the Contractor within five (5) Business Days (or such other period as specified in Item 8 of the Services Details and Item 6 of the Service Schedule) of assessing the Services against the Performance Criteria.
- 6.3 GCPHN must include reasons as to why it considers the Services do not meet the Performance Criteria in the Notice given under Clause 6.2.
- 6.4 If GCPHN notifies the Contractor that all or part of the Services do not meet the Performance Criteria, the Contractor must:
- (1) take all necessary steps to ensure that the Services are promptly corrected;
  - (2) give Notice to GCPHN when the Services have been corrected; and
  - (3) allow GCPHN to repeat the assessment of all or part of the Services against the Performance Criteria;
  - (4) Implement any strategy or action as suggested by GCPHN;
- within five (5) Business Days after the date of the Notice or such other time as agreed between the parties in writing.
- 6.5 Failure to meet the Performance Criteria on two or more occasions, shall be considered a fundamental breach of this Agreement and GCPHN may (in addition to its other remedies and without limiting Clause 17.1(1)(a)) terminate the Agreement immediately under Clause 17.1(1)(b).

## **7. Intellectual Property Rights**

### **7.1 GCPHN Material and Contractor Material**

This Clause 7 does not affect the ownership of the Intellectual Property Rights in any GCPHN Material or Contractor Material.

### **7.2 GCPHN ownership of Intellectual Property Rights in Contract Material**

7.3 All Intellectual Property Rights in all Contract Material vest in GCPHN upon creation.

7.4 Unless otherwise specified in Item 9 of the Service Schedule, to the extent that:

- (1) GCPHN needs to use any of the Contractor Material to receive the full benefit of the Services, the Contractor grants to, or must obtain for, GCPHN and the Commonwealth a perpetual, irrevocable, non-exclusive, world-wide, royalty-free licence (including the right to sub-licence) to use, reproduce, adapt, modify, distribute, communicate, publish, perform, broadcast, communicate and exploit and create derivative works from that material; and
- (2) the Contractor needs to use any of the GCPHN Material or Contract Material for the purpose of performing its obligations under this Agreement; GCPHN grants the Contractor, subject to any conditions or restrictions specified in Item 9 of the Service Schedule and any direction by GCPHN, a non-exclusive, non-transferable, royalty-free licence to use:

- (a) the Contract Material; and
- (b) the GCPHN Material;

solely for the purpose of providing the Services and for the Term of this Agreement. The licence granted under this Clause 7 does not allow the Contractor to distribute or exploit the GCPHN Material or the Contract Material unless GCPHN agrees in writing.

- (3) The contractor must use GCPHN Material or Contract Material in accordance with this Agreement and in the manner prescribed by GCPHN, and must not use such material for any other purpose, and must take steps to ensure that any of its employees or agents comply with the provisions of this clause.
- (4) Upon the expiration, termination or assignment of this Agreement, the Contractor shall immediately cease using the Intellectual Property.

#### 7.5 Intellectual Property Rights Warranty

- (1) The Contractor warrants that:
  - (a) GCPHN's use of the Contract Material and the Contractor Material (the **Warranted Material**) will not infringe the Intellectual Property Rights or Moral Rights of any person; and
  - (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this Clause 7.
- (2) If a third party claims, or GCPHN believes that a third party is likely to claim, that all or part of the Warranted Material infringes the third party's Intellectual Property Rights, in addition to the indemnity under Clause 10 and to any other rights GCPHN may have, the Contractor must promptly and at its own expense:
  - (a) use its best efforts to secure the rights for GCPHN to continue to use the affected Warranted Material; or
  - (b) replace or modify the Warranted Material in a manner acceptable to GCPHN so that it becomes non-infringing.

#### 7.6 Improvements

Should the Contractor during the term of this Agreement develop any improvements to the Contract Material or the GCPHN Material, and acquire any intellectual property rights in relation thereto, the Contractor shall immediately upon creation of such intellectual property rights, assign all its rights to such improvements to GCPHN (or its nominated entity). In the event that the intellectual property rights are not capable, for any reason, of being assigned:

- (1) The contractor grants to GCPHN (or their nominated entity) an irrevocable worldwide, fully assignable, perpetual and royalty free license to use such improvements; such license only capable of being terminated by GCPHN.
- (2) The contractor acknowledges and agrees that GCPHN may seek to register any intellectual property rights in any improvements referred to in Clause 7.6(1) herein and that the contractor shall perform all the acts and do all things necessary to either:
  - (a) Register such improvements in the name of GCPHN, or (if that for any reason is not possible); then
  - (b) Register such improvements in the Contractor's name and assign the registration and all necessary applications to GCPHN.

- (3) In the event that the contractor is not the author of any improvements referred to in 7.6(1) herein, the contractor will use its best endeavours to ensure that all copyright in any such improvement is assigned to GCPHN by the author.

## **8. Delivery of Contract Material and Deliverables**

On the expiration of this Agreement, termination of this Agreement under Clause 17 or 19.3 or upon request of GCPHN, the Contractor must deliver to GCPHN all:

- (1) Contract Material;
- (2) GCPHN Material;
- (3) Deliverables; and
- (4) other material in the possession or custody of the Contractor relating in whole or in part to the Services,

promptly and at the Contractor's expense.

## **9. Moral Rights**

9.1 To the extent permitted by applicable Laws and for the benefit of GCPHN, the Contractor must:

- (1) give, where the Contractor is an individual; and
- (2) ensure that each of the personnel used by the Contractor in the production or creation of the Contract Materials give,

genuine consent in writing, in a form acceptable to GCPHN, to the use of the Contract Material and the Contractor Material for, amongst other things, the Specified Acts even if such use would otherwise be an infringement of their Moral Rights.

9.2 The Contractor acknowledges that any use of the Contract Material or the Contractor Material made by GCPHN is an authorised use and the Contractor releases, and shall cause its personnel to release, GCPHN from any infringement of any personal right of action including any actions, proceedings, claims and demands for damages, loss of profit, any other losses and damages, costs, interest, injunctive relief or other remedies the Contractor or its personnel may have, now or in the future, arising from the use of the Contract Material or the Contractor Material, including but not limited to rights of action under tort law and under any statute.

9.3 In this Clause, Specified Acts means:

- (1) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including literary, dramatic, artistic works and cinematography within the meaning of the Copyright Act 1968 (Cth));
- (2) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (3) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (4) adding any additional content or information to the Contract Material

## 10. Indemnity

The Contractor must at all times indemnify, hold harmless and defend GCPHN, its employees, directors, officers and agents from and against all claims and losses arising directly or indirectly from:

- (1) an infringement, or an alleged infringement, of the intellectual property rights or Moral Rights of any person, which occurred by reason of an act done by GCPHN, or its sub-licensees arising out of the use of the Warranted Material provided under this Agreement, in relation to any part of the Services;
- (2) any actual, likely or threatened breach of the Contractor's or its subcontractor's obligations relating to Confidential Information by the Contractor, its subcontractors or its personnel;
- (3) any actual, likely or threatened breach of any of the obligations of the Contractor under Clause 12 or a subcontractor under the subcontract provisions referred to in Clause 12.2;
- (4) loss, damage or injury to any person or property caused by the Contractor in the course of providing the Services;
- (5) any actual, likely or threatened breach of the Contractor's or its subcontractor's obligations under this Contract;
- (6) negligent, reckless, unlawful or wilful act or omission of the Contractor, its personnel or subcontractors; or assign
- (7) without limiting the preceding paragraphs, any breach of this Agreement by the Contractor, its subcontractors or personnel.

The amount of any claims, damages, interest, costs and expenses (including without any limitation all related legal costs incurred by GCPHN) which may be paid, suffered or incurred by GCPHN in respect of such loss, damage or injury must be made good upon demand by GCPHN and may be deducted from any moneys due or becoming due to the Contractor.

## 11. Confidentiality

11.1 The Contractor must not directly or indirectly use any Confidential Information:

- (1) of GCPHN; or
- (2) of any related Body Corporate of GCPHN; or
- (3) disclosed to GCPHN or the Contractor by any existing or potential customer, supplier, contractor, agent, licensor or licensee of GCPHN,

for any purpose other than providing the services under this Agreement, and must not disclose such Confidential Information to any person without the prior written consent of GCPHN.

11.2 In giving written consent under Clause 11.1, GCPHN may impose such terms and conditions as it thinks fit in its sole and absolute discretion. The Contractor must comply with any term and condition imposed by GCPHN under this Clause 11.2.

11.3 The Contractor acknowledges that:

- (1) a breach of Clause 11.1 of this Agreement would be harmful to the business of GCPHN;
- (2) monetary damages alone would not be a sufficient remedy for the breach; and
- (3) in addition to any other remedy which may be available at Law, GCPHN is entitled to interim, interlocutory and permanent injunctions or any of them to prevent the breach.

- 11.4 The Contractor must, at the request of GCPHN, sign or cause any of its personnel to sign a confidentiality agreement containing provisions similar to the provisions in this Clause 11 in favour of the Commonwealth or any existing or potential customer, supplier, contractor, agent, licensor or licensee of GCPHN.
- 11.5 GCPHN may notify the Contractor in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement. Where GCPHN provides Notice to the Contractor under this Clause 11.5, the Notice document is incorporated into, and becomes part of this Agreement.
- 11.6 The Contractor must at all times store all Confidential Information safely and securely.
- 11.7 The Contractor must immediately notify GCPHN in writing of any actual, threatened or suspected unauthorised disclosure of any Confidential Information.
- 11.8 At GCPHN's request or on the expiry or termination of this Agreement under Clauses 17 or 19.3, the Contractor must promptly return all of GCPHN's physical and written records containing Confidential Information, and all documentation relating to that Confidential Information (including copies), to GCPHN in a form reasonably requested by GCPHN. Alternatively, if requested by GCPHN, the Contractor must destroy such items in the manner specified by GCPHN and promptly certify to GCPHN in writing that it has done so.
- 11.9 For the avoidance of doubt, nothing in this Agreement derogates from any obligation the Contractor may have under the *Privacy Act 1988* (Cth) (Privacy Act) and the Australian Privacy Principles (APPs) in the Privacy Act, as amended from time to time, in relation to the protection of personal information or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

## **12. Protection of Personal Information**

- 12.1 If the Contractor collects, receives or has access to Personal Information in order to provide the services, the Contractor must:
- (1) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - (2) not use Personal Information other than for the purposes of the supply or performance of the Services, unless required or authorised by law;
  - (3) not disclose Personal Information without the consent of GCPHN, unless required or authorised by law;
  - (4) not transfer Personal Information outside of Australia without the consent of GCPHN;
  - (5) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties under the Contract;
  - (6) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under the Contract;
  - (7) ensure that its agents and subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause 12;
  - (8) fully cooperate with GCPHN to enable GCPHN to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints, to the extent permitted by applicable law;
  - (9) if the Contractor is required to collect de-identified patient data and provide this to GCPHN, it

must ensure clients are aware that de-identified population health data is being shared for quality improvement or research and evaluation purposes; and

- (10) comply with such privacy and security measures as GCPHN reasonably advises; and
  - (11) comply with the Principles contained within the *Personally Controlled Electronic Health Records Act 2012* (Cth), the *Information Privacy Act 2009* (Qld) and any other applicable law relating to privacy in relation to the discharge of its obligations under the Contract, as if the Contractor was GCPHN.
- 12.2 The Contractor must, if requested by GCPHN during the Contract Term, obtain from its officers, employees, agent and/or subcontractors engaged for the purposes of the Contract, an executed deed of privacy in a form acceptable to GCPHN.
- 12.3 The Contractor must immediately notify GCPHN on becoming aware of any breach of Clause 12.1
- 12.4 Information provided by the Contractor to GCPHN, in order to meet the Deliverables of this Agreement, will be managed in compliance with GCPHN Information Management and Privacy Policy, which complies with the *Privacy Act 1988* (Cth).
- 12.5 a. If the Contractor provides a 'health service' (as defined in the *Privacy Act 1988* (Cth)) to an individual, the Contractor must:
- (i) comply with the requirements in the Privacy Act regarding the collection, use and disclosure of the individual's 'health information' or other 'sensitive information' (as those Terms are defined in the Privacy Act);
  - (ii) use best endeavours to obtain the written consent of the individual to the transfer of personal information relating to them collected or held by the Contractor, in connection with that service being transferred to another Australian health service provider which is contracted by the Commonwealth or the Contractors to provide similar health services to them;
  - (iii) keep a record of the written consent provided by each individual in accordance with a. ii and iv
  - (iv) ensure that records of individuals who do not consent are kept in such a way as to facilitate them being separated from other records in the event of transfer of information to another Australian health provider.
- b. If GCPHN;
- (i) terminates this Agreement;
  - (ii) removes all or part of an activity from the scope of this Agreement; or
  - (iii) changes the boundaries of your PHN Region, then your organisation must comply with any direction from GCPHN to transfer the personal information (including health information) of each individual who has provided consent under Clause a.ii to another Australian health service provider who is contracted by the Commonwealth to provide similar health services to that individual.

### **13. Contractor's Insurance**

- 13.1 The Contractor must:



- (1) from the Commencement Date have in place or effect and maintain the following insurance:
  - (a) if required by Item 7 of the Service Agreement Service Details, professional indemnity insurance (in the amount required by Item 7 of the Service Agreement Service Details), which policy must be maintained for seven years (7) after the End Date;
  - (b) if required by Item 7 of the Service Agreement Service Details public liability insurance (in the amount required by Item 7), which policy must be maintained until the End Date; and
  - (c) any other insurance that a prudent and experienced Contractor, in the position of the Contractor, would take out,each of which is to be:
  - (d) with reputable insurers; and
  - (e) subject to terms which are satisfactory to GCPHN (acting reasonably); and
- (2) provide GCPHN with evidence satisfactory to GCPHN that the policy is current.

#### **14. Invoicing**

The Contractor must invoice GCPHN for the Services in accordance with the requirements set out in Item 6 of the Service Agreement Service Details.

#### **15. Payment**

15.1 In this Clause and Item 5 of the Service Schedule, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and not otherwise defined in this Agreement has the same meaning given to it in that Act.

15.2 The payments are, with the exception of any out-of-pocket expenses incurred in accordance with Clause 15.7 that are reimbursable by GCPHN and (unless expressly stated), GST inclusive of all costs and expenses incurred by the Contractor.

15.3 Subject to:

- (1) this Clause 15; and
- (2) the Contractor complying with its obligations under this Agreement (including that the services have been delivered in accordance with this Agreement and meet the Performance Criteria),

GCPHN must pay to the Contractor the payments in accordance with the requirements set out in Item 8 of the Service Schedule.

15.4 GCPHN must make payment (as specified in Item 8 of the Service Schedule) of a correctly rendered invoice within 14 days of receipt of the invoice and any supporting documentation as GCPHN reasonably requests.

15.5 Any payment of moneys under Clause 15.4 is not:

- (1) evidence of the value of the Services or that the Services have been satisfactorily carried out in accordance with this Agreement;
- (2) an admission of liability; or
- (3) approval by GCPHN of the Contractor's performance or compliance with this Agreement;

but is only to be taken as payment on account.

- 15.6 The Contractor acknowledges that, as a result of GCPHN's funding arrangements under the GCPHN Deed or otherwise, it may be paid part (or all) of the payments in advance of performing the Services to which that part of the payments relate.
- 15.7 Any out-of-pocket expenses incurred by the Contractor in providing the Services must be pre-approved in writing by GCPHN. GCPHN must reimburse the Contractor for all pre-approved out-of-pocket expenses within 14 days of receipt of a correctly rendered Tax Invoice accompanied by such supporting documentation as GCPHN reasonably requests.
- 15.8 Without limiting its rights under this Clause 15 or otherwise under this Agreement or at Law, GCPHN may deduct from moneys otherwise due to the Contractor any debt or other moneys due from or any other amount claimed by GCPHN to be payable by the Contractor to GCPHN.

## **16. Goods and Services Tax**

- 16.1 In this Clause:
- (1) a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and not otherwise defined in this Agreement has the same meaning given to it in that Act;
  - (2) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and any reference to a party's entitlement to an input tax credit includes any entitlement to an input tax credit of the representative member of any GST group of which that party is a member; and
  - (3) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 16.2 When any consideration (whether expressed in money or otherwise) becomes due in respect of a taxable supply by the Contractor, the Contractor will provide GCPHN with a Tax Invoice for the supply to which the payment relates and any other documentation required under the GST Law.
- 16.3 If GST is applicable to a supply made under this Agreement, then, to the extent that the consideration for that supply is not already stated to include an amount in respect of GST, the Contractor may increase the consideration by the applicable amount of GST and GCPHN must pay that increased amount.
- 16.4 Where any out-of-pocket expenses incurred by the Contractor are to be reimbursed by GCPHN under this Agreement, the reimbursable amount will be determined as follows:
- (1) first, any amount that the Contractor is entitled to claim as an Input Tax Credit shall be deducted from the cost to the Contractor of the expense item to arrive at an "actual cost"; and
  - (2) second, the actual cost shall be increased by the amount of GST applicable to the supply of the expense item to GCPHN.
- 16.5 Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any Input Tax Credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement but the supplier need not provide a Tax Invoice for a supply until the supplier has received payment for the supply.
- 16.6 If the GST on a taxable supply is varied pursuant to any change in legislation, the consideration payable under this Agreement must be increased or decreased to reflect that variation of the GST.

## **17. Termination**

- 17.1 **Termination for Default**

- (1) A party may terminate this Agreement at any time by Notice to the other party (**Defaulting Party**) if any of the following apply:
  - (a) the Defaulting Party breaches any provision of this Agreement, the breach is capable of remedy and the Defaulting Party does not remedy that breach within fourteen (14) days of receipt of Notice from the other party requiring it to be remedied;
  - (b) the circumstances contemplated by Clause 6.5;
  - (c) the Defaulting Party breaches a material provision or breaches a warranty provided under this Agreement and the breach is not capable of remedy;
  - (d) where the Defaulting Party:
    - (i) becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth) or commits an act of bankruptcy; or
    - (ii) is subject to any event or circumstance which, in the reasonable opinion of a party to this Agreement, is likely materially and adversely to affect the ability of the Defaulting Party to perform all or any of its obligations under or otherwise to comply with the terms of this Agreement.
- (2) If this Agreement is terminated under Clause 17.1(1), subject to Clause 17.3, GCPHN is liable only for payments under Clause 15 for services rendered before the effective date of termination.
- (3) GCPHN may terminate this Agreement at any time by notice in writing to the Contractor if the Contractor:
  - (a) is guilty of any dishonesty, serious misconduct or serious neglect of duty in connection with the provision of the Services; or
  - (b) engages in any act or omission that in the reasonable opinion of GCPHN has or will likely have the effect of causing material damage to GCPHN.
- (4) In the event the Agreement is terminated under Clause 17.1 (1) or to the extent that any part of the payments paid to the Contractor amounts to excess payments, those payments will be deemed to be held in trust for the benefit of GCPHN.

#### 17.2 Termination for Convenience

- (1) GCPHN may as a result of any variation to the GCPHN Deed, or change in related funding or administrative policies and practices initiated by the Commonwealth, or at the direction of the Commonwealth, by Notice, terminate this Agreement by notice in writing to the Contractor. On receipt of a Notice of termination, the Contractor must:
  - (i) stop work as specified in the Notice; and
  - (ii) take all available steps to minimise loss resulting from that termination and to protect GCPHN Material and Contract Material.
- (2) If this Agreement is terminated under Clause 17.2(1) 17.2, subject to Clause 17.3, GCPHN is liable only for:
  - (a) Payments under Clause 15 for services rendered before the effective date of termination; and
  - (b) reasonable costs incurred by the Contractor and directly attributable to the termination.

- (3) GCPHN is not liable to pay compensation under Clause 17.2(2)(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Agreement, exceed the total payments which would otherwise have been payable under this Agreement.

### 17.3 Refunding of Payments Paid In Advance

- (1) GCPHN:
  - (a) if this Agreement is terminated under Clauses 17.1, 17.2 or 17.3 or is otherwise terminated or expires, must determine; and
  - (b) may otherwise in its discretion choose to determine at any point,  
  
in accordance with Clause 17.3(2) the extent to which any part of the payments paid to the Contractor corresponds to Services not yet rendered.
- (2) In making its determination under Clause 17.3(1), GCPHN must:
  - (a) where applicable, take into account the Deliverables, the Deliverable Dates and any other relevant details of the Details About Service in the Service Schedule; and
  - (b) act reasonably.
- (3) To the extent that any part of the payments paid to the Contractor corresponds to Services not yet rendered (as determined by GCPHN under Clause 17.3(1)) 'Excess Payments':
  - (a) GCPHN may set off the Excess Payments against any amounts payable to the Contractor; and
  - (b) the Contractor must reimburse GCPHN for the Excess Payments (after taking into account any set off under Clause 17.3(3)(a)) within 30 days of a written request from GCPHN.

## 18. Dispute Resolution

- 18.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement or the services (Dispute) unless it has complied with this Clause 18. If a party does not comply with this Clause 18 in relation to a Dispute, the other party does not have to comply with this Clause in relation to the Dispute.
- 18.2 A party claiming that a Dispute has arisen must give Notice to the other party or parties to the Dispute giving details of the Dispute (notification).
- 18.3 On receipt of a notification each party must negotiate in good faith to resolve the Dispute and, if necessary to resolve the Dispute, involve the Chief Executive Officers or other senior officers of any of the parties directly in those negotiations.
- 18.4 If the Dispute is not resolved under Clause 18.3 within 14 days of the date of the notification (or a longer period agreed between the parties), the parties must refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the mediation rules of the ACDC. Mediation must take place within the Jurisdiction.
- 18.5 If the Dispute is not resolved under Clause 18.4 within 60 days after referral to mediation (or a longer period agreed between the parties) any party may initiate proceedings in a court.
- 18.6 This Clause 18 does not:
  - (1) prevent a party from applying to a court for urgent injunctive relief; or

- (2) apply to any Dispute in relation to a termination or reduction by GCPHN under Clause 17.

## **19. Unavoidable Delay**

- 19.1 A party (Affected Party) is not liable for any delay or failure to perform its obligations under this Agreement if:
  - (1) the delay or failure is caused by an event beyond the non-performing party's reasonable control (including war, terrorism, natural disaster or labour disputes not solely involving its personnel);
  - (2) the delay could not have been reasonably foreseen before entering into this Agreement; and
  - (3) it notifies the other party of the unavoidable delay as soon as it becomes aware of it.
- 19.2 The 'affected party' must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.
- 19.3 If non-performance or diminished performance by the 'affected party' due to the circumstances under Clause 19.1 continues for a period of more than 30 consecutive days, the other party may terminate the Agreement immediately by giving the 'affected party' Notice.
- 19.4 If this Contract is terminated under Clause 19.3:
  - (1) each party will bear its own costs and neither party will incur further liability to the other; and
  - (2) subject to Clause 17.3, where the Contractor is the 'affected party', it will be entitled to payment for services performed in accordance with this Agreement prior to the date of intervention of the circumstances described in Clause 19.1.

## **20. Commonwealth Requirements**

- 20.1 Notwithstanding anything else in this Agreement, the Contractor:
  - (1) acknowledges that GCPHN is bound by obligations to the Commonwealth under the GCPHN Deed and that the Contractor's acts or omissions (except where it is acting in accordance with the terms of this Agreement) may cause GCPHN to breach or otherwise incur liabilities under the GCPHN Deed;
  - (2) must comply with all reasonable directions of GCPHN, and otherwise provide all assistance and do all things necessary for GCPHN to comply with the GCPHN Deed;
  - (3) must comply with any obligations under any laws relating to working or contact with Vulnerable Persons or police checks;
  - (4) must ensure that any subcontractor approved under this Agreement is engaged under a subcontract that contains all the relevant terms of this Agreement including those relating to subcontracting, intellectual property, obligations equivalent to those under this Clause 20, and in particular that the Contractor has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded to GCPHN by Clause 17.2 in the event of this Agreement being terminated;
  - (5) acknowledges that the Commonwealth may collect Personal Information from it, which may be used or disclosed to administer, monitor, review, promote and evaluate this Agreement; and
  - (6) acknowledges that the Commonwealth may:
    - (a) collect, use and disclose the Personal Information of the Contractor; and

- (b) disclose information about the Contractor to, and receive information about the Contractor from, any Commonwealth or other entity that maintains the Commonwealth Department of Health's electronic on-line grant management system or has a directly-related policy interest or a role in administering the Primary Health Networks Core Funding Program.
- 20.2 The Contractor must allow the Auditor-General, the Privacy Commissioner, the Commonwealth Ombudsman and persons authorised in writing by the Commonwealth:
- (1) to access:
    - (a) premises at which any Contract Material is stored or at which the services are undertaken; and
    - (b) its personnel; and
  - (2) to inspect and copy any Contract Material.
- 20.3 The Contractor:
- (1) must provide any report, or assistance in preparing any report, as directed by GCPHN in order for GCPHN to comply with the GCPHN Deed;
  - (2) must not publish any publication or otherwise make any public communication in relation to the services without the prior written approval of GCPHN; and
  - (3) must comply with any directions of GCPHN in respect of publications.
- 20.4 The Contractor must:
- (1) comply with any reasonable directions of GCPHN in relation to confidentiality or conflict of interest as defined and located online at this web address - [www.GCPHN.org.au/COI](http://www.GCPHN.org.au/COI); and
  - (2) provide any information or enter into any undertakings required by the Commonwealth in respect of confidentiality or conflict of interest defined and located online at this web address - [www.GCPHN.org.au/COI](http://www.GCPHN.org.au/COI); and
  - (3) upon request by GCPHN or the Commonwealth, provide to GCPHN or the Commonwealth any document that relates to the performance of this Agreement
- 20.5 The Contractor must at all times indemnify and release GCPHN, its employees, directors, officers and agents from and against all claims and losses arising under the GCPHN Deed directly or indirectly as a result of the Contractor's breach of this Clause 20.

## **21. General**

### **21.1 No Partnership or Employment**

- (1) The relationship between GCPHN and the Contractor is that of a principal and an independent Contractor. Nothing in this Agreement is intended to create a partnership as between the Contractor and GCPHN. The Contractor acknowledges that:
  - (a) the Contractor has no authority to bind GCPHN without GCPHN's specific consent; and
  - (b) the Contractor enters into this Agreement as an independent contractor and retains the ultimate responsibility for the management and direction in relation to the provision and performance of the services to GCPHN.

- (2) The Contractor must not represent itself as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- (3) Notwithstanding paragraph (2), the Contractor acknowledges that:
  - (a) it may be considered a "Commonwealth Service Provider" for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Commonwealth Ombudsman under that Act and that neither the Commonwealth nor GCPHN will be liable for the costs of any such investigation in connection with this Agreement or the services; and
  - (b) it must comply with the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth).
- (4) The Contractor acknowledges that:
  - (a) its role under this Agreement is as a non-exclusive provider of services; and
  - (b) GCPHN is in no way restricted from performing or engaging third parties to perform services similar to the Services.
- (5) The Contractor is solely responsible for paying its employees and agents, including but not limited to the Specified Personnel, all remuneration and benefits including salary, superannuation, annual leave, sick leave, long service leave, and any other benefits to which they may be entitled as its employees, and for otherwise complying with the legislation and industrial awards which are applicable to its employees. The Contractor must pay all taxes and duties in respect of such remuneration and benefits.
- (6) The obligations under this clause 21.1 survive termination or expiry of this Agreement.

#### 21.2 **No Assignment**

Neither party to this Agreement may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other party.

#### 21.3 **Further Assurance**

Each party must promptly, at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

#### 21.4 **Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

#### 21.5 **Counterparts**

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

#### 21.6 **Entire Understanding**

- (1) This Agreement:
  - (a) is the entire Agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
  - (b) supersedes any prior Agreement or understanding on anything connected with that subject matter.

- (2) The Contractor acknowledges and agrees that:
  - (a) it has entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
  - (b) the Agreement supersedes all material and representations provided by GCPHN in entering into this Agreement; and
  - (c) to the extent permitted by law, GCPHN is not liable to the Contractor upon any claim with respect to GCPHN Material or GCPHN representations.

#### 21.7 Amendment

- (1) Subject to paragraph (2), an amendment to this Agreement is not effective unless it is in writing and signed by the parties.
- (2) Where GCPHN determines that an amendment to this Agreement is necessary:
  - (a) to ensure that the Contractor complies with the requirements of the GCPHN Deed; or
  - (b) as a result of any variation to the GCPHN Deed, or change in related funding or administrative policies or practices, where that change or variation is initiated by the Commonwealth,GCPHN will:
  - (c) notify the Contractor in writing of the amendment;
  - (d) consult with the Contractor in good faith on any necessary adjustment to the fee resulting from the amendment; and
  - (e) adjust the fee as necessary and acting reasonably.
- (3) The Contractor will be deemed to have agreed to any amendment to this Agreement in accordance with paragraph (2).
- (4) GCPHN will post the terms and conditions of this agreement to its website at [www.gcphn.org.au](http://www.gcphn.org.au); The Contractor shall be deemed to have been provided notice, in accordance with clause 21.10.

#### 21.8 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is only effective in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### 21.9 Costs and Outlays

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

#### 21.10 Notices

- (1) A notice or other communication connected with this Agreement shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of a party and addressed to the contact person set out in Item 2 of the Service Agreement Service Details, and is either delivered



by hand, posted, by email or facsimile to the contact details set out in Item 2 of the Service Agreement Service Details or such other address as may be notified in writing from time to time.

- (2) A Notice given in accordance with 21.10(1) is taken to be received:
- (a) if sent by post, on the second business day after the date of posting (or if outside Australia, on the seventh business day after the date of posting)
  - (b) if sent by facsimile, when the sender's facsimile machine generates a message confirming successful transmission; or
  - (c) if sent by email, the date Notice was sent, unless the sender receives an email message stating that the Notice could not be delivered,

but if the Notice is given after 5.00pm on a business day or not on a business day, the Notice is taken to be received at 9.00am on the next business day.

#### 21.11 **Governing Law and Jurisdiction**

The law of the Jurisdiction governs this Agreement and the parties submit to the non-exclusive Jurisdiction of the courts of the Jurisdiction and any courts of appeal from those courts.

#### 21.12 **Survival**

The obligations of the Contractor under Clauses 3.2, 7, 8, 9, 10, 11, 12, 13, 17.3 and 20 will survive the expiry or termination of this Agreement.

Under review - Subject to change

**Executed as an Agreement.**

Signed as an agreement on \_\_\_\_\_ / \_\_\_\_\_ / 2020

Signed, sealed and delivered by **Entity Name** )  
in the presence of: )  
)

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative (print)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (print)

Signed, sealed and delivered by **Primary Care Gold Coast Limited ACN 152 953 092** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director/Company Secretary  
(Please delete as applicable)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Director/Company Secretary (print)  
(Please delete as applicable)

\_\_\_\_\_  
Full Name of Witness (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date