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1. Definitions and interpretation

1.1 Definitions

In these Standard Terms and Conditions and the Contract, the following terms have the meanings set out below:

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.

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.

Clinical Services means any aspect of the Services which is of a clinical nature, including any diagnosis, advice or treatment in respect of the health or wellbeing of any person.

Clinician means any Personnel that provide any Clinical Services in connection with this Contract.

Commencement Date is defined in the Contract Specifics.

Commonwealth means the Commonwealth of Australia as represented by its departments including the Commonwealth Department of Health.

Confidential Information means all information of whatever description which is designated by HNECC as confidential or which a party knows or ought to know is confidential.

Contract Material means all Material:

- a) created for the purpose of the Services (other than any Material which is expressly agreed as not being Contract Material for the Service);
- b) developed and delivered to HNECC by the Provider specifically for and paid for by HNECC under this Agreement or part of the Services; or
- c) derived at any time from the Material referred to in paragraphs a) or b) above, but excludes Existing Material.

Contract Specifics (contained in the Service Agreement) means the section in the document named "Contract Specifics" forming part of the Contract.

Contract Price means the payment that is payable to the Provider described in Schedule A.

Deliverable Date means any fixed date to be met by the Provider in performing any of its obligations under this Contract, as specified in the Service Agreement.

Deliverables means any item or element of the Services to be supplied by the Provider to HNECC under this Contract.

Department means the Commonwealth Department of Health or such other department or body having authority to manage or administer the HNECC Funding Agreement on behalf of the Commonwealth.

Client / Patient means a person identified in the Contract (or notified to the Provider by HNECC) to whom the Provider provides services comprising, or derived from, in whole or in part, the Services.

Existing Material means any Material:

- a) in existence prior to Commencement Date; or
- b) created, developed or generated after the Commencement Date other than in the course of delivering the Services or otherwise performing work contemplated by this Contract.

End Date is defined in the Contract Specifics

General Practitioner or GP means a "medical practitioner" as defined in Section 3 of the Health Insurance Act 1973 (Cth) including any amendment or re-enactment of the same or any legislation passed in substitution and whose practice involves the provision of primary, continuing and comprehensive whole patient care to individuals, families and their community.

General Practice means the provision of primary continuing comprehensive whole-patient medical care to individuals, families and their communities.

GST means a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and not otherwise defined in the Contract and has the same meaning given to it in that Act

HNECC means HNECC Limited (Hunter New England Central Coast Primary Health Network) **HNECC** as defined in the Contract Specifics.

HNECC Funding Agreement means the standard funding agreement (SFA) between the Commonwealth and HNECC for delivery of the particular program

HNECC Material means any Material provided to the Provider by HNECC.

HNECC Representations means any representations (including by silence) made by HNECC to the Provider in respect of the scope or nature of the Services or any matters the subject of this Contract.

Intellectual Property Rights or IPR means all intellectual property rights, including any patent, registered design, trademark or name, copyright or other protected right, whether or not such rights are registered or capable of being registered.

Jurisdiction means the State of New South Wales.

Law means:

- a) any statute, regulation or subordinate legislation of the Commonwealth, 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.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

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).

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.

Notice has the meaning given in clause 25.

Party means a party to the Contract and **Parties** means both of them.

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).

Personnel means any natural person who is an employee, officer, agent or professional adviser of a party or, in the case of the Provider, of a subcontractor.

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.

Provider is defined in the Contract Specifics.

Provider Material means all Material created, developed or generated by, on behalf of, or under licence from, Provider or the Personnel in the course of, arising out of or incidental to, delivering the Services or otherwise performing work contemplated by this Contract (including the production of the Reports) but excludes Contract Material and Existing Material.

Provider Representative is defined in the Contract Specifics.

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Special Conditions means the special conditions as set out in the Service Agreement (Special Conditions).

Services means the services described in Schedule B (inclusive of the Scope of Services, Standards and Guidelines) and includes any Deliverables listed in the Service Agreement.

Tender means the Provider's offer or counter-offer in writing to perform the Services whether described as a "tender" or "proposal" or otherwise.

Term is defined in the Contract Specifics.

Variation means any change to the Services, including any addition, increase, decrease, omission or deletion in, to or from the Services.

Vulnerable Person means an individual aged under 18 years or any individual who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by any reason, including age, illness, trauma or disability, pregnancy, the influence, or part or existing use, of alcohol, drugs or substance use or any other reason.

1.2 Interpretation:

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- a) The singular includes the plural and conversely.
- b) A gender includes all genders.
- c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- d) The meaning of general words is not limited by specific examples introduced by *including* or *for example*.
- e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way

of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).

- g) A reference to a clause or appendix is a reference to a clause of, or appendix to, these Standard Terms and Conditions.
- h) A reference to a schedule is a reference to a schedule to the Contract.
- i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- j) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- l) Where it is provided that the Provider will perform any act or provide any thing at its cost, this means the Provider will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract.

2. Evidence of Contract and precedence of documents

2.1 Contract

2.2 The Contract consists of the following documents:

- a) The Service Agreement or Letter of Acceptance including Contract Specifics; Schedule A (Contract Price and Contract Deliverables); Schedule D (Special Conditions (if any));
- b) These Standard Terms and Conditions;
- c) Schedule B (including Scope of Services, Standards and/or Guidelines) (if applicable); and
- d) Schedule E Attachments

the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Contract itself, form part of the Contract unless HNECC expressly so agrees in writing.

2.3 Precedence of Contract documents

- a) To the extent of any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2.
- b) If there is any conflict or inconsistency between a payment and the Contract, the Contract will prevail to the extent of that conflict or inconsistency.

3. Term of Contract

This Contract begins on the Commencement Date and will remain in force unless terminated earlier in accordance with the Contract, for the Term.

4. Performance of Services

In performance of the Services, the Provider will:

- a) provide the Services in a diligent, professional and expeditious manner and to the standard of skill and care expected of a Provider in the specialty in accordance with this Contract, all Laws and the requirements of all authorities, including any relevant HNECC policies;
- b) maintain and comply with all approvals applicable to the provision of the Services;
- c) where relevant, provide evidence of professional registration, qualifications, participation in Continuing Professional Development activities and insurance, as well as evidence that the Provider and its Personnel continue to meet relevant college / professional body requirements in order to practice in their field within Australia;
- d) ensure Services meet accepted quality and safety standards;
- e) ensure Services meet agreed frequencies, quantities and locations (if any) listed in Schedule B of the Contract;
- f) ensure all reports are provided in accordance with Schedule A of the Contract;
- g) ensure Personnel meet acceptable standards of practice through regular performance reviews;
- h) provide other activities necessary for the proper operation of the Services;
- i) participate and provide input / data to support the evaluation of the Services; and
- j) maintain ongoing business registration and accreditation (where applicable).

HNECC may, acting reasonably, direct the Provider to ensure all Personnel perform all or specified aspects of the Services.

If it becomes evident to a Party that there is a delay with performance of the Services, that Party must promptly notify the other Party in writing with details of the possible delay and the cause. HNECC may, at any time, by Notice to the Provider, extend the time for carrying out the Services or any Deliverable Date for any reason. HNECC is not required to exercise its discretion under this clause 4 for the benefit of the Provider.

5. Variations to the Services

- a) HNECC may direct the Provider in writing to vary the Services.
- b) The Provider must not effect a Variation unless that Variation is directed by HNECC in writing and the Provider will have no Claim against HNECC if it does effect a purported Variation that is not so directed.
- c) HNECC will adjust the Contract Price in response to any Variation directed under clause 5(a) acting reasonably.

6. Probity checks

- a) The Provider must, before engaging, deploying or redeploying its Personnel in relation to any part of delivery of the Services that involves working or contact with a Vulnerable Person; and
- b) thereafter every three years Provider Personnel is deployed or redeployed in relation to any part of delivery of the Services that involves working or contact with a Vulnerable Person, do the following:

- c) obtain a Police Check for the relevant person,
- d) If a Police Check indicates that the Provider Personnel has a serious record, the Provider may not deploy or redeploy that person in relation to any part of delivery of the Services that involves working or contact with a Vulnerable Person.
- e) The Provider must provide all information and assistance required for a Police Check and any other check or investigation required by Law or government policy in respect of Vulnerable Persons.
- f) The Provider agrees to provide verified results of any Police Check (or other check) to HNECC.
- g) The Provider is responsible for all costs associated with compliance with this clause 6.

7. Subcontracting

- a) The Provider must provide a listing of all subcontractors engaged to perform the Services within five (5) Business Days of receipt of a request by HNECC. The listing shall be inclusive of
 - i. Business Name
 - ii. Specific service provided
 - iii. Locations that services are provided
 - iv. ABN
 - v. Contract Email address
 - vi. Contact Person and
 - vii. Contact Phone number
- b) The Provider must not subcontract any aspect of the Services without the prior written approval of HNECC. Such approval may be subject to conditions.
- c) Notwithstanding any approval given by HNECC, the Provider will be liable to HNECC for all acts and omissions of any subcontractor (including its Personnel) as if those acts and omissions were those of the Provider itself.
- d) Notwithstanding any subcontracting of any aspect of the Services with the prior written approval of HNECC, the Provider is, and will remain responsible and liable to HNECC for the performance of the Services by its subcontractor.
- e) HNECC may at any time require the Provider to remove any of its Personnel or subcontractors from performing any of the Services.

8. Performance assessment

- a) Without limiting any other rights of HNECC, if HNECC considers that all or part of the Services do not meet the Contract, HNECC may issue a Notice on the Provider.
- b) If HNECC issues a Notice under clause 8(a), the Provider must carry out the following actions within five (5) Business Days of receipt of the Notice:
 - i. immediately take all necessary steps to ensure that the Services are promptly corrected,

- ii. give Notice to HNECC when the Services have been corrected, and
 - iii. allow HNECC to re-assess all or part of the Services against the performance criteria.
- c) If any part of the Services does not meet the obligations of this Contract on two or more occasions, HNECC may terminate the Contract in accordance with clause 20.

9. Intellectual Property Rights and Moral Rights

9.1 Ownership of Existing Material

Each Party acknowledges and agrees that the IPR in any Existing Material which is provided by a Party for the purpose of delivering the Services or otherwise connected with this Contract (including that Party's trade marks) is either:

- a) owned absolutely by it; or
- b) if the relevant Party does not own the IPR, that the Party has the right to use and exploit those IPR and to grant the rights set out in this Contract.

9.2 Licence to use Existing Material

- a) The Provider grants HNECC a perpetual, irrevocable, royalty-free and licence fee-free, worldwide and non-exclusive licence (including a right of sub-licence) to use, copy, modify, adapt, publish, perform, broadcast, communicate and exploit the Provider's Existing Material that is provided to HNECC to allow HNECC and its licensees to receive the benefit of the Services or in conjunction with any Contract Material. Without limiting the foregoing, the licence granted to HNECC under this clause does not extend to commercialisation of the Provider's Existing Material.
- b) HNECC grants the Provider a worldwide royalty-free and non-exclusive licence to use, copy and sub-licence HNECC's Existing Material for the term solely for the purpose and to the extent necessary for the Provider to complete its obligations under this Contract.

9.3 Licence to use Provider Material

The Provider grants HNECC a perpetual, irrevocable, worldwide, royalty-free and licence fee-free, non-exclusive licence (including a right of sub-licence) to use, copy, modify, adapt, publish, perform, broadcast, communicate and exploit the Provider Material that is provided to HNECC under this Contract, for any purpose.

9.4 Ownership and use of Contract Material

The Provider agrees that the IP Rights in all Contract Material (excluding the Provider's Existing Material and Provider Material) will vest in HNECC immediately upon the creation, development or generation of that Contract Material for the purpose of HNECC obtaining the benefit of the Contract Material. The Provider will take all necessary steps to ensure that any IPR in the Contract Material that do not automatically vest in HNECC transfer to HNECC. For the avoidance of any doubt, if this Contract is terminated prior to the completion of the Services, this clause will apply to all Contract Material in existence as at the date of termination provided that the Fees for Services up to the date of termination have been paid to the Provider.

9.5 Ownership and use of Provider Material

Nothing in this Contract grants or transfers any rights of the Provider Material to HNECC, except as set out in clause 9.

9.6 Licence to use Contract Material

- a) Subject to clause 9.6b), HNECC grants to the Provider a perpetual, worldwide, royalty-free and non-exclusive licence to Use the Contract Material for the purposes of delivering the Services only.
- b) If the Provider requires the use of the Contract Materials for a purpose beyond the scope of the licence granted in clause 9.6a), it must seek and obtain HNECC's written agreement.
- c) HNECC may revoke the licence referred to in clause 9.2b) or clause 9.6b) if, in the reasonable opinion of HNECC the use of the relevant Material;
 - i. is inconsistent with the purposes, mission or philosophy of HNECC;
 - ii. may harm the reputation of HNECC; or
 - iii. breaches the IPR of any other person.

9.7 Acknowledgements relating to Contract Material

The Provider acknowledges and agrees that:

- a) it must disclose all IPR arising out of or in connection with the delivery of the Services to HNECC;
- b) during the Term, at the end of the Term, or upon the earlier termination of this Contract, it must deliver a copy of all Contract Material to HNECC; and
- c) it must do all things and execute all documents and cause its officers, employees (including the specified Personnel), agents and Providers to do all things and execute all documents which are required by HNECC to give effect to clause 9.3.

9.8 Warranties

- a) Each Party warrants that it is entitled, or will be entitled at the relevant time, to deal with the Existing Material in the manner provided for in this clause 9.
- b) The Provider warrants that where any Contract Materials contain IPR belonging to a third party, it has all necessary consents in place, sufficient to allow it to deal with the Contract Material in the manner required by the Contract.
- c) The Provider warrants that the provision of the Services will not infringe the IPR of any person.

9.9 Moral Rights

The Provider agrees to obtain from each author of the Provider's Existing Material or any Contract Material a written consent which extends directly or indirectly to the performance of any of the following acts or omissions by or on behalf of HNECC (whether occurring before or after the consent is given):

- a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship (but HNECC must not falsely attribute authorship);

- b) supplementing the Contract Material with any other Material; and
- c) using the Contract Material in a different context to that originally envisaged under this Contract,

however, those acts or omissions must not result in the Contract Material being altered or edited in a way which would, or would be likely to, diminish the relevant author's reputation or standing.

9.10 Provision of consent

On request, the Provider agrees to provide the executed original of each such consent referred to in clause 9.9 to HNECC. If despite its best endeavours, the Provider is unable to obtain a consent referred to in clause 9.9, it must notify HNECC as soon as the Provider becomes aware of that inability.

10. Delivery of Contract Material and Deliverables

On the expiry of this Contract, termination of this Contract under clause 20 or upon request of HNECC, the Provider must deliver to HNECC all HNECC Material and all contract related Confidential Information promptly and at the Provider's expense.

11. Warranties and Indemnities

- a) The Provider represents and warrants that:
 - i. it has the right to enter into this Contract; and
 - ii. it has all rights, title, licences, interests and property necessary to lawfully perform the Services in this Contract.
- b) The Provider acknowledges that HNECC is entering into this Contract in reliance on the warranties and representations in clause.
- c) The Provider must at all times indemnify, hold harmless and defend HNECC, its employees, directors, officers and agents from and against all Claims and Losses arising directly or indirectly from:
 - i. any infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by HNECC, or its sub-licensees within the scope of HNECC's Intellectual Property Rights and licences under this Contract, in relation to any part of the Services;
 - ii. any actual, likely or threatened breach of any obligations under clause 13 or otherwise relating to Confidential Information by the Provider, its subcontractor or its Personnel;
 - iii. any wilful, misleading and deceptive conduct by the Provider, its subcontractor's and/ or Personnel;
 - iv. any actual, likely or threatened breach of clause 22;
 - v. any act or omission of the Provider, its subcontractors

- vi. any material breach of this Contract by the Provider, its subcontractors and/ or Personnel.

- d) The Provider and HNECC agree that each indemnity or promise provided by the Provider under this clause to a Party other than HNECC (Indemnified Party) is held on trust by HNECC for the benefit of that Indemnified Party, and that the consent of an Indemnified Party is not required for any amendment to, or waiver of rights under this Contract.

The indemnities provided by the Provider under this clause exclude any liability for any Claim or Loss to the extent that HNECC contributed to the Claim or Loss.

12. Confidentiality

- a) Each Party shall treat as confidential all Confidential Information and must not directly or indirectly use any Confidential Information of either Party or any Related Body Corporate of either Party for any purposes other than providing the Services under this Contract. The Parties must not disclose such Confidential Information to any person without the other Parties prior written consent and must otherwise comply with each of the Parties reasonable directions in respect of Confidential Information. The Parties must also enter into any confidentiality or conflict of interest undertakings required by the Commonwealth.
- b) The Parties acknowledge that damages would not be a sufficient remedy for breach of this clause and agree that a Party is entitled to interim, interlocutory or permanent injunctions to prevent any breach of Confidential Information.

13. Protection of Personal Information

If the Provider obtains any Personal Information in connection with this Contract, the Provider must comply with the *Privacy Act 1988* (Cth), the Australian Privacy Principles established under that Act, the *Personally Controlled Electronic Health Records Act 2012* (Cth), any other applicable Law relating to privacy and HNECC's reasonable directions in relation to the protection of Personal Information.

14. Provider's insurance

14.1 General insurance requirements

- a) The Provider is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described under this clause in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.
- b) The Provider must provide HNECC certificates of currency for each policy of insurance required under this Contract.
 - (i) Public Liability Insurance with a minimum limit of Liability being

- not less than AUD\$20,000,000 for each and every claim.
- (ii) Professional Indemnity Insurance - with a minimum limit of Liability being not less than AUD\$10,000,000 for each and every claim. the Provider must effect and maintain throughout the Term and for a period of not less than 7 years after termination of the Contract or completion of the Provider's obligations under the Contract
- (iii) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Provider.

14.2 Notification under Provider's policy

If the Provider becomes aware of an event which may give rise to a claim involving HNECC under any policy of insurance effected by the Provider as required by this clause, the Provider must notify HNECC and must ensure that HNECC is kept fully informed of subsequent action or developments concerning the claim.

14.3 Subcontractors insurance

The Provider must ensure that its subcontractors have the benefit of or effect and maintain insurances similar to the Provider insurances required to be effected by the Provider.

14.4 Insurance claims and payment of insurance excess

- a) The Provider will be responsible for the payment of any excess or deductible relating to the insurances effected by the Provider and the Provider will not be entitled to recover from HNECC any excess or deductible so paid by the Provider.
- b) The Provider will be responsible for the payment of any excess or deductible relating to the insurances effected by the Provider where HNECC makes a claim under such policy, to the extent that HNECC determines that the Provider or any of its Personnel were responsible for the loss or damage.

14.5 Survival of Clause

This clause will survive the expiry or earlier termination of the Contract.

15. Payment

15.1 Payments

Payment by HNECC to the Provider will be made following receipt of a tax invoice for that payment. The tax invoice is to identify the Contract number (SERV-xxx), a purchase order number and a description of the deliverable as set out in the Service Agreement (Schedule A) or Letter of Acceptance.

Payment by HNECC to the Provider in accordance with the Contract is deemed to be full compensation for all costs including advertising, labour, incidentals, consumables, fuel, direct and indirect expenses, preparation and delivery of reports, profit, administration costs, insurance, travel cost, meal breaks, office costs, tax (including GST), government charges, compliance with all obligations of this Contract and any other fees required for the performance of the Services.

15.2 Disputed Payments

If the Provider disputes any payment amount, it must notify the HNECC within 14 days of receipt.

15.3 Errors or exceptions in payments

If the Provider discovers or is advised of any errors or exceptions relating to the payment for the Services, the Provider and HNECC will jointly review the nature of the errors or exceptions, and the Provider must, if appropriate, take prompt corrective action and or refund overpayments.

15.4 Payment Schedule

HNECC shall process payments according to Schedule A of the Contract or other agreed payment schedule as listed in the Letter of Acceptance.

- a) For the avoidance of doubt and without limiting the general nature of the provisions contained above in this clause, if at any time HNECC determines, after having discussed (or made a reasonable attempt to discuss) the relevant aspects of this clause with the Provider, that:
- i. the Provider has not delivered the Services,
 - ii. the Provider has claimed or received any part of the Contract Price for Services (or any part of the Services or Deliverables) that have not been provided in accordance with this Contract including as a result of the Provider having received a surplus payment and/or any part of the Services not being required;
 - iii. HNECC has made an overpayment of the Contract Price to the Provider; or
 - iv. HNECC has spent or committed funds to or with the Provider other than:
 - (A) for Services which have actually been provided; and
 - (B) in accordance with this Contract

Then, at the discretion of HNECC as advised by HNECC to the Provider:

- a) HNECC may withhold payment;
- b) HNECC may reduce one or more further instalments of the Contract Price yet to be paid to the Provider, by up to the amount of the Moneys Due;
- c) the Provider must repay the relevant part or parts of the Contract Price (**Moneys Due**) back to HNECC within 30 days after receiving a notice from HNECC requiring the Provider to do so;
- d) the Provider must deal with the Moneys Due as directed by HNECC; or
- e) If, after the above sub-clause has been applied and Moneys Due have been recovered by HNECC, and subject to the other provisions of this Contract, the Provider demonstrates to the reasonable satisfaction of HNECC that the Provider is properly entitled to some or all of the Moneys Due, then HNECC will repay or procure the repayment of the required amount to the Provider within 15 days after HNECC is satisfied that the amount is repayable.

15.5 Commonwealth Funding

Notwithstanding the payment schedule in the Provider recognises that if the funding has not been provided to HNECC by the Commonwealth, HNECC may reduce or delay the payment until such funds are received.

16. Goods and Services Tax

The Provider agrees to perform all requirements, including providing tax invoices or other documentation in such form and detail that may be necessary to enable or assist HNECC to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under the Contract.

17. Provider's information, accounts and records

17.1 Provision of information

The Provider must in relation to the performance of this Contract or any review or evaluation of the Services conducted by HNECC:

- a) liaise with and provide HNECC with any information that it reasonably requires, including information regarding the provision of the Services and the Provider's ability to provide the Services and its financial and non-financial viability; and
- b) comply with all of HNECC's reasonable requests, directions and monitoring requirements

17.2 Provider to maintain accounts and records

The Provider must:

- a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and
- b) retain, and ensure that all of its Personnel retain, any of the items referred to under this clause for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

17.3 Provider to provide access

- a) In addition to the rights set out in clause 17.1, the Provider and its Personnel must permit HNECC to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
 - i. the Contract Price, including any amendment to the Contract Price;
 - ii. the existence (or otherwise) of any GST; or
 - iii. any other amount payable to, or claimed by, the Provider pursuant to the Contract.
 - iv. HNECC may make and retain copies of any of the items referred to in clause 17.3 (a).

18. Work health and safety

Without limiting clause, Your Organisation must:

- a) ensure that the work conducted by Your Organisation and any of Your Organisation's Personnel in respect of this Contract complies with all applicable legislative requirements, standards and policies and requirements of this Contract that relate to the health and safety of any person; and
- b) comply with obligations under applicable WHS Law and must ensure, so far as is reasonably practicable, that officers (as defined under applicable WHS Law) and

workers also comply with their obligations under the WHS. This paragraph b) is not limited by paragraph a)

In this clause [Work health and safety]:

'WHS Act' means the Work Health and Safety Act 2011 (Cth);
'WHS Law' means the WHS Act and any 'corresponding work health and safety law' as defined in section 4 of the WHS Act; and

- i. a word or expression that is:
- ii. used or defined in the applicable WHS Law; and
- iii. not otherwise defined in this clause or elsewhere in this Contract,
- iv. has for the purpose of this clause has, for the purpose of this clause [Work health and safety], the meaning given to it under the applicable WHS Law.

19. Dispute resolution

- a) A Party claiming that a dispute has arisen under this Contract must notify the other Party or Parties to the dispute giving details of the dispute (**Notification**).
- b) On receipt of a Notification each Party must negotiate in good faith to resolve the dispute and, if necessary, must, involve the Chief Executive Officers or other senior officers of any of the Parties directly in those negotiations.
- c) If the dispute is not resolved under clause 19 (b) 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.
- d) If the dispute is not resolved under clause 19 c) within 60 days after referral to mediation (or a longer period agreed between the Parties) any Party may initiate proceedings in a court within the Jurisdiction.

20. Termination

- a) Either Party may terminate this Contract at any time for any reason by giving 60 calendar days prior written notice to the other Party.
- b) A Party may terminate this Contract at any time by Notice to the other Party (Defaulting Party) if any of the following apply:
 - i. the Defaulting Party breaches any provision of this Contract, the breach is capable of remedy and the Defaulting Party does not remedy that breach within twenty (20) Business Days after receipt of Notice from the other Party requiring it to be remedied;
 - ii. the Defaulting Party breaches a material provision of, or breaches a warranty provided under, this Contract and the breach is not capable of remedy; or
 - iii. where the Defaulting Party becomes an externally-administered body corporate under the Corporations Act 2001 (Cth), commits an act of bankruptcy, or is subject to any

event or circumstance which, in the reasonable opinion of the other Party to this Contract, 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 this Contract.

- iv. HNECC may, as a result of a loss of funding from the Department of Health, terminate this Contract at any time by giving not less than thirty (30) Business Days written Notice to the Provider.
- v. If this Contract is terminated under clauses 20 (a) i, 20(a) ii or 8.c) iii, HNECC is liable only for fees or payments under clause 15 for Services rendered before termination.

Where the Provider has received payment for Services not yet provided, that portion of the Contract Price will be a debt due and payable by the Provider to HNECC on termination of this Contract.

21. Conflict of interest

21.1 Warranty

The Provider warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Services by the Provider and its Personnel under the Contract.

21.2 Conflicts of interest

The Provider must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Services by the Provider and its Personnel under the Contract, without the prior written consent of HNECC.

21.3 Indemnity

Without limiting clause 11, the Provider indemnifies HNECC and each client must keep HNECC and each client indemnified in respect of any Liabilities incurred or sustained by HNECC or a client as a result of any breach by the Provider of the warranties contained in clause 21.1 or the undertakings contained in clause 21.2.

22. Commonwealth requirements

Notwithstanding anything else in this Contract, the Provider:

- a) acknowledges that HNECC is bound by obligations to the Commonwealth under HNECC Funding Agreement and that the Provider's acts or omissions may cause HNECC to breach those obligations,
- b) acknowledges that the Provider may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976 (Cth)* and subject to investigation by the Ombudsman under that Act;
- c) expressly consents to the disclosure of its identity and the nature of the service arrangement between the Parties (and their Personal Information if the Provider is an individual) to the Commonwealth for publication in media releases, annual reports and on Commonwealth websites;

- d) acknowledges that any interest earned by your organisation on the contract funds are to be treated and reported as contract funds
- e) must comply with all reasonable directions of HNECC, and otherwise provide all assistance and do all things necessary for HNECC to comply with HNECC Funding Agreement, and
- f) must provide any report, or assistance in preparing any report, as directed by HNECC to comply with HNECC Funding Agreement; and
- g) must not publish any publication or otherwise make any public communication in relation to the Services without the prior written approval of HNECC.
- h) must allow the Auditor-General, any person appointed under Commonwealth legislation to perform information management, privacy or freedom of information acts, the Commonwealth Ombudsman and persons authorised in writing by the Commonwealth to:
 - i. access premises at which any Material is stored or at which the Services are undertaken,
 - ii. interview its Personnel, and
 - iii. inspect and copy any Material.

23. Clinical Services

- a) The Provider acknowledges that the acts or omissions of it or its Personnel in connection with Clinical Services may cause HNECC to suffer significant loss, including as a result of
 - i. claims by third Parties,
 - ii. loss of its status as a "Primary Health Network", and
 - iii. loss of existing or future funding.
- b) In recognition of the acknowledgments under clause 23 (a), and without limiting any other obligation of the Provider under this Contract, the Provider agrees to be bound by the obligations in respect of the Services set out in the Contract, if any.

24. Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

25. Notices

25.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- a) be in writing;
- b) be marked to the attention of the Representative for the Party to whom the Notice is addressed;
- c) where given by HNECC, be signed or authorised by either HNECC Representative, a director or company secretary of HNECC, or a duly authorised representative of HNECC;

- d) where given by the Provider, be signed or authorised by either the Provider Representative, a director or company secretary of the Provider, or a duly authorised representative of the Provider; and
- e) be delivered by prepaid post, by hand or electronically to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

25.2 Notices deemed given

A Notice will be taken to be duly given:

- a) in the case of delivery by hand, when delivered;
- b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- c) sent by facsimile, on the date send-back confirmation of its receipt by the addressee's facsimile is received by the sender; or,
- d) if sent electronically:
 - i. at the time shown in the delivery confirmation report generated by the sender's email system; or
 - ii. if the senders email system does not generate a delivery confirmation report within 12 hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

26. Laws

26.1 Compliance with Laws

During the Term, the Provider must:

- b) comply with all applicable legislation, Laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- c) in relation to the provision of the Services, at its cost:
 - i. obtain all necessary notices;
 - ii. give all necessary notices;
 - iii. pay all necessary fees, deposits and taxes, and, if requested by HNECC, must provide evidence of the matters referred to in this clause 26.1.

26.2 Working with Children

Where the Provider is required to perform Services involving any person or persons under the age of 18 years, the Provider must retain copies of the Provider's clearance from the Office of the Children's Guardian. If requested, copies of the Provider's clearance shall be provided to the HNECC representative.

26.3 Consequence of breach

Notwithstanding any other clause of these Standard Terms and Conditions or Term of the Contract, in the event of any breach of clause 25 or this clause 26, HNECC may, by written notice to the Provider:

- a) require the Provider to suspend the Services immediately;
- b) require the Provider, the Provider's Personnel, and/or any other person to leave HNECC's premises immediately; and/ or
- c) require the Provider and/or any of its Personnel to remove any Material or substance from HNECC's at the Provider's cost,

and the Provider must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

27.

General

The Provider acknowledges and agrees that:

- a) it is a non-exclusive provider of services and HNECC may engage third Parties to provide services similar to the Services;
- b) it has not been named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
- c) nothing in this Contract is intended to create a partnership between the Provider and HNECC;
- d) it must not represent itself as an officer, employee, partner or agent of the Commonwealth or HNECC;
- e) it must comply with the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth); and
- f) it may be subject to investigation by the Commonwealth Ombudsman and must bear any costs it incurs in relation to any such investigation.
- g) Neither Party to this Contract may assign or otherwise deal with any part of it save with the prior written consent of the other Party.
- h) If anything in this Contract is unenforceable, illegal or void then it is severed, and the rest of this Contract remains in force.
- i) This Contract may be executed in counterparts. All executed counterparts constitute one document.
- j) This Contract is the entire Contract and understanding between the Parties on everything connected with the subject matter of this Contract and supersedes any prior Contract or understanding connected with that subject matter.

Where HNECC determines that an amendment to this Contract is necessary for compliance with HNECC Funding Agreement (as amended), HNECC will in good faith:

- a) consult the Provider regarding that amendment;
- b) adjust the Contract Price in response to the amendment; and
- c) provide the Provider the amended form of this Contract,

and the Provider will be deemed to have agreed to such amendment to this Contract.

The Provider acknowledges and agrees that:

- a) it has not placed any reliance on the completeness, accuracy or adequacy of any

of HNECC Material or HNECC Representations;

- b) it has entered into this Contract based on its own investigations, interpretations, deductions, information and determinations;
- c) HNECC Material and HNECC Representations do not form part of this Contract; and
- d) to the extent permitted by Law, HNECC is not liable to the Provider upon any Claim with respect to HNECC Material or HNECC Representations.
- e) Each Party must bear its own costs arising out of:
 - i. The negotiation, preparation and execution of the Contract; and
 - ii. except as expressly provided otherwise in this Contract, any transaction contemplated by the Contract.
- f) The Law of the Jurisdiction governs this Contract and the Parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction and any courts of appeal from those courts.
- g) The obligations of the Provider under clauses 7, 9, 11, 12, 13 and 14 will survive the expiry or termination of the Contract.

28. Ethics and Values

28.1 Ethics

The Provider must comply with and observe the ethical principles in HNECC's Statement of Business Ethics which is available from HNECC's website: <http://www.hneccphn.com.au/>

28.2 Values

The Provider must comply with and observe HNECC Values of; Respect – Innovation – Accountability – Integrity – Cooperation – Recognition

29. Transition Plan

The Provider will submit (if requested) a detailed transition plan to manage continuity of service in the event that the Provider is not successful in obtaining future contracts with HNECC. The transition plan will outline in detail, strategies for exiting the service to ensure clinical handover and service continuity is maintained with any new Provider, strategies to communicate with referrers regarding the changes that might be anticipated, and the management of clinical records in line with legislative requirements and local policies.

30. Cultural Competency

HNECC has a fundamental commitment to achieve meaningful and sustainable improvements in health outcomes for Aboriginal communities living within the region.

Providers will be expected to work with members of the local Aboriginal communities in which they service to negotiate and implement cultural safe and responsive healthcare, which includes culturally welcoming environment and staff receiving continual cultural education.

All HNECC Commissioned Providers will be provided with a copy of the HNECC Cultural Framework. It is expected that HNECC commissioned Providers will embed cultural respect principles into their service delivery. The framework

provides a guide for service partners to help deliver quality, culturally safe and responsive health care to Aboriginal communities across our region that contributes towards Closing the gap.

31. Client / Patient Outcomes

HNECC will work with Providers on the collection of outcomes from a standard suite of Patient Reported Outcome Measures (PROMs) and Patient Reported Experience Measures (PREMs) in each of the program areas. These measures will be part of the evaluation of the services provided and will contribute to the ongoing assessment of needs. It is not anticipated that these outcome measures will require more effort in data collection than those which would be currently utilised in the ongoing measurement of performance of a service.

32. Clinical Records

All Clinical Services will make clinical notes which are maintained in a manner which is compliant with the standards of the RACGP, or the relevant professional body. Written feedback will be provided to the referrer or the Client/Patient/Resident's primary health care provider. Feedback is to be provided in a timely manner via a secure messaging platform.

33. Secure Messaging Delivery

- a) Under the OAIC Information Privacy Principle 4 (a) 'Secure Safeguards', personal information should not be transmitted across public networks by fax or e-mail using plain text. Secure messaging delivery (SMD) supports the secure delivery of encrypted messages containing clinical documents and/or other personal information between healthcare organisations. The use of SMD complies with privacy legislation and improves communication with the patient's primary care provider.
- b) Providers are required to communicate using SMD where available in order to provide written feedback to the patient primary care providers.

34. My Health Record System Compliance

All Providers must:

- a) Supply Patients and Carers with relevant information about the My Health Record System. <https://www.myhealthrecord.gov.au/>
- b) Ensure that if eligible, the Organisation is registered to use My Health Record. This involves:
 - i) Application for registration via Provider Digital Access (PRODA) <https://www.humanservices.gov.au/organisations/health-professionals/services/medicare/proda/you-need-know> and the Health Professional Online Service (HPOS). <https://www.humanservices.gov.au/organisations/health-professionals/services/medicare/hpos>
 - ii) Health Care Providers accessing, uploading and viewing My Health Record via conformant practice software. <https://www.myhealthrecord.gov.au/f>

[or-healthcare-professionals/conformant-clinical-software-products](https://www.myhealthrecord.gov.au/for-healthcare-professionals/conformant-clinical-software-products)

- iii) At a minimum, Health Care Organisations or Providers are to be registered to view My Health Record via the National Provider Portal. <https://www.myhealthrecord.gov.au/for-healthcare-professionals/howtos/access-my-health-record-using-Provider-portal>

- c) Implement a My Health Record Security and Access policy for the organisation.

<https://www.myhealthrecord.gov.au/for-healthcare-professionals/howtos/security-practices-and-policies-checklist>

- d) Educate staff on how to use My Health Record. <https://www.myhealthrecord.gov.au/for-healthcare-professionals>

35. Secure eReferral Network Transfer system

Providers must ensure that patient information is transmitted (sent and received) via secure methods. Transmission of patient information via fax, post or email is not considered secure

HNECC in partnership with HNE LHD support an electronic referral program that uses BPAC's Secure eReferral Network Transfer (SeNT) system.

The SeNT eReferral system is the preferred solution for sending and receiving patient referrals.

The SeNT system has two applications;

- one integrated with Medical Director and Best Practice software for General Practitioners to send eReferrals; and
- the other, called Referral Manager, is an application that allows coordinators, specialists and allied health providers to view, triage and process referrals received from GPs.

All Providers must:

- a) Supply the Health Provider Identifier – Organisation (HPI-O) and required provider information to HNECC who will arrange set up with BPAC Clinical Solutions (the Vendor).
- b) Consent to third party (Vendor) personnel assisting with installation of the digital certificate. This may involve BPAC personnel accessing your computer workstations or server and/or liaising with your nominated IT support provider. Costs incurred by third party (the Vendor) to install the digital certificate are the responsibility of HNECC. Costs incurred by use of a Provider nominated IT support provider are the responsibility of the Provider.
- c) Consent to HNECC Personnel to access your workstations for the purpose of providing training and support, if required.
- d) Implement a Digital Health access policy for your organisation.

36. Telehealth

The use of telehealth solutions will be encouraged. Where appropriate, Providers with experience and capability in telehealth should utilise this service modality.

37. HealthPathways

HealthPathways is a combination of web-based portal and a process of clinical redesign that supports integration between primary and tertiary

care. HNECC expects that all Providers would contribute to the development of HealthPathways, support and participate as appropriate in clinical redesign processes, and consent to having service information, including referral pathways available on the HealthPathways site. All Providers must be able to demonstrate the ability to access HealthPathways, advocate the use of HealthPathways in their clinical practice and actively maintain their referral practice details.

38. Report Data

HNECC report data will be delivered and received via the Folio Contract Management system. The Provider will be granted a soft licence in order to provide the required report data.

The report data is considered Contract Material and may be published by HNECC in reports on its website, to the Commonwealth and other stakeholders.

39. Clinical Governance

All Providers contracted by HNECC are required to have in place, a Clinical Governance Framework that reflects best practice. All Providers are also required to have effective structures and processes to implement that framework, along with complaints handling and clinical incident management policies and procedures. Providers will be expected to participate in service review and improvement meetings with HNECC and to provide regular reports on the quality of their services to HNECC.

40. Mandatory Reporting – Notifiable Risk Events

All Providers are required to report details of any serious risk events (complaints or incidents) in writing to HNECCPHNContracts@hneccphn.com.au within 24 hours of becoming aware of the event. Serious complaints or incident types are outlined below.

40.1 Complaints

Any serious complaint involving:

- a) Accessibility of the service e.g. cost, eligibility, geographic access, physical access for those with a disability;
- b) Breach of rights e.g. privacy, confidentiality, consent, discrimination – this would include breaches in person and via use of clinical records;
- c) Competence of performance or attitude of staff member or private practitioner;
- d) Content or messaging of resources, campaigns or social media sites run by the Provider; or
- e) The media and/or a state or national Member of Parliament.

40.2 Incidents

Any preventable risk event involving harm/ potential harm to a client including:

- a) Death of a client (from any cause);
- b) Self-harm or harm to a client, whether intentional or accidental, resulting in professional medical or psychological attention;
- c) Abuse or mistreatment of a client;
- d) Inappropriate relationship with a client;
- e) Medical error causing physical or psychological harm to client;
- f) Near miss (medical error with potential to cause physical or psychological harm but did not actually cause physical harm);

- g) Staff breach of privacy or confidentiality which is not a response to a concern for safety; or
- h) Breach of privacy or confidentiality due to a systems or process error

40.3 Notification

When submitting notification of a complaint or incident the Provider will supply the following information:

- a) Date of incident
- b) Details of the incident
- c) Consequences of the incident
- d) Action taken – immediate and planned (including ongoing risks)
- e) Date of notification to the Provider
- f) Any other details that may provide further information

Further details are provided in the HNECC policy: *Serious Risk Event Reporting for Providers* available at <https://hneccphn.com.au/about-us/our-policies/>

41. Complaint Handling

41.1 Complaints raised with Provider

Where a Provider receives complaints directly from service users, HNECC requires Providers to:

Acknowledge unresolved complaints in writing (this includes email) within five working days outlining the process that will be taken to assess and report on the complaint.

- A reference number should be provided to allow for feedback and follow-up of complaints.
- Resolve the complaint within 35 working days or provide an explanation of why a longer period is required.
- Make any internal changes required as a result of the complaint investigation within 60 days.

- Provide actual numbers of all complaints and all unresolved complaints in the Quarterly Report to HNECC.

41.2 Complaints raised with HNECC

Where complaints regarding a Provider is received directly by HNECC:

- The complainant will be referred in the first instance to discuss their concerns with the relevant Provider.
- If uncomfortable to raise a complaint directly with a Provider or if, after raising the issue, the complaint has not been resolved, HNECC will address the complaint directly with the Provider.
- For matters of sufficient concern, where the Provider response does not alleviate concerns about patient/client safety, referral to the relevant authority (in most cases HCCC) will be considered.

42. Acknowledgement of Funding

The Provider acknowledges and agrees that it will provide full acknowledgement of HNECC funding under this Contract and the overall funding provided by the Department in all communication materials that relate to the activities or Services contained in this Contract. 'Communication materials' includes, but is not limited to websites, printed advertising, media releases and promotional events or launches.

43. Publishing Provider Performance

The Provider acknowledges and consents to HNECC publishing on its website service contract data including service delivery against contracted service targets, health outcome measures and overall Provider performance. All data shall be client de-identified.