



Australian Government

Department of Health

**Australian Government
Hearing Services Program**

Service Provider Contract

Terms and Conditions

(FOR INFORMATION ONLY)

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This **Contract** is made between and binds the following parties:

The Commonwealth of Australia as represented by the Minister for Health ("the Commonwealth")

And

[insert legal name of Service Provider], of [insert address of Service Provider]

ABN [insert Service Provider ABN] ("**the Service Provider**").

Recitals

- A. Under section 20 of the *Hearing Services Administration Act 1997* (Cth) (the Act) the Minister for Health may, on behalf of the Commonwealth, enter into agreements with Accredited Service Providers for the supply of hearing services to Voucher-holders.
- B. The Service Provider is an Accredited Service Provider for the purposes of the Act.
- C. This Contract is an agreement for the purposes of section 20 of the Act.
- D. This Contract sets out the terms and conditions on which the Service Provider will provide Services to Voucher-holders under the Act and in support of the Hearing Services Program administered by the Commonwealth.
- E. The overall aim of the Hearing Services Program is to support the reduction in the incidence and impact of hearing loss in Australia.
- F. The Service Provider has represented that it has the capacity and authority to enter into this Contract, and the necessary professional knowledge and expertise to provide Services to Voucher-holders in accordance with the Act, this Contract, the Schedule of Service Items and Fees and the overall aim of the Hearing Services Program.

The parties agree as follows

Part 1 – Services

1. Interpretation

1.1 In this Contract, unless otherwise specified, the following terms have the following meanings:

“Accreditation” has the same meaning as it has in the Act, which at the Commencement Date is accreditation under the Accreditation Scheme.

“Accreditation Scheme” has the same meaning as it has in the Act, which at the Commencement Date is the scheme in force under section 15 of the Act.

“Accredited Service Provider” has the same meaning as it has in the Act, which at the Commencement Date is an entity accredited under the Accreditation Scheme.

“Act” means the *Hearing Services Administration Act 1997* (Cth) and any instruments, including the Instrument, and regulations made under or for the purposes of that Act, as amended or replaced from time to time.

“Appointed Supplier” means a supplier appointed by the Commonwealth who is a party to a Deed of Standing Offer.

“Approved Membership Category” has the same meaning as it has in the Act, which at the Commencement Date under the Instrument is a category of membership of a Practitioner Professional Body that is listed in the Program Website.

“Auditor General” means the office established under the *Auditor-General Act 1997* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

“Australian Consumer Law” means the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

“Business Day” means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

“Claim” means a claim by the Service Provider for payment of Scheduled Fees in accordance with this Contract.

“Claim Form” means the tax invoice and payment form issued by the Commonwealth from time to time which must be used by the Service Provider to make a Claim.

“Client Rights and Responsibilities Document” means the document of that name published by the Commonwealth on the Program Website, as amended or replaced from time to time.

“Commencement Date” means the date specified in Item A(1) of Schedule A.

“Commonwealth Contact Point” means the address for the Commonwealth specified in Item F of Schedule A or such other address notified to the Service Provider by the Commonwealth from time to time under clause 42 or through the Portal.

“Conditions of Accreditation” means the following conditions, as amended or replaced from time to time:

- (a) the conditions specified in the instrument of Accreditation in relation to the Service Provider pursuant to section 16 of the Act;
- (b) the conditions imposed on the Service Provider under the Accreditation Scheme; and
- (c) the additional conditions outlined in Item E of Schedule A.

“Confidential Information” means information that:

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

but does not include information which:

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

"Conflict" means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Service Provider (or the Service Provider Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Service Provider in performing the Services fairly and independently.

"Contract" means this contract between the Service Provider and the Commonwealth comprising these terms and conditions and any schedules to this Contract.

"Contracted Service Provider" has the same meaning as it has in the Act, which at the Commencement Date is an Accredited Service Provider engaged under section 20 of the Act.

"Corporate Change" in relation to a partnership, a corporation who is a partner in a partnership, a trust, a joint venture, a corporation or any other entity ("**Entity**"), means a change in:

- (a) the Entity's directors, secretary or other person (by whatever name called and whether or not a director) who is concerned in, or takes part in, the management of the Entity (including chairperson, secretary and chief executive);
- (b) the partners of an Entity which is a partnership and which has less than 10 partners;
- (c) the identity of the person (natural or incorporated) who has the ability to cast or control the casting of more than 50 percent of the maximum number of votes that might be cast at any general meeting (or equivalent) of the Entity; or
- (d) the identity of the person (natural or incorporated) who holds more than 50 percent of the issued ordinary share capital, the equity, or other ownership interest, in the Entity.

"Date of Service" in relation to any particular aspect of the Services means that date as defined for each service item in the Schedule of Service Items and Fees.

"Deed of Standing Offer" means a deed between the Commonwealth and an Appointed Supplier under which the Appointed Supplier has agreed to provide Supplies to Contracted Service Providers.

"Department" means the Commonwealth Department of Health or such other Commonwealth agency which fulfils the same functions from time to time.

"Device" means a device included on the Schedules of Approved Devices, or otherwise approved by the Minister for supply under the Hearing Services Program.

"Disallowance Event" means:

- (a) the Instrument is disallowed; or
- (b) a provision of the Instrument is disallowed,

under section 42 of the *Legislation Act 2003* (Cth).

"End Date" means the date specified in Item A(2) of Schedule A.

"FOI Act" means the *Freedom of Information Act 1982* (Cth), as amended or replaced from time to time.

"Freedom of Information Commissioner" means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'freedom of information functions' as defined in that Act.

"GST" has the same meaning as it has in the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended or replaced from time to time.

"Hearing Services Program" means the Hearing Services Program administered by the Department.

"Information Commissioner" means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'information functions' as defined in that Act.

"Insolvency Event" means:

- (a) the Service Provider disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business
- (b) the Service Provider ceases to carry on business;
- (c) the Service Provider ceases to be able to pay its debts as they become due;
- (d) proceedings are initiated with a view to obtaining an order for the winding up of the Service Provider, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Service Provider;

- (e) the Service Provider applies to come under, the Service Provider receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Service Provider under, or the Service Provider otherwise comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
- (f) where the Service Provider is a natural person, the Service Provider is declared bankrupt or assigns his or her estate for the benefit of creditors;
- (g) where the Service Provider is a partnership, any step is taken to dissolve that partnership; or
- (h) anything analogous to an event referred to in paragraph (d), (e), (f) or (g) occurs in relation to the Service Provider.

"Instrument" means the *Hearing Services Program (Voucher) Instrument 2019* (Cth), as amended or replaced from time to time.

"Intellectual Property" includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"Ombudsman" means the office established under the *Ombudsman Act 1976* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

"Party" means the Service Provider or the Commonwealth.

"Personal Information" has the same meaning as it has in the Privacy Act.

"Portal" means the Hearing Services Online Portal, the part of the Program Website administered by the Hearing Services Program for the purposes of applications and other approvals under the Instrument.

"Practitioner Professional Body" has the same meaning as it has in the Act, which at the Commencement Date under the Instrument is an Australian body:

- (a) formally constituted for the purpose of representing the interests of the professions of audiology or audiometry or both;
- (b) whose membership is based on appropriate industry recognised professional qualifications for audiologists or audiometrists or both;
- (c) that supervises or enforces a code of ethics for the professions of audiology or audiometry or both;
- (d) that requires members to continue their professional development;
- (e) that meets any practitioner professional body requirements published by the Hearing Services Program on the Program Website; and
- (f) published on the list of practitioner professional bodies on the Program Website.

"Previous Contract" means the agreement (if any) made pursuant to section 20 of the Act between the Service Provider and a delegate of the Minister for Health on behalf of the Commonwealth in force on 30 September 2019.

"Privacy Act" means the *Privacy Act 1988* (Cth) and any instruments and regulations made under or for the purposes of that Act, as amended or replaced from time to time.

"Privacy Commissioner" means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'privacy functions' as defined in that Act.

"Program Website" has the same meaning as it has in the Act, which at the Commencement Date under the Instrument is the website administered by the Hearing Services Program for the purposes of setting out information related to hearing services.

"Provisional Practitioner" has the same meaning as it has in the Act, which at the Commencement Date under the Instrument is a member of a Practitioner Professional Body in an approved provisional membership category listed on the Program Website who works under a supervision agreement or internship agreement approved by that Practitioner Professional Body.

"Qualified Practitioner" has the same meaning as it has in the Act, which at the Commencement Date under the Instrument is a member of a Practitioner Professional Body in an Approved Membership Category listed on the Program Website.

"Records" means the collection of information, data or documents, including:

- (a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any hard drive, USB flash drive, disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device,

about Voucher-holders and created or maintained for the purposes of the Act, this Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act.

"Related Party" means:

- (a) a person or entity that controls or has significant influence over the Service Provider at any time;
- (b) a person or entity that the Service Provider controls or has significant influence over at any time, including a joint venture or the Service Provider's subsidiary;
- (c) a person who is a member of the Service Provider's board or governing body;
- (d) a member of the board of an entity referred to in paragraph (a) or (b) above;
- (e) a representative or intermediary of the Service Provider's Personnel, who is not an officer, employee or agent of the Service Provider;
- (f) a spouse or family member of:
 - (i) the Service Provider's Personnel; or
 - (ii) any person specified in paragraph (c), (d) and (e) above.

"Schedule of Service Items and Fees" has the same meaning as it has in the Act, which at the Commencement Date under the Instrument is the schedule made by the Minister under section 41 of the Instrument, as amended or replaced from time to time.

"Scheduled Fees" means the fees payable to Contracted Service Providers by the Commonwealth in relation to the provision of Services set out the Schedule of Service Items and Fees, subject to clause 14.3.

"Schedules of Approved Devices" means the lists of devices approved for the purpose of hearing rehabilitation published by the Commonwealth on the Program Website.

"Self Assessment Tool" means the survey tool published by the Department to be utilised by Contracted Service Providers for the purposes of reviewing their compliance with the Act and any agreement they have entered with the Commonwealth pursuant to section 20 of the Act.

"Service Provider Contact Point" means the representative of the Service Provider who is authorised to:

- (a) represent and bind the Service Provider in any matter related to this Contract; and
- (b) receive notices under the Act or this Contract for the Service Provider at the address notified to the Commonwealth by the Service Provider from time to time through the Portal in accordance with clause 15.3.

"Service Provider Number" means the individual identification number allocated by the Commonwealth to the Service Provider.

"Service Provider Personnel" has the same meaning as it has in the Act, which at the Commencement Date under the Instrument in relation to the Service Provider is:

- (a) officers, employees, agents and contractors of the Service Provider;
- (b) officers, employees, agents and contractors of any subcontractor to the Service Provider; and
- (c) any person (including a Qualified Practitioner, provisional audiologist, provisional audiometrist, student or locum) who, whether in the capacity of employee or otherwise, works for the Service Provider in the provision of hearing services to Voucher-holders.

"Services" means hearing services as defined in the Act and Schedule of Service Items and Fees.

"Site" means a premises where Services are delivered to a Voucher-holder by the Service Provider that has been notified to the Commonwealth via the Portal and has been issued an identification number in accordance with clause 10.6(a).

"Standards" means the following standards, as amended or replaced from time to time:

- (a) standards the Act requires a Contracted Service Provider to comply with in relation to the provision of Services to a Voucher-holder;
- (b) documents referenced as standards in the Schedule of Service Items and Fees;
- (c) professional codes and standards of practice, including those set by the Practitioner Professional Bodies; and
- (d) any additional standards specified in Item B of Schedule A.

"Supplies" means the Devices and associated services (or any part thereof) supplied under a Deed of Standing Offer and includes Warranty Services and Support Services.

"Support Services" means the support services for Devices referred to in the Deed of Standing Offer.

"Term" means the period referred to in clause 2.

"Voucher" has the same meaning it has in the Act, which at the Commencement Date is a voucher issued under section 10 of the Act.

"Voucher-holder" has the same meaning it has in the Act, which at the Commencement Date is a participant in the Voucher system who holds a Voucher.

"Warranty Services" means the warranty services for Devices referred to in the Deed of Standing Offer.

1.2 In this Contract, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (g) the Commonwealth may, in its sole discretion, give conditionally or unconditionally or withhold any acceptance, approval or consent under this Contract;
- (h) headings are for ease of reference only and do not affect interpretation;
- (i) any schedules form part of this Contract;
- (j) if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of a schedule, the terms and conditions of the clauses prevail; and
- (k) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3 This Contract records the entire agreement between the parties in relation to its subject matter.

1.4 As far as possible all provisions of this Contract will be construed so as not to be void or otherwise unenforceable.

1.5 If anything in this Contract is void or otherwise unenforceable then it will be severed and the rest of this Contract remains in force.

1.6 A provision of this Contract will not be construed to the disadvantage of a Party solely on the basis that it proposed that provision.

2. Term of Contract

- 2.1 Clauses 35.8, 42, 43, 44 and 45 commence on the date that the last Party to sign this Contract does so and all other clauses in this Contract commence on the Commencement Date. This Contract will remain in force until the End Date and, in the Commonwealth's sole discretion, for such further periods as notified in accordance with clause 2.2, unless terminated earlier under clause 26, 27 or 28.
- 2.2 The Commonwealth may in its sole discretion:
- (a) extend the Term of this Contract beyond the End Date for a further period, up to a maximum of 3 years, by giving the Service Provider at least ten (10) Business Days written notice before the End Date; and
 - (b) extend the Term of this Contract any number of times after extending the Term of this Contract under clause 2.2(a), up to a maximum of 3 years for each extension, by giving the Service Provider at least ten (10) Business Days written notice before the end of the then current Term of this Contract.
- 2.3 Any extension under clause 2.2 takes effect and ends in accordance with the details set out in the notice given under clause 2.2.

3. Scope of Contract

- 3.1 This Contract sets out the terms and conditions under which the Service Provider, as an Accredited Service Provider, is a Contracted Service Provider.

4. Transitional Matters

- 4.1 Entry into this Contract does not constitute a waiver of any breach of the Previous Contract.
- 4.2 Despite clause 2 of the Previous Contract, the Previous Contract expired on 30 September 2019.
- 4.3 The expiry of the Previous Contract does not affect the continued operation of clauses 4.1(f), 4.1(g), 4.1(h), 4.2, 11.10, 11.12, 12, 13, 15, 16, 18, 19, 20, 22, 23 and 28 and any other provision of the Previous Contract which expressly or by implication from its nature survives the expiry of the Previous Contract.
- 4.4 The Service Provider must not claim payment under both this Contract and the Previous Contract for the same Services.
- 4.5 Despite the expiry of the Previous Contract, the Commonwealth remains entitled to recover any amount owing in accordance with the Previous Contract, including by requiring the Service Provider to reimburse the Commonwealth in accordance with clauses 12 and 13 of the Previous Contract.
- 4.6 Where the Service Provider commenced Services under the Previous Contract, it must complete those Services: and
- (a) *where the Date of Service for any Services commenced under the Previous Contract is before the Commencement Date* - the Service Provider must provide the Services in accordance with the terms and conditions of the Previous Contract;
 - (b) *where the Date of Service for any Services commenced under the Previous Contract is after the Commencement Date* - the Service Provider must provide the Services in accordance with the terms and conditions of this Contract; and
 - (c) *where the Date of Service for any Services commenced under the Previous Contract is before the Commencement Date and the Voucher-holder requires further Services as a direct consequence of those Services* - the Service Provider must provide the further Services in accordance with the terms and conditions of this Contract, except to the extent the Commonwealth notifies the Service Provider in writing that it must provide the further Services in accordance with the terms and conditions of the Previous Contract.

5. Service Provider Acknowledgements

5.1 The Service Provider acknowledges and agrees that:

- (a) the Commonwealth may enter into agreements under section 20 of the Act with other Contracted Service Providers;
- (b) the Commonwealth makes no guarantee that any or any number of Voucher-holders will seek Services from the Service Provider;
- (c) the relevant legislation (including, without limitation, the Act) and any instruments and regulations made under or for the purposes of that legislation (including, without limitation, the Instrument and the Schedule of Service Items and Fees), to which this Contract is subject may be consolidated, amended, re-enacted or replaced from time to time and, if they are during the Term of this Contract, the terms and conditions of this Contract will take effect subject to the prevailing legislation, instruments and regulations in force at the relevant time;
- (d) no actions of the Commonwealth under this Contract are to be construed as the provision of Services; and
- (e) the Commonwealth, in entering into this Contract, is relying on the warranties and representations contained in this Contract and the representation referred to in Recital F.

6. Service Provider Warranties

6.1 The Service Provider represents and warrants that:

- (a) all information that has been, or will be, provided to the Commonwealth, is or will be, correct, complete and not false or misleading in any respect;
- (b) it has the power and authority to enter into this Contract;
- (c) the person who has signed this Contract on behalf of the Service Provider is duly authorised to execute this Contract on behalf of the Service Provider;
- (d) it has not breached any terms of the Previous Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act and failed to notify the Commonwealth of the breach;
- (e) if the Service Provider is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract;
- (f) its signing, delivery and performance of this Contract does not constitute:
 - (i) a violation of any judgement, order or decree;
 - (ii) a material default under any contract which relates in any way to the performance of obligations under this Contract by which it or any of its assets are bound or;
 - (iii) an event that would, with notice or lapse of time, or both, constitute such a default;
- (g) it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence, actual or threatened, which could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract;
- (h) it will, no later than five (5) Business Days of any change, update the Service Provider information held in the Portal, including without limitation in relation to the Service Provider Contact Point for the purposes of clause 15.3, Site details for the purposes of clauses 10, Qualified Practitioner information and Portal user roles;
- (i) to the best of its knowledge, after making diligent inquiry, at the date of signing this Contract no Conflict exists or is likely to arise in the performance of the obligations under this Contract by the Service Provider or the Service Provider Personnel, or if a Conflict does exist that Conflict has been disclosed to the Commonwealth in writing prior to the date of signing this Contract; and
- (j) the Service Provider has read and understands the Act and this Contract and warrants that it will implement systems and processes to ensure that it can comply with its obligations under the Act, this Contract and the Schedule of Service Items and Fees.

7. Provision of Services

7.1 The Service Provider must:

- (a) provide such information as required by the Act to potential Voucher-holders and Voucher-holders;
- (b) ensure that any representations made by the Service Provider to potential Voucher-holders and Voucher-holders are not false or misleading in any way, including, without limitation, in contravention of the Act;
- (c) provide Services to Voucher-holders as and when sought by those Voucher-holders, subject to clause 25, the Services available to the Voucher-holders under the Act and this Contract, and the ability of the Service Provider to refuse to provide Services provided under the Act;
- (d) ensure that it has in place the policies and procedures specified in Item C of Schedule A in relation to the delivery of the Services;
- (e) ensure that the Services provided to Voucher-holders in accordance with clause 7.1(c) are provided:
 - (i) in accordance with the best interests of the Voucher-holders;
 - (ii) to a high standard and in compliance with the Act, this Contract, the Conditions of Accreditation, the Schedule of Service Items and Fees, all applicable Standards and current Australian standards and the policies and procedures it puts in place in accordance with clause 7.1(d); and
 - (iii) in a safe and appropriate manner;
- (f) not seek payment from a Voucher-holder in relation to the Services unless prior to delivering the Services the Service Provider confirmed that the Voucher-holder had a valid Voucher and that the Services were available to the Voucher-holder under the Voucher;
- (g) cease providing communications to any Voucher-holders that have informed the Service Provider that they do not wish to receive further communications from the Service Provider (including, without limitation, if they have unsubscribed from a mailing list) and as otherwise required by law; and
- (h) take all reasonable steps to ensure that no injury or damage is caused to persons or to property arising out of or in connection with the provision of the Services by the Service Provider or the Service Provider Personnel.

7.2 The Commonwealth may in its sole discretion issue at any time new or amended standards under the Act or the Schedule of Service Items and Fees that the Services must comply with under clause 7.1(e)(ii).

7.3 If during the Term of this Contract a Conflict arises, or appears likely to arise, the Service Provider must:

- (a) notify the Commonwealth in writing immediately;
- (b) make full disclosure to the Commonwealth of all relevant information relating to the Conflict; and
- (c) take any steps the Commonwealth reasonably requires to resolve or otherwise deal with the Conflict.

8. Service Provider Personnel

8.1 The Service Provider must ensure that the Service Provider Personnel engaged by the Service Provider to perform work in relation to the Services:

- (a) who are Qualified Practitioners, maintain the competency levels required by the relevant Practitioner Professional Body;
- (b) who are Provisional Practitioners, maintain the competency levels required by the relevant Practitioner Professional Body and are supervised in accordance with the relevant Practitioner Professional Body requirements;
- (c) have appropriate qualifications, skills and expertise to perform that work; and
- (d) perform that work in accordance with the Act, this Contract, the Conditions of Accreditation and the Schedule of Service Items and Fees.

8.2 The Service Provider must, at the request of the Commonwealth in its sole discretion, promptly remove any of the Service Provider Personnel from work in relation to the Services.

- 8.3 The Service Provider must ensure that the Service Provider Personnel comply with all relevant requirements of the Act and this Contract.
- 8.4 The Service Provider agrees to exercise any rights it may have against any of the Service Provider Personnel in connection with any obligations, conditions, restrictions or prohibitions binding on the Service Provider under this Contract in accordance with any direction by the Commonwealth.

9. Device Supply Arrangements

- 9.1 The Commonwealth will maintain Schedules of Approved Devices.
- 9.2 The Service Provider must only provide Voucher-holders with Devices that are listed on a Schedule of Approved Devices at the time of fitting and that it has purchased from an Appointed Supplier.
- 9.3 The Service Provider may consult with the Commonwealth where the Service Provider believes the requirement in clause 9.2 cannot be met for a Voucher-holder due to that Voucher-holder's exceptional circumstances.
- 9.4 The Service Provider acknowledges and agrees that if the Service Provider places an order with an Appointed Supplier for the purchase of Supplies, a contract between the Appointed Supplier and the Service Provider is to be formed in the terms set out in the Deed of Standing Offer, unless the Service Provider is also the Appointed Supplier.
- 9.5 When the Service Provider provides Services to a Voucher-holder that include Supplies, the Service Provider must disclose in writing to the Voucher-holder whether or not:
- (a) the Service Provider or any Service Provider Personnel receives any direct or indirect benefit (whether pecuniary or non-pecuniary) in relation to, or in connection with, the Service Provider's purchase of Supplies from an Appointed Supplier, including, without limitation, exclusive supply arrangements, price discounts (including volume discounts), commissions, gifts or rewards;
 - (b) the Supplies are provided or manufactured by:
 - (i) a Related Party; or
 - (ii) a person or entity which has provided significant financial support to the Service Provider, or has a financial interest in the Service Provider, or to whom the Service Provider has provided significant financial support; or
 - (c) the Service Provider is also an Appointed Supplier, and Supplies are those supplied by the Service Provider.

10. Sites

- 10.1 The Service Provider may provide Services to Voucher-holders at:
- (a) a Site operated by the Service Provider for the purpose of providing the Services to Voucher-holders; or
 - (b) a location that is not operated by the Service Provider for the purposes of providing the Services to Voucher-holders, such as a Voucher-holder's home or an aged care facility,
- provided that any such Site or location provides a safe and appropriate environment for the provision of the Services and otherwise meets the requirements of this clause 10.
- 10.2 When the Service Provider proposes to commence operating a new premises for the purpose of providing the Services to Voucher-holders it must notify the Commonwealth via the Portal of the physical address of the premises, the contact details for the premises, and any other information required by the Portal in relation to the premises and certify whether the premises complies with this clause 10. Once the Service Provider has provided this notification the proposed premises will be taken to be a Site for the purposes of this Contract.
- 10.3 The Service Provider must maintain and update the information held in the Portal in relation to any Site.

- 10.4 The Service Provider must notify the Commonwealth via the Portal if it ceases to provide Services to Voucher-holders at a Site. The notice should be provided prior to the Service Provider ceasing to provide Services to Voucher-holders at the Site but must be provided no later than five (5) Business Days after the Service Provider ceases to provide Services to Voucher-holders at the Site in accordance with clause 6.1(h). Once the Service Provider has provided this notification the Site will no longer be taken to be a Site for the purposes of this Contract from the date of cessation of Services at the Site.
- 10.5 For the avoidance of doubt, where the Service Provider ceases to provide Services to Voucher-holders at a Site and proposes to commence providing Services to Voucher-holders at a new premises, it must provide notification in accordance with clause 10.4 and notify the new premises in accordance with clause 10.2.
- 10.6 The Commonwealth will:
- (a) issue an identification number for each Site; and
 - (b) include each Site, on the list of active Sites it maintains on the Program Website.
- 10.7 The Service Provider must ensure that in providing the Services to Voucher-holders at any Site or other location that it has appropriate equipment and facilities meeting current Australian Standards for the provision of the Services, including, without limitation, ambient noise level testing and audiometric equipment for assessment, fitting and rehabilitation.
- 10.8 The Service Provider must display the current Client Rights and Responsibilities Document, as published by the Commonwealth, in a public area of any Site and must be made available to Voucher-holders at other locations where the Service Provider delivers Services.
- 10.9 Within ten (10) Business Days of a request from the Commonwealth, the Service Provider must certify in writing, and provide associated evidence, that a Site or other location where the Service Provider delivers Services satisfies the requirements of this clause 10.

11. Records and documentation

- 11.1 In addition to its obligations under clause 12.3, the Service Provider must, at its cost and without limiting any other obligations of the Service Provider under this Contract:
- (a) make and maintain a complete, legible, accurate, current and comprehensive Record for each Voucher-holder to whom the Service Provider delivers Services, including, as required by the Act;
 - (b) make and maintain complete, legible and accurate documentation, in electronic or hard copy form, of any private services or devices provided to any Voucher-holder in accordance with section 49 of the Instrument, including receipts for payments received from the Voucher-holder in relation to the private services or devices;
 - (c) document on the Record maintained for a Voucher-holder in accordance with clause 11.1(a), legible and accurate information regarding any private services or devices provided to the Voucher-holder in accordance with section 49 of the Instrument, including the type of private service or device provided and the outcomes of the private service;
 - (d) store the Records made and maintained in accordance with clause 11.1(a) and the documentation made and maintained under clause 11.1(b) in such a way that they are easily identifiable and accessible, including, without limitation, for the purposes of clause 16;
 - (e) subject to clause 11.1(h), retain the Records made and maintained in accordance with clause 11.1(a) and the documentation made and maintained under clause 11.1(b) for at least seven (7) years from the date of the Service Provider's most recent interaction with the relevant Voucher-holder;
 - (f) manage the Records made and maintained in accordance with clause 11.1(a) and the documentation made and maintained under clause 11.1(b) in accordance with any requirements set out in guidance published on the Program Website, as amended or replaced from time to time;
 - (g) provide such access to Records made and maintained in accordance with clause 11.1(a) and the documentation made and maintained under clause 11.1(b) for each Voucher-holder to the relevant Voucher-holder as is necessary for it to comply with this Contract; and
 - (h) if a Voucher-holder who has received any Services or private services or devices in accordance with section 49 of the Instrument relocates to a different Contracted Service Provider, provide any Record made and maintained in accordance with clause 11.1(a) to that Contracted Service Provider.

- 11.2 All Records and any copies of Records are Commonwealth Records for the purposes of section 3 of the *Archives Act 1983* (Cth).
- 11.3 The Service Provider must comply with all requests of the Commonwealth in relation to Records.
- 11.4 Intellectual property in all Records, including, without limitation, those made and maintained in accordance with clause 11.1 and clause 12.3, and the property in any Records or copies of them (in the form of a document, article or removable medium), vests or will vest in the Commonwealth upon their creation and remains with the Commonwealth at all times.
- 11.5 The Commonwealth grants a royalty-free, non-exclusive licence for the Service Provider to use, reproduce, adapt, modify, distribute and communicate all Records made and maintained by the Service Provider for the purposes of this Contract, to the extent doing so is consistent with the Act, this Contract and any other obligations on the Service Provider at law.
- 11.6 The Service Provider must not in any circumstances sell any Records, including, without limitation, any Voucher-holder Personal Information, or copies of them.

12. Payments to the Service Provider

- 12.1 The Service Provider must submit a Claim to the Commonwealth using the Claim Form and in the manner directed on the Program Website and in accordance with the requirements of this clause 12, to receive payment of the Scheduled Fees for Services that the Service Provider has provided to a Voucher-holder.
- 12.2 The Service Provider must:
- (a) only use the Service Provider Number in submitting a Claim for payment under clause 12.1 if the Services were provided directly by a Qualified Practitioner or by a Qualified Practitioner in their role supervising a Provisional Practitioner in accordance with the Act, this Contract and the Schedule of Service Items and Fees; and
 - (b) not allow a person who is not the Service Provider (or the Service Provider Personnel acting on behalf of the Service Provider) to use the Service Provider Number.
- 12.3 The Service Provider must:
- (a) maintain Records that support and substantiate all Claims for payment submitted by the Service Provider under clause 12.1;
 - (b) retain, in electronic or hard copy form, all original Claim Forms submitted by the Service Provider under clause 12.1 for a period of seven (7) years; and
 - (c) retain, in electronic or hard copy form, copies of receipts for payments received from Voucher-holders in relation to the Services for a period of seven (7) years from the date of the most recent interaction with the Voucher-holder.
- 12.4 The Service Provider must not submit a Claim for payment under clause 12.1 unless:
- (a) prior to delivering the Services, the Service Provider confirmed that the Voucher-holder had a valid Voucher and that the Services to which the Claim relates were available to the Voucher-holder under the Voucher;
 - (b) the conditions for submitting a Claim for payment as set out in the Act, this Contract and the Schedule of Service Items and Fees have been met; and
 - (c) the information on the Claim Form is complete, true and correct, and is certified by an authorised Service Provider Personnel acting on behalf of the Service Provider.
- 12.5 The Commonwealth and the Service Provider acknowledge and agree that certification under clause 12.4(c) may be electronic.

- 12.6 The Commonwealth is not required to pay a Service Provider for Services if a Claim submitted by the Service Provider under clause 12.1:
- (a) is not for an amount equal to the corresponding item in the Schedule of Services Items and Fees;
 - (b) is not compliant with the requirements of the Act, this Contract or the Schedule of Service Items and Fees; or
 - (c) was submitted:
 - (i) twelve (12) months or more after the Date of Service;
 - (ii) twenty (20) Business Days or more following the notification date of the relevant Voucher-holder relocating to a different Contracted Service Provider; or
 - (iii) twenty (20) Business Days or more after the expiration or termination of this Contract.

13. Reimbursement by Service Provider

- 13.1 Where the Service Provider has received payment of Scheduled Fees under clause 12.1 from the Commonwealth for Services that were not provided in accordance with the Act, this Contract or the Schedule of Service Items and Fees, the Service Provider will be liable to reimburse the Commonwealth the amount of the payment.
- 13.2 Any reimbursement under this clause 13.1 must be made by the Service Provider within the timeframe notified by the Commonwealth in writing.
- 13.3 If the Service Provider does not make a reimbursement in accordance with this clause 13, the amount will become a debt due and payable to the Commonwealth and may be deducted from any amounts due to the Service Provider under this Contract.
- 13.4 The Service Provider must reimburse a Voucher-holder if the Voucher-holder has made a payment to the Service Provider that is not in compliance with the Act, this Contract or the Schedule of Service Items and Fees.

14. Taxes, Duties and Government Charges

- 14.1 Except as provided by this clause 14, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract will be borne by the Service Provider.
- 14.2 The Scheduled Fees payable to the Service Provider under clause 12.1 include, when applicable, an amount to cover the liability of the Service Provider for GST on any supplies made under this Contract which are taxable supplies within the meaning of the GST Act.
- 14.3 The Scheduled Fees payable to the Service Provider under clause 12.1 will be reduced where there is a reduction in or removal of taxes, duties or charges which impacts on the costs to the Service Provider in performing the Services, so that the benefit of that reduction or removal is passed on to the Commonwealth. If a reduction is made under this clause 14.3, the reduced amount will become the Scheduled Fees for the purposes of this Contract.
- 14.4 In relation to taxable supplies made under this Contract, the Service Provider must issue the Commonwealth with a tax invoice in accordance with the GST Act.

Part 2 – Contract Administration

15. Liaison

- 15.1 If the Service Provider wants to discuss any aspect of the Services or this Contract with the Commonwealth, it must do so by contacting the Commonwealth Contact Point.
- 15.2 The Service Provider must liaise with and report to the Commonwealth Contact Point as reasonably required by the Commonwealth during the Term of this Contract.

- 15.3 The Service Provider must notify the Commonwealth via the Portal of the name and address details for the Service Provider Contact Point and must maintain and update those details in the Portal.
- 15.4 The Service Provider acknowledges and agrees that, if it fails to maintain and update the details for the Service Provider Contact Point under clause 15.3 the details last notified by the Service Provider for the Service Provider Contact Point in the Portal will be taken to be the correct address details for the provision of notices by the Commonwealth under clause 42.1(b).

16. Audit and access

- 16.1 The Service Provider agrees that the Commonwealth and any person authorised by the Commonwealth may from time to time audit or otherwise inspect Records, any other material relevant to the Services, the Act, this Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act, any documentation retained by the Service Provider in accordance with clause 11, and any Site or any other premises where information is held regarding the delivery of Services for the purpose of assessing:
- (a) the Service Provider's compliance with the Act and this Contract (including, without limitation, the Conditions of Accreditation, the Schedule of Service Items and Fees and all applicable Standards);
 - (b) the Service Provider's practices and procedures as they relate to this Contract;
 - (c) the compliance of Records with the Service Provider's obligations under the Act and this Contract; and
 - (d) any other matters determined by the Commonwealth to be relevant to the performance of the Service Provider's obligations under this Contract.
- 16.2 The Service Provider must participate promptly and cooperatively in any audit or other inspection conducted under clause 16.1 by the Commonwealth or any persons authorised by the Commonwealth in relation to the matters specified by the Commonwealth. In particular, the Service Provider must:
- (a) provide, and ensure that the Service Provider Personnel provide, all reasonable assistance to the Commonwealth and any person authorised by the Commonwealth, including, without limitation, by arranging interviews of Service Provider Personnel by the Commonwealth and any person authorised by the Commonwealth where required by the Commonwealth;
 - (b) give the Commonwealth and any person authorised by the Commonwealth access to any Site and any other premises that the Service Provider occupies, possesses or controls;
 - (c) provide to the Commonwealth and any person authorised by the Commonwealth, within the timeframe reasonably requested by the Commonwealth, any:
 - (i) Records or copies of any Records, including, without limitation, Records maintained under clause 12.3(a), Claim Forms retained under clause 12.3(b), receipts for payments received from Voucher-holders retained under clause 12.3(c), and Records maintained under clause 11;
 - (ii) other material relevant to the Services, the Act, this Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act, including, without limitation, receipts for payments received from Voucher-holders retained under clause 12.3(c), working documents and any other documents, data, records, accounts and other financial material or non-financial material; and
 - (iii) documentation retained by the Service Provider in accordance with clause 11, under the Service Provider's or the Service Provider Personnel's custody, possession or control;
 - (d) permit the Commonwealth and any person authorised by the Commonwealth to inspect and take copies of any:
 - (i) Records, including, without limitation, Records maintained under clause 12.3(a), Claim Forms retained under clause 12.3(b), receipts for payments received from Voucher-holders retained under clause 12.3(c), and Records maintained under clause 11;

- (ii) other material relevant to the Services, the Act, this Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act, including, without limitation, receipts for payments received from Voucher-holders retained under clause 12.3(c), working documents and any other documents, data, records, accounts and other financial material or non-financial material; and
 - (iii) documentation retained by the Service Provider in accordance with clause 11, however and wherever stored or located, under the Service Provider's or the Service Provider Personnel's custody, possession or control; and
 - (e) make available to the Commonwealth and any person authorised by the Commonwealth in writing such reasonable facilities as may be necessary to enable a legible reproduction of any Records, other material relevant to the Services, the Act, this Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act, and documentation retained by the Service Provider in accordance with clause 11 to be created.
- 16.3 All original Records, other material relevant to the Services, the Act, this Contract or any other agreement between the Service Provider and the Commonwealth made pursuant to section 20 of the Act and documentation retained by the Service Provider in accordance with clause 11 provided to the Commonwealth or any person authorised by the Commonwealth by the Service Provider under clause 16.2(c) will be returned to the Service Provider by the Commonwealth as soon as practicable.
- 16.4 Except for those circumstances in which notice is not practicable or appropriate (e.g. caused by a regulatory request with shorter notice or investigation of complaints, fraud or serious breach of this Contract), and without limiting any other right, recourse or remedy of the Commonwealth, the Service Provider will be given reasonable prior notice of an audit or other inspection to be conducted under clause 16.1.
- 16.5 Each Party must bear its own costs of any audit or other inspection conducted under this clause 16.
- 16.6 The requirement for, and participation in any audit or other inspection conducted under this clause 16, does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with the Act and this Contract.
- 16.7 Without limiting any other rights or remedies the Commonwealth may have arising out of or in connection with this Contract, the Commonwealth must use reasonable endeavours to ensure that any audit or other inspection conducted under this clause 16 does not unreasonably delay or disrupt in any material respect the Service Provider's performance of its obligations under this Contract.
- 16.8 The Service Provider agrees it will complete and provide to the Commonwealth an annual assessment of its compliance with the Act and this Contract using the Self Assessment Tool provided by the Commonwealth, by the date specified by the Commonwealth.
- 16.9 The Auditor-General, the Commonwealth Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner and the Australian Competition and Consumer Commissioner and any of their delegates are persons authorised by the Commonwealth for the purposes of this clause 16.
- 16.10 Nothing in clause 16 reduces, limits or restricts in any way any statutory function, power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner, the Australian Competition and Consumer Commission or any of their delegates. The rights under this clause 16 are in addition to any statutory function, power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner, the Australian Competition and Consumer Commission or any of their delegates.
- 16.11 This clause 16 applies for the Term of this Contract and for a period of 7 years from the date of its expiration or termination.

17. Service Provider Access to Voucher-holder Records

- 17.1 Subject to clause 17.3, the Commonwealth will give the Service Provider reasonable access to any Records held by the Commonwealth in connection with this Contract:
- (a) if the Service Provider gives the Commonwealth seven (7) Business Days' notice in writing requesting such access; and
 - (b) where the Service Provider requires custody of those Records, the Service Provider confirms it has the Voucher-holder's consent to access and have custody of those Records.
- 17.2 Access to Records held by the Commonwealth under this clause 17 entitles the Service Provider to:
- (a) inspect;
 - (b) take temporary custody of; and
 - (c) use the Records,
- only for the purpose of providing Services to the Voucher-holder to whom the Records relate.
- 17.3 The Commonwealth's obligations under this clause 17 are subject at all times to the Act, the Privacy Act and the consent of the relevant Voucher-holder.
- 17.4 All Records provided by the Commonwealth to the Service Provider under this clause 17 must be returned immediately to the Commonwealth or forwarded on to another Service Provider as required, after the reason for custody being granted to the Service Provider has passed or upon written demand.
- 17.5 The Service Provider must not, and must ensure that the Service Provider Personnel do not, take Records accessed under this clause 17 or allow Voucher-holder Records accessed under this clause 17 to be taken outside of Australia, without the Commonwealth's prior written consent.

Part 3 – Information, Privacy and Confidentiality

18. Freedom of Information

- 18.1 In this clause 18 “document” and “Commonwealth contract” have the same meaning as they have in the FOI Act.
- 18.2 The Service Provider acknowledges and agrees that this contract is a Commonwealth contract.
- 18.3 Where the Commonwealth receives a request under the FOI Act for access to a document that:
- (a) is created by, or is in the possession of, the Service Provider or any subcontractor; and
 - (b) relates to the performance of this Contract,
- the Service Provider must, at no cost to the Commonwealth, provide the document to the Commonwealth on request, within the time specified by the Commonwealth.

19. Confidential Information

- 19.1 Subject to clause 19.2, the Service Provider must not disclose Records and Confidential Information without the prior approval in writing from the Commonwealth.
- 19.2 Subject to its privacy obligations (including under clause 20, clause 36 and clause 38), the Service Provider may only disclose Records and Confidential Information to a person who has a need to know the information for the purposes of the Service Provider performing the Services.
- 19.3 The Commonwealth may at any time by notice in writing to the Service Provider require the Service Provider to give, and to arrange for the Service Provider Personnel to give, written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Records and Confidential Information.

- 19.4 If the Service Provider receives a request under clause 19.3 it must promptly arrange for all such undertakings to be given.
- 19.5 The Service Provider must not, and must ensure that the Service Provider Personnel do not, take Records or Confidential Information or allow Records or Confidential Information to be taken outside of Australia, without the Commonwealth's prior written consent.
- 19.6 The obligations on the Service Provider under this clause 19 will not be taken to have been breached where the information referred to is required by law to be disclosed.
- 19.7 The Commonwealth gives no undertaking to treat the Service Provider's information, or this Contract, as confidential.
- 19.8 Nothing in this clause 19 derogates from any obligation which the Service Provider may have either under the Privacy Act as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

20. Protection of Personal Information

- 20.1 This clause 20 applies only where the Service Provider deals with Personal Information when, and for the purpose of, providing the Services under this Contract.
- 20.2 In this clause 20, the terms:
- (a) **"agency"**;
 - (b) **"Australian Privacy Principle"**;
 - (c) **"contracted service provider"**;
 - (d) **"health information"**; and
 - (e) **"subcontract"**,
- have the same meaning as they have in the Privacy Act.
- 20.3 The Service Provider is a contracted service provider under the Privacy Act and in respect of the provision of the Services under this Contract must:
- (a) use or disclose Personal Information, including, without limitation, health information, obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
 - (b) on request by a Voucher-holder, give access to any Personal Information, including, without limitation, health information, it holds about the Voucher-holder to the Voucher-holder free of charge;
 - (c) comply with its obligations under the Privacy Act and not otherwise do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an Australian Privacy Principle;
 - (d) comply with any directions, guidelines, determinations or recommendations of the Australian Information Commissioner to the extent that they are consistent with the obligations of this clause 20.3(c); and
 - (e) ensure that the Service Provider Personnel who are required to deal with Personal Information, including, without limitation, health information, for the purposes of this Contract are made aware of the obligations of the Service Provider set out in this clause 20.
- 20.4 The Commonwealth may at any time require the Service Provider to give, and to arrange for Service Provider Personnel to give, undertakings in writing in a form required by the Commonwealth, relating to the non-disclosure of Personal Information, including, without limitation, health information.
- 20.5 If the Service Provider receives a request under clause 20.4, it must promptly arrange for all such undertakings to be given.
- 20.6 The Service Provider must notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 20, whether by the Service Provider or any subcontractor.

Part 4 – Subcontracting

21. Subcontracting

- 21.1 The Service Provider may subcontract any part of the performance of this Contract unless prohibited by the Act. At the Commencement Date, the Instrument prohibits subcontracting of Services except:
- (a) for the purposes of obtaining locum Qualified Practitioners; or
 - (b) where subcontracting is expressly permitted in the Schedule of Service Items and Fees.
- 21.2 The Service Provider must ensure that:
- (a) its subcontractors comply with all relevant requirements of the Act and this Contract; and
 - (b) any subcontract entered into in connection with this Contract imposes the same relevant obligations, conditions, restrictions or prohibitions binding on the Service Provider under this Contract on the subcontractor, including, without limitation, those under clauses 16, 18, 20 and 39.
- 21.3 The Service Provider agrees to exercise any rights it may have against any of its subcontractors in connection with any obligations, conditions, restrictions or prohibitions binding on the Service Provider under this Contract in accordance with any direction by the Commonwealth.
- 21.4 The Service Provider is responsible for the performance of the Services and this Contract notwithstanding that the Service Provider has subcontracted any part of the performance of this Contract in accordance with this section.

Part 5 – Indemnity and Insurance

22. Indemnity

- 22.1 The Service Provider must at all times indemnify the Commonwealth, its officers, employees, agents and contractors (except the Service Provider) ("**Those Indemnified**") from and against all loss, liability, damages, costs and expenses (including legal costs and expenses on a solicitor and own client basis) incurred by any of Those Indemnified where such loss, liability, damage, cost and expense was caused or contributed to in any way by:
- (a) any wilfully wrongful, unlawful or negligent act or omission by the Service Provider, the Service Provider Personnel or the Service Provider's subcontractors in providing the Services or otherwise in connection with this Contract; and
 - (b) any breach of the Act or this Contract by the Service Provider, the Service Provider Personnel or the Service Provider's subcontractors.
- 22.2 The Commonwealth may enforce the indemnity in favour of Those Indemnified for the benefit of each of such persons in the name of the Commonwealth or of such persons.
- 22.3 The right of the Commonwealth to be indemnified under this clause 22:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law and
 - (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant loss, liability, damage, cost or expense.
- 22.4 The Service Provider's indemnity in this clause 22 will be reduced proportionately to the extent that an act or omission involving fault on the part of the Commonwealth, its officers, employees, agents or contractors (except the Service Provider) directly contributed to the loss, liability, damage, cost or expense, as substantiated by the Service Provider.

23. Insurance

- 23.1 The Service Provider must, at its own cost, effect and maintain for the Term of this Contract (and in the case of professional indemnity insurance, for at least seven (7) years after the expiry or termination of this Contract) the insurance specified in Item D of Schedule A.

- 23.2 The Service Provider must, if requested by the Commonwealth, provide evidence that is acceptable to the Commonwealth of the insurance effected and maintained by the Service Provider under clause 23.1 and its currency within ten (10) Business Days of the request.
- 23.3 The Service Provider must ensure that each Qualified Practitioner and Provisional Practitioner it engages is covered by a professional indemnity insurance policy in the amount specified in Item D of Schedule A.

Part 6 – Breach and Termination

24. Service Provider to notify Commonwealth of breaches

- 24.1 The Service Provider must promptly inform the Commonwealth of any breach or suspected breach of the Act or this Contract (including, without limitation, the requirement under clause 38 to comply with all relevant legislation, including the Privacy Act and the Australian Consumer Law).
- 24.2 The Service Provider must promptly take, without cost to the Commonwealth, corrective action to rectify any error, non-compliance or inaccuracy identified, including, without limitation, under clause 16, in relation to the Service Provider's performance of this Contract.

25. Suspension of Services

- 25.1 Without limiting any other rights or remedies the Commonwealth may have arising out of or in connection with this Contract, if:
- (a) the Commonwealth reasonably suspects that the Service Provider has breached this Contract when providing Services to Voucher-holders; or
 - (b) an Insolvency Event occurs,

the Commonwealth may, at any time and in its sole discretion, by notice setting out the Commonwealth's reasons ("**Suspension Notice**"), direct the Service Provider to stop providing all or a specified part of the Services to Voucher-holders, with effect from the date of the Suspension Notice or a later date specified in the Suspension Notice.

- 25.2 If the Commonwealth gives the Service Provider a Suspension Notice, the Service Provider must stop providing Services to Voucher-holders as set out in the Suspension Notice until the Commonwealth notifies the Service Provider that it is satisfied, based on its own enquiries or information provided by the Service Provider, that:
- (a) if the Suspension Notice is given under clause 25.1(a), there was no breach or suitable remedial action(s) have been implemented; or
 - (b) if the Suspension Notice is given under clause 25.1(b), the Insolvency Event will not have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract.
- 25.3 The Commonwealth will not be liable to pay compensation or damages in respect of a suspension under this clause 25.

26. Termination by Act

- 26.1 In accordance with subsection 20(4) of the Act, the cancellation or surrender of the Service Provider's Accreditation immediately terminates this Contract without the need for the Commonwealth to give further notice to the Service Provider and without giving the Service Provider any entitlement to compensation or damages.

27. Termination by Either Party on 20 Business Days' Notice

- 27.1 Either Party may terminate this Contract at any time by giving the other Party a written notice specifying a date not less than twenty (20) Business Days after the date of the notice on which the Contract will be terminated under this clause 27.

- 27.2 Without limiting clause 27.1, an example of when the Commonwealth may terminate this Contract under clause 27.1 may be as the result of legislative change or as set out in clause 35.6 and an example of when the Service Provider may terminate this Contract under clause 27.1 may be as set out in clause 35.7 or clause 35.8.
- 27.3 Unless otherwise agreed in writing by the Commonwealth, during the period from the date 20 Business Days prior to the date of termination specified in the written notice given under clause 27.1 until the date of termination specified in the written notice given under clause 27.1 the Service Provider must not:
- (a) undertake a new Voucher-holder assessment Service;
 - (b) enter into a new maintenance agreement with a Voucher-holder;
 - (c) accept the relocation of any Voucher-holders to it; or
 - (d) initiate a fitting Service where the follow-up component of the Service cannot be completed before the effective termination date.

28. Termination for Default

- 28.1 Where the Service Provider fails to satisfy any of its obligations under this Contract or the Previous Contract the Commonwealth may:
- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Contract immediately;
 - (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven (7) days) and, if the failure is not remedied within that time, may, by further notice, terminate this Contract immediately.
- 28.2 The Commonwealth may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if the Service Provider:
- (a) experiences an Insolvency Event;
 - (b) undergoes a Corporate Change; or
 - (c) breaches a warranty listed in clause 6.

29. Consequences Upon Termination

- 29.1 Upon termination of this Contract under clause 26, 27, or 28:
- (a) the Commonwealth will be liable only for payments under clause 12.1 for Services provided before the effective date of termination, subject to the remainder of clause 12;
 - (b) the Service Provider must submit Claims under clause 12.1 for provision of Services provided to Voucher-holders prior to the effective date of termination within twenty (20) Business Days of the effective date of termination;
 - (c) the Commonwealth will not be liable to pay compensation or damages in respect of the termination;
 - (d) the Service Provider must provide all Records under the Service Provider's or the Service Provider Personnel's custody, possession or control to the Commonwealth within ten (10) Business Days of the effective date of termination;
 - (e) the Service Provider must ensure that any references to being contracted by the Commonwealth to provide Services do not appear in its advertisements, marketing material and other documents; and
 - (f) the Service Provider must immediately reimburse any amounts due under clause 13.
- 29.2 Termination of this Contract does not affect any accrued rights or remedies of a Party arising out of or in connection with this Contract.

Part 7 – General

30. Disclosure of Information

30.1 It is a condition of this Contract that:

- (a) the Service Provider has disclosed in writing to the Commonwealth prior to the Commencement Date:
 - (i) any litigation, arbitration, mediation, conciliation or proceeding whatsoever, including, without limitation, any investigations ("**Proceedings**"), that are taking place, pending or threatened, against the Service Provider; or
 - (ii) any matters relating to the commercial, technical or financial capacity of the Service Provider or of any subcontractor proposed to be engaged or currently engaged in respect of this Contract, including, without limitation, the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Service Provider, being Proceedings or matters that could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract; and
- (b) the Service Provider will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened including matters of the kind described in clause 30.1(a) during the Term of this Contract, which could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Contract.

30.2 The Service Provider must notify the Commonwealth as soon as practicable if an Insolvency Event occurs or there is a high probability of an Insolvency Event.

30.3 The Service Provider acknowledges and agrees that Commonwealth may make enquiries of and exchange information with Practitioner Professional Bodies regarding the Service Provider's Qualified Practitioners and Provisional Practitioners.

31. Negation of Employment, Partnership And Agency

31.1 The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Commonwealth, nor does the Service Provider have any power or authority to represent or bind the Commonwealth.

31.2 The Service Provider must not represent itself, and must ensure that the Service Provider Personnel do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth.

32. Assignment or Novation

32.1 Subject to clause 32.3, the Service Provider must not assign its rights, or any part of its rights, under this Contract, or novate this Contract, without the prior consent in writing of the Commonwealth. The Commonwealth reserves the right to audit the Service Provider before agreeing to an assignment of rights or novation of this Contract. The Service Provider must seek the Commonwealth's consent to assignment or novation at least twenty (20) Business Days before the proposed date of effect of an assignment or novation.

32.2 Subject to clause 32.3, the Commonwealth may in its sole discretion refuse to give its consent to a proposed assignment or novation, or in giving its consent impose such conditions as it thinks fit.

32.3 Where the Service Provider's Accreditation has been transferred in accordance with the Act, the Commonwealth approves the novation of this Contract to the entity the Accreditation has been transferred to.

33. Notification of Corporate Change

33.1 The Service Provider must notify the Commonwealth:

- (a) if practicable, at least twenty (20) Business Days prior to the expected date of implementation of any Corporate Change; or
- (b) if not practicable, within five (5) Business Days after any Corporate Change has taken effect.

34. Waiver

- 34.1 A failure or delay by a Party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 34.2 The exercise or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent any other exercise or partial exercise of that right or remedy by the Party.

35. Variation

- 35.1 No variation of this Contract is binding unless it is agreed in writing between the Parties or is made under clause 2.2 or this clause 35.
- 35.2 The Commonwealth will not be liable for any additional work undertaken or expenditure incurred by the Service Provider pursuant to a variation to this Contract or the imposing of conditions, unless such variation has been effected in accordance with this Contract and the additional expenditure has been agreed to by the Commonwealth.
- 35.3 The Commonwealth may initiate a proposed variation of this Contract by issuing a formal request to the Service Provider containing details of the proposed variation and if required, specify the period of time by which the Service Provider is to indicate whether they accept the proposed variation.
- 35.4 The Service Provider must, within the time specified by the Commonwealth under clause 35.3 or within a reasonable time if no time is specified, indicate in writing whether it wishes to accept or reject the Commonwealth's proposed variation.
- 35.5 If the Service Provider accepts the Commonwealth's proposed variation under clause 35.4, the Commonwealth will prepare a formal variation to this Contract.
- 35.6 If the Service Provider rejects the Commonwealth's proposed variation under clause 35.4, the Commonwealth may terminate this Contract with no penalty in accordance with clause 27.
- 35.7 The Commonwealth may, from time to time and in its sole discretion, vary Schedule A without the agreement of the Service Provider by giving notice to the Service Provider. The amendments to Schedule A described in the notice will be deemed to be incorporated into this Contract from the date specified in the notice. Before giving notice, the Commonwealth will consult with such professional, industry and consumer groups which the Commonwealth in its sole discretion decides to consult. If the Service Provider does not agree with the amendments to this Contract, the Service Provider may terminate this Contract in accordance with clause 27.
- 35.8 If a Disallowance Event occurs, the Commonwealth may, in its sole discretion, vary this Contract as it considers reasonably necessary as a result of the Disallowance Event without the agreement of the Service Provider by giving notice to the Service Provider prior to the Commencement Date. The amendments to this Contract described in the notice will be deemed to be incorporated into this Contract from the Commencement Date. If the Service Provider does not agree with the amendments to this Contract, the Service Provider may terminate this Contract in accordance with clause 27.

36. Applicable Law

- 36.1 This Contract will be governed by the laws for the time being in force in the Australian Capital Territory and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

37. Cumulative Remedies

- 37.1 Except as expressly provided otherwise in this Contract, a right, power, remedy, entitlement or privilege given or granted to the Commonwealth under this Contract is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege given or granted to the Commonwealth under this Contract, under the Act, at law or in equity.

38. Compliance with Applicable Laws

- 38.1 The Service Provider, in carrying out this Contract, must comply with all legislation of the Commonwealth or of a State or Territory or local authority applicable to its performance of this Contract (including, without limitation, the Act, *Criminal Code Act 1995* (Cth), *Australia Competition and Consumer Act 2010* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Workplace Gender Equality Act 2012* (Cth), *Age Discrimination Act 2004* (Cth), *Ombudsman Act 1976* (Cth), Privacy Act, FOI Act, *Public Interest Disclosure Act 2013* (Cth), *Archives Act 1983* (Cth), *Work Health and Safety Act 2011* (Cth), *Auditor-General Act 1997* (Cth) and any laws relating to power of attorney, guardianship and the protection of vulnerable people).
- 38.2 Under section 137.1 of the Schedule to the *Criminal Code Act 1995* (Cth), knowingly giving false or misleading information to the Commonwealth is an offence.
- 38.3 The Service Provider will bear the cost of any investigation of its activities by the Commonwealth Ombudsman in connection with the subject matter of this Contract under the *Ombudsman Act 1976* (Cth).

39. Work Health and Safety

- 39.1 In carrying out this Contract, the Service Provider must ensure that the Services are performed in a safe manner, including:
- (a) by complying with, and ensuring the Service Provider Personnel comply with, all WHS Legislation and any relevant Approved Code of Practice relating to work health and safety;
 - (b) where the health and safety of any person may be affected by the performance of the Services, the Service Provider must consult, cooperate and coordinate with the Commonwealth and any other relevant duty holders and the Service Provider Personnel in relation to health and safety issues;
 - (c) ensuring the Commonwealth is sufficiently informed to discharge its WHS Legislation obligations, including, without limitation, the Service Provider providing a full and comprehensive response to any form of request for information by the Commonwealth, including any assurance, regarding any matter related to WHS Legislation in relation to the Services; and
 - (d) informing the Commonwealth immediately of any Relevant Matter.
- 39.2 Without limiting the Service Provider's obligations under this Contract or at law, the Service Provider must not, and must ensure that the Service Provider Personnel do not, place the Commonwealth in breach of the Commonwealth's obligations under the WHS Legislation.
- 39.3 To the extent permitted by law, the Commonwealth is not liable to the Service Provider or the Service Provider Personnel for any loss in connection with work health and safety in performing the Services.
- 39.4 For the purposes of this clause 39:
- (a) **"Approved Code of Practice"** means a code of practice approved pursuant to section 274 of the WHS Legislation;
 - (b) **"WHS Legislation"** means the *Work Health and Safety Act 2011* (Cth), any instruments and regulations made under or for the purposes of that Act and any "corresponding WHS law" within the meaning of section 4 of that Act, as amended and replaced from time to time;
 - (c) **"Regulator"**, **"Notifiable Incident"**, **"Inspector"** and **"WHS Entry Permit Holder"** have the same meaning as they have the *Work Health and Safety Act 2011* (Cth); and
 - (d) **"Relevant Matter"** includes:
 - (i) Notifiable Incidents or injury which occurs during the provision of the Services or is in connection with the Services;
 - (ii) entry by a WHS Entry Permit Holder or Inspector to any Site or other location where Services are performed and any notices and communications by the WHS Entry Permit Holder or Inspector with respect to a suspected contravention of the WHS Legislation;

- (iii) proceedings against the Service Provider by the Regulator, or a decision, request, notice or communication made by the Regulator or agent of the Regulator to the Service Provider or the Service Provider Personnel under the WHS Legislation with respect to the Services;
- (iv) notices, communications and undertakings given by the Service Provider or Service Provider Personnel to the Regulator or agent of the Regulator; and
- (v) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Legislation to do so, due to unsafe work.

40. Dispute Resolution

40.1 The Parties agree that any dispute arising under this Contract will be dealt with as follows:

- (a) first, the Party claiming that there is a dispute will give the other Party a written notice setting out the nature of the dispute;
- (b) secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) thirdly, if the Parties have not resolved the dispute under clause 40.1(b) within ten (10) Business Days from the receipt of the notice under clause 40.1(a) or such other period as agreed by the Parties in writing, the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure agreed by the Parties; and
- (d) lastly, if within a further ten (10) Business Days or such other period as agreed by the Parties in writing:
 - (i) the Parties have been unable to agree to submit the dispute to mediation or some other form of alternative dispute resolution procedure under clause 40.1(c); or
 - (ii) the Parties have not resolved the dispute under clause 40.1(c),then either Party may commence legal proceedings.

40.2 Despite the existence of a dispute, the Service Provider will continue to perform the Services, unless requested in writing by the Commonwealth not to do so.

40.3 Each Party will bear its own costs of complying with this clause 40 and the Parties will bear equally the cost of any mediation or alternative dispute resolution procedure under clause 40.1(c).

40.4 This clause 40:

- (a) does not apply to action by either Party under or purportedly under clause 27;
- (b) does not apply to action by the Commonwealth under or purportedly under clause 28; and
- (c) does not prevent either Party from commencing legal proceedings for urgent interlocutory relief.

41. Survival

41.1 Clauses 11, 12, 13, 14, 16, 18, 19, 20, 22, 23, 29, and 30.3 survive the expiry or termination of this Contract, together with any provision of this Contract which expressly or by implication from its nature is intended to survive the expiry or termination of this Contract.

42. Notices

42.1 A notice under this Contract is only effective if it is in writing, and dealt with as follows:

- (a) *if given by the Service Provider to the Commonwealth* – addressed to the Commonwealth Contact Point; or
- (b) *if given by the Commonwealth to the Service Provider* – addressed to the Service Provider Contact Point.

42.2 A notice is to be:

- (a) signed by the person giving the notice and delivered by hand;
- (b) signed by the person giving the notice and sent by pre-paid post; or
- (c) transmitted electronically by the person giving the notice by electronic mail transmission.

42.3 A notice given to the Commonwealth is deemed to be effected:

- (a) if delivered by hand – upon delivery to the relevant address;
- (b) if sent by post – upon delivery to the relevant address; or
- (c) if transmitted electronically – upon acknowledgement of receipt by the addressee by reply email (a 'read receipt' or other automated reply is not a reply email for the purposes of this clause 42.3).

42.4 A notice given to the Service Provider is deemed to be effected:

- (a) if delivered by hand – upon delivery to the relevant address;
- (b) if sent by post – upon delivery to the relevant address; or
- (c) if transmitted electronically – upon:
 - (i) the sender receiving an automated message confirming delivery; or
 - (ii) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

42.5 A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

43. Trust Representations and Warranties

43.1 This clause 43 only applies if the Service Provider is a trustee of a Trust.

43.2 In this clause “**Trust**” means the trust that is specified on the signatory page of this Contract and of which the Service Provider is trustee.

43.3 The Service Provider carries out its obligations under this Contract in the Service Provider's capacity as trustee of the Trust and, except for matters the Service Provider has disclosed to the Commonwealth and that the Commonwealth has accepted in writing, the Service Provider makes the representations and warranties set out in this clause 43.

43.4 The Service Provider represents and warrants that:

- (a) it has the right to be indemnified out of, and has a lien over, the assets of the Trust for all liabilities incurred by it under this Contract;
- (b) this right has not been limited in any way, and the Service Provider has no liability which may be set off against this right of indemnity;
- (c) the assets of the Trust are sufficient to satisfy this right of indemnity and all other obligations and liabilities in respect of which the Service Provider has a right to be indemnified out of those assets; and
- (d) the Commonwealth has the benefit of the Service Provider's rights of indemnity against, and lien over, the assets of the Trust, and has recourse to the assets of the Trust to satisfy the Service Provider's liabilities arising in connection with this Contract and the carrying out of the Services.

43.5 The Service Provider represents and warrants that:

- (a) it is the sole trustee of the Trust and no meeting has been called to remove the Service Provider as the trustee;
- (b) the Trust has not been terminated and no beneficiary is presently entitled to any of the Trust's assets;

- (c) the constituent documents of the Trust, including the Trust's deed of trust, comply with all applicable laws; and
- (d) no property of the Trust has been resettled or set aside or transferred to any other trust.

43.6 The Service Provider represents and warrants that it has entered into this Contract, and will enter into the transactions contemplated by it, for the proper administration of the Trust and for the benefit of all of the Trust's beneficiaries.

43.7 Throughout the Term of this Contract, the Service Provider must:

- (a) maintain complete and correct records in relation to the Trust;
- (b) not vest, distribute or advance any property of the Trust (other than income) that is required for the performance of this Contract;
- (c) not resettle, set aside or transfer any property of the Trust that is required for the performance of this Contract unless the Commonwealth agrees otherwise in writing;
- (d) not amend or revoke any of the terms of the Trust unless the Commonwealth agrees otherwise in writing;
- (e) not do anything, or permit or omit anything, which breaches the Trust or which would permit the Service Provider to be removed as trustee of the Trust; and
- (f) keep the assets of the Trust separate from other property and not do anything which results in the assets of the Trust being mixed with other property.

43.8 The Service Provider acknowledges and agrees that, in respect of any liability to the Commonwealth arising under this Contract, including the indemnity under clause 22, the Service Provider is liable in its own capacity and as trustee of the Trust.

44. Method of Execution

44.1 The Parties agree that a manually signed copy of this Contract or a copy of this Contract signed by electronic means that in either case is delivered by electronic transmission has the same legal effect as delivery of an original signed copy of this Contract.

45. Further Action

45.1 Each Party must promptly do and require its officers, employees, agents and contractors to promptly do any further acts to give effect to the provisions of this Contract, including executing and delivering all further documents required by law or requested by the other Party.

Schedule A– Contract Information

Item A Term of Contract

- (1) **Commencement Date:** 1 October 2019
- (2) **End Date:** 30 June 2022

Item B Standards

- (1) The following additional Standards apply:
 1. Nil

Item C Policies and procedures

- (1) Policies and procedures that are compliant with relevant national, State/Territory, Practitioner Professional Body and Hearing Services Program requirements for:
 1. medical referral;
 2. management of client records and health information;
 3. supervision of Provisional Practitioners;
 4. Voucher-holder relocations;
 5. complaints policies and procedures; and
 6. infection control procedures.

Item D Insurance Requirements

- (1) Public liability insurance for no less than \$20 million per claim;
- (2) Professional indemnity insurance for no less than \$10 million per claim; and
- (3) Workers' compensation insurance as required by law in the State or Territory in which Services are provided.

Item E Conditions of Accreditation

- (1) The following additional Conditions of Accreditation apply to the Service Provider:
 1. Nil

Item F Commonwealth Contact Point

Address:
Hearing Services Program
Department of Health
Mail Drop Point 113
GPO Box 9848
CANBERRA CITY ACT 2601

Email: hearing@health.gov.au

Attention: Director
Hearing Services Program Management Section