

APPENDIX A

Funding Program Conditions of Entry

Version 1 - November 2015



Australian Government

Funded by the Australian Government

Table of Contents

DEFINITIONS AND INTERPRETATION	15
Definitions Generally	15
Interpretation	15
CONDITIONS	16
Submission of Funding Application	16
Cancellation And Variation	18
Health Service Authority's Rights	18
Selection Of Preferred Respondent	19
Discretion	20
Agreement With These Conditions of Entry	20
Agreement By Respondent	20
Withdrawal Of Funding Application	20
Funding Application Validity	21
Disclosure Of Funding Application Information	21
Conflict Of Interest	21
No Bribe, Inducement Or Funding Application Of Employment	21
Use Of Lobbyists	22

DEFINITIONS AND INTERPRETATION

DEFINITIONS GENERALLY

In the Request:

Closing Time means the time and date specified in the Request as the closing time for the submission of Funding Applications.

Agreement means the Subcontractor Deed between the Health Service Authority and the successful Respondent of which the terms and conditions of which form part of the Grant Agreement Documents.

Conditions of Entry means this document.

Funding Application means the application for funding submitted by the Respondent in response to the Request.

Funding Application Information means all information, other than the Respondent's Funding Application, submitted by the Respondent in response to, or in connection with, the Request.

Funding Application Validity Period means the period of one year from the date of submission unless otherwise specified by the Respondent in their Funding Application.

Funding Application Value means the amount of funding the Respondent is applying for in their Funding Application.

Funding Recipient means the successful respondent receiving grant funding.

Respondent means any person who submits a Funding Application.

Request means the Health Service Authority's invitation for Funding Applications.

Section means a section of the Request.

INTERPRETATION

In the Request and these Conditions of Entry unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Respondent consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally;
 - (ii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and
 - (iii) the act of one person who comprises the Respondent binds the other persons



who comprise the Respondent;

- (g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of the Health Service Authority or the Respondent;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;
- (j) all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Health Service Authority and the Respondent;
- (k) headings are included for convenience and do not affect the interpretation of the Request;
- (l) 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 it;
- (m) no rule of interpretation is to be applied to disadvantage the Health Service Authority or the Respondent on the basis that it was responsible for preparing the Request;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) a reference to a monetary amount means that amount in Australian currency, and
- (v) a reference to time means the time observed by the general community from time to time in Perth, Western Australia.

CONDITIONS

SUBMISSION OF FUNDING APPLICATION

Any Funding Application which:

- (a) is not submitted before the Closing Time;
- (b) is incomplete at the Closing Time; or
- (c) is not submitted in accordance with the provisions of the Request,

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Funding Application.

For the purposes of the Request, mishandling will only have occurred where:

- (a) in the case of submission of the Funding Application by hand or by post, the Funding Application was received by the Health Service Authority prior to the Closing Time but the Funding Application was not transferred by the Health Service Authority internally by the Closing Time; or
- (b) in the case of submission of the Funding Application by facsimile, the Funding Application was received by the Health Service Authority prior to the Closing Time but the Funding Application was not transferred by the Health Service Authority internally by the Closing Time.

If the Respondent submits the Funding Application by facsimile, then the Funding Application must be received in full by the Health Service Authority prior to the Closing Time. If the Respondent submits the Funding Application by facsimile, the Respondent agrees that:

- (a) receipt of the Funding Application will be determined by the date and time which the Health Service Authority facsimile machine records that the facsimile was successfully received; and
- (b) facsimile transmission is not a reliable method of submitting Funding Applications and the Respondent submits the Funding Application entirely at its own risk in respect of transmission failures and transmission errors howsoever caused.

If the Respondent submits the Funding Application electronically, then the Respondent must ensure that the electronic copy of the Funding Application is in one of the following file format and extensions:

.doc*	.pub*	.pdf#	.txt	.rtf	.ppt	.xls*
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* Microsoft Compatible

Adobe Compatible
 NB: Zipped Files Acceptable

The Funding Application must be received in full by the Health Service Authority prior to the Closing Time. If the Respondent submits the Funding Application electronically, the Respondent agrees that:

- (a) receipt of the Funding Application will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Health Service Authority computer records that the Funding Application was received;
- (b) if the electronic copy of the Funding Application contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Health Service Authority all costs incurred by the Health Service Authority arising from, or in connection with, the virus;
- (c) lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Funding Application;
- (d) the Health Service Authority will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Funding Application; if the electronic copy of the Funding Application becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Health Service Authority may request the Respondent to provide another copy of the Funding Application either electronically or in hard copy or both;



- (f) if the Health Service Authority requests the provision of another copy of the Funding Application, then the Respondent must;
- (i) provide the copy in the form or forms requested within the period specified by the Health Service Authority;
 - (ii) provide a statutory declaration that the copy is a true copy of the Funding Application which was electronically submitted by the Respondent and that no changes to the Funding Application have been made after the initial attempted electronic submission; and
 - (iii) provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

A Funding Application is not assignable by the Respondent without the prior written consent of the Health Service Authority.

If a Funding Application is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Funding Application is binding on those persons jointly and severally.

A Funding Application is, upon submission, the absolute property of the Health Service Authority and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Funding Application, except that the Health Service Authority may make such copies of the Funding Application as the Health Service Authority requires for the proper evaluation of the Funding Application.

CANCELLATION AND VARIATION

The Health Service Authority reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request.

If the Health Service Authority cancels, varies, supplements, supersedes or replaces the Request, then;

- (a) the Health Service Authority will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
- (b) the Respondent shall not have any recourse against the Health Service Authority whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

HEALTH SERVICE AUTHORITY'S RIGHTS

The Health Service Authority is not obliged to accept the Funding Application containing the lowest Funding Application Value.

The Health Service Authority is under no obligation to accept any Funding Application and may reject any Funding Application or all Funding Applications, in the Health Service Authority's discretion, including:

- (a) **(failure to comply with Conditions of Entry)** if a Funding Application fails to comply with these Conditions of Entry;
- (b) **(false or misleading)** if a Funding Application contains information or representations that are false or misleading;
- (c) **(change of control)** if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the

Respondent within the meaning of the *Corporations Act 2001* (Cth);

- (d) **(change of consortium membership)** in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or
- (e) **(change of policy or commercial reasons)** if the Health Service Authority decides to cancel the Request due to changes of policy or for commercial reasons.

After the Closing Time, the Health Service Authority may:

- (a) Request additional information from the Respondent in relation to the content of the Funding Application for the sole purpose of clarifying the Funding Application; and
- (b) Request information from the Respondent regarding the financial capacity of the Respondent,

and if so requested, the Respondent must promptly provide such information to the Health Service Authority.

In evaluating a Funding Application, the Health Service Authority may take into account any information regarding the Respondent that the Health Service Authority has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other Agreement, arrangement or dealing between the Respondent and a Public Authority.

The Health Service Authority reserves the right to conduct site visits as it deems appropriate.

SELECTION OF PREFERRED RESPONDENT

The Health Service Authority may select, but is not obliged to select, one or more Respondents as a preferred Respondent.

Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Conditions of Entry, continue to apply until such time as a Agreement is awarded or the Request is terminated.

The Respondent agrees that, if it is selected as a preferred Respondent, then:

- (a) its Funding Application will remain open for acceptance by the Health Service Authority at any time prior to the expiry of the Funding Application Validity Period;
- (b) the Health Service Authority may choose to negotiate any aspect of the Funding Application; and
- (c) the Health Service Authority may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Health Service Authority.

At any time during the negotiations either the Health Service Authority or a preferred Respondent may terminate the negotiations for any reason.

If the Health Service Authority does terminate negotiations, the Preferred Respondent may terminate the negotiations for any reason.

If the Health Service Authority does terminate negotiations, the Health Service Authority may:

- (a) accept the Respondent's original Funding Application; or
- (b) select and then negotiate with any other Respondent as a preferred Respondent in accordance with this clause 2.4; or
- (c) terminate the Request.

DISCRETION

Whenever the consent of the Health Service Authority is required under the Request, that consent may be given or withheld by the Health Service Authority in the Health Service Authority's absolute discretion and may be given subject to such conditions as the Health Service Authority may determine.

AGREEMENT WITH THESE CONDITIONS OF ENTRY

In submitting a Funding Application, the Respondent is deemed to have read and agreed to these Conditions of Entry.

AGREEMENT BY RESPONDENT

In submitting a Funding Application, the Respondent agrees that:

(information true and correct) all information in its Funding Application and all Funding Application Information is true and correct at the time of its submission;

(relies on own enquiries) other than in respect of information provided by the Health Service Authority to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request and the Conditions of Entry;

(understood Request) it has examined and understood the Request, each addendum issued under the Request, the Conditions of Entry and any other information available to the Respondent in respect of the Request;

(made reasonable enquiries) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Funding Application which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;

(does not rely on warranties) other than in respect of information provided by the Health Service Authority to the Respondent in writing, it does not rely on any warranty or representation of the Health Service Authority or any person actually or ostensibly acting on behalf of the Health Service Authority;

(no secret commission) it has not paid or received and will not pay or receive any secret commission in respect of the Request;

(no collusion) it has not colluded and will not collude with any other person in respect of the Request;

(no inflation or deflation of Funding Application Value) its Funding Application Value is not inflated or deflated to advantage another Respondent;

(no unlawful arrangement) it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;

(no improper influence) it has not sought and will not seek to influence any decision in respect of the Request by improper means; and

(own cost and expenses) it will pay its own costs and expenses in connection with:

- (a) the preparation and submission of its Funding Application; and
- (b) any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Health Service Authority, whether before or after the submission of any Funding Application,

irrespective of whether its Funding Application is accepted or not.

WITHDRAWAL OF FUNDING APPLICATION

The Respondent may withdraw its Funding Application at any time prior to acceptance of its Funding Application, by notifying the Health Service



FUNDING APPLICATION VALIDITY

Unless the Respondent withdraws its Funding Application under clause 2.8, the Respondent agrees that its Funding Application will remain open for acceptance by the Health Service Authority for the Funding Application Validity Period.

The Funding Application Validity Period may be extended or further extended by the Health Service Authority by advising each Respondent in writing at any time or times.

DISCLOSURE OF FUNDING APPLICATION INFORMATION

- (a) The Respondent agrees and acknowledges that its Funding Application and its Funding Application Information are subject to the *Freedom of Information Act 1992 (WA)* and may also be disclosed by the Health Service Authority or the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
- (b) By submitting a Funding Application, the Respondent releases the Health Service Authority and the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Funding Application and its Funding Application Information under this clause by the Health Service Authority or the State.
- (c) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* and the *Auditor General's Act 2006* are not affected in any way by the Request.
- (d) Subject to this clause and to the provisions of the *Financial Management Act 2006* and the *Auditor General's Act 2006*, the Health Service Authority will not make public any part of the Funding Application or any Funding Application Information that the Respondent expressly and reasonably nominates in its Funding Application as confidential. However, the Health Service Authority may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Funding Application or any Funding Application Information as a condition of acceptance of the Funding Application.

CONFLICT OF INTEREST

The Respondent must, prior to any acceptance of its Funding Application by the Health Service Authority, disclose to the Health Service Authority any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Agreement (if awarded) by the Respondent.

The Health Service Authority may, in its discretion, accept or reject the Respondent's Funding Application if the Health Service Authority considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of the Agreement (if awarded) by the Respondent.

NO BRIBE, INDUCEMENT OR FUNDING APPLICATION OF EMPLOYMENT

The Respondent must not, without the prior written consent of the Health Service Authority, directly or indirectly approach or communicate with any officer or employee of the Health Service Authority having any connection or involvement with the Request, with respect to:

- (a) an offer of employment; or
(b) availability of employment,

with the Respondent or any related entity.

The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Health Service Authority in

connection with the Request.

USE OF LOBBYISTS

The Respondent warrants and represents to the Health Service Authority that any "Lobbyist" (as that term is defined in Public Sector Commissioner's Circular 2009-13 "Public Sector Commissioner's Circular") which can be found at:

www.publicsector.wa.gov.au/AgencyResponsibilities/PSCCirculars

that it or any of its officers, employees, agents or sub-contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with the Request, is duly registered as a "Lobbyist" in terms of that Public Sector Commissioner's Circular and has fully complied with its obligations under it.

APPENDIX B

This **Subcontractor Deed** is made between

THE STATE OF WESTERN AUSTRALIA by the Minister for Health of 13th Floor, Dumas House, 2 Havelock Street, West Perth WA 6005 through the **Department of Health** ABN 28 684 750 332 ('the Participant')

and

XXXXXX

ABN **.....** ('the Subcontractor')

RECITALS:

- A. Health Workforce Australia (HWA), a body corporate established under section 4 of the *Health Workforce Australia Act 2009 (Cth)* developed the Integrated Regional Clinical Training Networks Program (the Program).
- B. The objectives and outcomes of the Program are to expand the capacity for clinical training placement at a national, jurisdictional and regional level through establishing networks to co-ordinate, plan and facilitate quality clinical training activity across a number of health sectors including public and non-government health providers and higher education and training providers.
- C. The Participant is committed to helping to achieve the objectives and outcomes of the Program through the conduct of the Project.
- D. HWA and the Participant entered into the Principal Agreement on 23 June 2011 and under the Principal Agreement, among other things, HWA agreed to fund the Participant to perform the Project in support of the objectives and outcomes of the Program on the terms and conditions set out in the Principal Agreement.
- E. Clause 1.6 of the Principal Agreement permits the Parties to vary the agreement in writing, and HWA and the Participant have entered into the following variations and deeds of variation:
 - (i) Deed of Variation No. 1 dated 30 September 2011;
 - (ii) Letter of Variation No. 1 dated 21 May 2012;
 - (iii) Letter of Variation No. 2 dated 21 June 2012;
 - (iv) Letter of Variation No. 3 dated 20 August 2012;
 - (v) Deed of Variation No. 2 dated 12 August 2013;
 - (vi) Deed of Variation No. 3 dated 18 June 2014; and
 - (vii) Deed of Variation No 4 dated 29 April 2015.
- F. On 8 October 2014, the relevant provisions of the Health Workforce Australia (Abolition) Act 2014 commenced. This Act abolished HWA and provided for the transfer of assets, liabilities, interests in land, records and instruments to the Commonwealth and the transfer of functions and programs to the Commonwealth Department of Health.
- G. Any reference to HWA in the Principal Agreement has effect after 8 October 2014 as if it were a reference to the Commonwealth, and any reference in this Subcontractor Deed to HWA has effect as if it were a reference to the Commonwealth.
- H. On **.....** the Parties to the Principal Agreement entered into Deed of Variation No. 5.
- I. Clause 7 of the Principal Agreement permits the Participant to enter into an arrangement to subcontract some or all of the performance of the Project to another party under a formal agreement that satisfies the



requirements of clause 7 of the Principal Agreement.

- J. Subject to the terms and conditions of this Subcontractor Deed, the Subcontractor has agreed to assist the Participant to achieve the objectives and outcomes of the Project in support of the Program in consideration of the Participant making payment of parts of the Funds to the Subcontractor.

OPERATIVE PART

The Parties agree as follows:

1. INTERPRETATION AND OPERATION OF CONTRACT

- 1.1 In this Subcontractor Deed, unless the contrary intention appears, with the exception of the definition of 'Commencement Date', 'Party' and 'Principal Agreement' the definitions and interpretation in clause 1.1 and 1.2 of the Principal Agreement apply to this Subcontractor Deed.

In addition, unless the contrary intention appears, the following words have the following meanings:

'Annexure' means an annexure to this Subcontractor Deed;

'Commencement Date' means the date the Participant issues a certificate of satisfaction of the Conditions Precedent in clause 3;

'Conditions Precedent' means has the meaning given in clause 3;

'Conditions Precedent Deadline Date' means the date which is 14 Business Days after the Participant executes this Subcontractor Deed, or such other date as the parties may agree in writing;

'Principal Agreement' means Agreement FA/2011/026 made between Health Workforce Australia (ABN 21 295 050 589) and the State of Western Australia by the Minister for Health through the Department of Health (ABN 26 684 750 332);

'Subcontractor Personnel' means officers, employees, agents or subcontractors of the Subcontractor engaged in the performance of the Project, and includes those individuals (if any) engaged in the performance of the Project on a voluntary basis by the Subcontractor;

'Subcontractor Deed' means this document; and

'Schedule' means a schedule to this Subcontractor Deed.

- 1.2 If there is any conflict or inconsistency between the terms and conditions contained in the clauses of this Subcontractor Deed and the terms and conditions contained in the clauses of the Principal Agreement, then the terms and conditions of the clauses of the Principal Agreement will prevail to the extent of the conflict or inconsistency.
- 1.3 The laws of Western Australia apply to this Subcontractor Deed. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia in respect of any dispute under this deed.
- 1.4 This Subcontractor Deed records the entire agreement between the parties in relation to its subject matter.
- 1.5 No variation of this Subcontractor Deed is binding unless agreed in writing between the parties.
- 1.6 If at any time a provision of this Subcontractor Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, it will not affect or impair:
- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Subcontractor Deed; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Subcontractor Deed.
- 1.7 A waiver of any provision of this Subcontractor Deed must be in writing.
- 1.8 No waiver of a term or condition of this Subcontractor Deed will operate as a waiver of another breach of the same or of any other term or condition contained in this Subcontractor Deed.
- 1.9 If a party does not exercise, or delays in exercising, any of its rights under this Subcontractor Deed or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.10 A single or partial exercise by a party of any of its rights under this Subcontractor Deed or at Law does not prevent the further exercise of any right.
- 1.11 The Subcontractor must not assign, subcontract or novate any of its rights or obligations under this Subcontractor Deed without prior approval in writing from the Participant.
- 1.12 Each party must pay its own costs and expenses of negotiating, preparing and executing this Subcontractor Deed.
- 1.13 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Subcontractor Deed and any transaction contemplated by it.

2. COMMENCEMENT, SUSPENSION AND TERMINATION

- 2.1 This Subcontractor Deed commences when the Commencement Date occurs and, unless terminated earlier, expires on the Completion Date.
- 2.2 If, for any of the reasons set out in paragraphs (a) to (k) of clause 21.1 of the Principal Agreement:
 - (a) the Commonwealth terminates the Principal Agreement, this Subcontractor Deed will terminate automatically;
 - (b) the Commonwealth reduces the scope of the Project and makes a corresponding reduction in the Funds payable under the Principal Agreement, the Participant has an unfettered discretion to elect to terminate the Subcontractor Deed or reduce the scope of that part of the Project undertaken by the Subcontractor or immediately suspend the Subcontractor Deed;
 - (c) the Commonwealth requires the Participant to immediately suspend dealings with the Funds, the Participant has an unfettered discretion to immediately suspend the Subcontractor Deed.
- 2.3 If the Commonwealth exercises its right to terminate the Principal Agreement, reduce the scope of the Project or require the Participant to immediately suspend dealings with the Funds in accordance with clause 21.1 (l), (m) or (n) of the Principal Agreement, the Participant will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Subcontractor, which are directly attributable to the termination, reduction in scope or suspension. The Participant will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Subcontractor Deed at the date that the termination, reduction in scope or suspension takes effect.
- 2.4 On termination of the Principal Agreement, reduction in scope of the Project, or for the duration of any suspension of dealings with the Funds, the Subcontractor must hold the Funds in utmost good faith for use only in accordance with the directions of

the Participant and will cease all other dealings with the Funds.

- 2.5 If the Commonwealth ends the suspension of dealings with the Funds by written notice to the Participant, subject to such preconditions (including variations to this Subcontractor Deed) which the Commonwealth may require, the Participant may end the suspension of the Subcontractor Deed by written notice to the Subcontractor, subject to such preconditions (including variations to this Subcontractor Deed) which the Participant may require.
- 2.6 Subject to clause 2.3 of this Subcontractor Deed, the Participant will not be obliged to pay any part of the Funds to the Subcontractor after the termination of the Principal Agreement or during any period of suspension of dealings with the Funds.
- 2.7 Except as provided in this clause, the Participant will not come under any liability to the Subcontractor for termination of this Subcontractor Deed in accordance with clause 2.2.
- 2.8 If a purported termination for cause by the Commonwealth under any of clauses 21.1 (a) to (j) of the Principal Agreement is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth and the automatic termination of this Subcontractor Deed will be deemed to be a termination for convenience.
- 2.9 Clauses 2.3, 2.4, 2.6 and 2.7 and this clause 2.9 will survive the expiration or termination of this Subcontractor Deed.

3. CONDITIONS PRECEDENT

- 3.1 This Subcontractor Deed does not take legal effect and the parties have no rights or obligations under this Subcontractor Deed unless and until the Commencement Date occurs.
- 3.2 For the purpose of this clause 3, the following are the Conditions Precedent:
- (a) the Commonwealth delivering to the Participant its prior approval in writing to this Subcontractor Deed;
 - (b) the Commonwealth delivering to the Participant any terms and conditions it considers appropriate when giving its approval under 3.2(a);
 - (c) the Subcontractor delivering to the Participant written confirmation from its bank that it is financially viable and has in place the appropriate types and amount of insurance to perform its obligations under this Subcontractor Deed in relation to the Project;
 - (d) the Subcontractor delivering to the Participant a written acknowledgement that it may be considered a "Commonwealth service provider" for the purposes of the Ombudsman Act 1976 (Cth) and a acknowledgement and agreement that the Participant will not be liable for the cost of any such investigation by the Commonwealth Ombudsman in connection with the subject matter of the Subcontractor Deed or the subject matter of the Principal Agreement;
 - (e) the Subcontractor delivering to the Participant a written acknowledgement that it is prohibited from further subcontracting the Project without the prior written approval of the Participant; and
 - (f) the Subcontractor delivering to the Participant a written acknowledgement that it will comply with any written direction of the Participant concerning this Subcontractor Deed.
- 3.3 The Subcontractor agrees that:
- (a) it must use its best

endeavours to satisfy, or



procure the satisfaction of, the Conditions Precedent in paragraphs (a) to (f) of clause 3.2;

- (b) the satisfaction of a Condition Precedent can only be waived with the agreement of the Participant.

- 3.4 Unless each of the Conditions Precedent has been satisfied or waived before the Conditions Precedent Deadline Date, this Subcontractor Deed will have no legal effect and the parties will have no rights or obligations under it.
- 3.5 When the Participant is satisfied (acting reasonably) that all Conditions Precedent have been satisfied or waived before the Conditions Precedent Deadline Date, the Participant must prepare and issue to the Subcontractor a certificate to that effect.

4. RESPONSIBILITIES AND OBLIGATIONS OF SUBCONTRACTOR

- 4.1 The Subcontractor agrees to be fully responsible for the performance of that part of the Project to be undertaken by the Subcontractor as set out in Schedule 2 and to use his best endeavours to assist the Participant in complying with the requirements of the Principal Agreement, and the Subcontractor will not be relieved of that responsibility because of any:
 - (a) involvement by the Participant in the performance of the Project;
 - (b) payment made to the Participant on account of the Project; or
 - (c) subcontracting of all or any part of the Project.
- 4.2 Without limiting its rights, the Participant may at its discretion:
 - (a) defer;
 - (b) reduce; or
 - (c) not make,a payment of Funds until the Subcontractor has performed all of its obligations that are required to be performed up to the date of that payment under this Subcontractor Deed.
- 4.3 In consideration of the provision of the Funds, the Subcontractor must use the Funds only for the Project and according to the terms and conditions set out in the Principal Agreement.
- 4.4 The Subcontractor agrees to submit invoices for payment of the Funds. The amount of the invoice must not exceed the amount of Funds properly required by the Subcontractor for its use in relation to the performance of this Subcontractor Deed up to the date of the next invoice.
- 4.5 If an invoice is found to be rendered incorrectly after payment any underpayment or overpayment will be recoverable by or from the Subcontractor as the case may be and without limiting recourse to other available means may be offset against any amount subsequently due by the Participant to the Subcontractor under this Subcontractor Deed.
- 4.6 The Subcontractor acknowledges and agrees that the provisions set out in clause 5 of the Principal Agreement – Taxes, Duties and Government Charges – apply to this Subcontractor Deed.
- 4.7 The Subcontractor agrees to repay to the Participant any Funds which are not properly acquitted, or which remain Unspent or not committed, or which have been spent for purposes other than for specified purposes, within one month after the termination or expiry of this Subcontractor Deed.

5. MANAGEMENT OF FUNDS AND BANK ACCOUNT

The Subcontractor must keep proper accounts and records of its receipt and use of the Funds for the Project separately from any other accounts and records of the Subcontractor.

6. REPORTS

6.1 If requested by the Participant the Subcontractor must provide the Participant's liaison officer with Progress Reports and a Final Report in accordance with the time-frame for Reports specified by the Participant in the request.

6.2 Each Progress Report must contain:

- (a) a financial statement;
- (b) information covering the Project Period to the date of the Progress Report on whether the objectives and outcomes of the Project are being achieved; and
- (c) if requested by the Participant, a copy of any Material produced in relation to the Project up to the date of the Progress Report.

6.3 The Final Report must contain:

- (a) a financial statement; and
- (b) a comprehensive report on whether the objectives and outcomes of the Project were achieved and, if not, the reasons why those objectives and outcomes were not achieved.

7. LIAISON

7.1 The Subcontractor's liaison officer must liaise with and report to the Participant's liaison officer as reasonably required by the Participant's liaison officer for the purposes of this Subcontractor Deed. Details of the Parties respective liaison officers are set out in Schedule 1 or as notified by one party to the other party from time to time during the term of this Subcontractor Deed.

7.2 Upon receipt of reasonable written notice from the Participant, the Subcontractor must within the time-frame specified in the notice, or within a reasonable time-frame if no time-frame is specified in the notice, provide any information in relation to the Project requested by the Participant for the purposes of this Subcontractor Deed or the Principal Agreement, including monitoring and evaluation.

8. ACCESS TO PREMISES AND MATERIALS

8.1 The Subcontractor must, at all reasonable times during normal working hours (except where the Subcontractor believes that there is an actual or apprehended breach of the Law), give the Auditor-General, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner, the Commonwealth Ombudsman and any persons authorised in writing by the Participant (referred to in this clause collectively as '**those permitted**') access to:

- (a) premises at which records and Materials associated with this Subcontractor Deed or the Principal Agreement are stored;
- (b) premises at which work associated with the Project is undertaken; or
- (c) the Subcontractor Personnel,

in order for those permitted to be able to inspect and copy Material, in the Subcontractor's possession and control, for purposes associated with this Subcontractor Deed or the Principal Agreement or any review of performance under this Subcontractor Deed or the Principal Agreement.

8.2 The Subcontractor agrees to provide all assistance reasonably requested by the Participant in respect of any inquiry into or concerning



the Project or the Principal Agreement.

- 8.3 The requirement for access under this clause does not in any way reduce the responsibility of the Subcontractor to perform its obligations in accordance with this Subcontractor Deed.
- 8.4 Nothing in this Subcontractor Deed limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or the Commonwealth Ombudsman, or their respective delegates. The rights of the Participant or the Commonwealth under this Subcontractor Deed or the Principal Agreement are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or the Commonwealth Ombudsman, or their respective delegates.
- 8.5 This clause survives the expiration or early termination of this Subcontractor Deed for a period of seven years.

9. COMMONWEALTH MATERIAL AND INTELLECTUAL PROPERTY

- 9.1 Intellectual Property rights and title to, or in relation to, the Commonwealth Material remains vested at all times in the Commonwealth.
- 9.2 The Participant grants to the Subcontractor a royalty-free and licence fee-free, world-wide, non-exclusive sub-licence to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material for the purposes of the Project.
- 9.3 The Subcontractor agrees to ensure that all Intellectual Property in the Commonwealth Material is used strictly in accordance with any conditions, restrictions or directions specified by the Participant or by the Commonwealth.
- 9.4 This clause survives the expiration or earlier termination of this Subcontractor Deed.

10. PROJECT MATERIAL AND INTELLECTUAL PROPERTY

- 10.1 Any Intellectual Property rights and title to, or in relation to, the Project Material will vest, upon creation, in the Commonwealth.
- 10.2 The Participant grants to the Subcontractor a royalty-free and licence fee-free, world-wide, non-exclusive sub-licence to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in Project Material for the purposes of the Project.
- 10.3 This clause does not affect the ownership of any Intellectual Property in any Existing Material.
- 10.4 If requested by the Participant or by the Commonwealth, the Subcontractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause.
- 10.5 The Subcontractor warrants that that anything done by the Subcontractor in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property rights of any person.
- 10.6 As part of the Final Report, or on the expiry or early termination of this Subcontractor Deed, the Subcontractor must deliver a complete copy of the Project Material and all of the Commonwealth Material to the Participant or the Commonwealth, or deal with it as otherwise directed by the Participant or by the Commonwealth.
- 10.7 This clause survives the expiration or earlier termination of this Subcontractor Deed.

11. MORAL RIGHTS



- 11.1 For the purposes of this clause, the '**Specified Acts**' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Project Material, with or without attribution of authorship;
 - (b) supplementing the Project Material with any other Material; and
 - (c) using the Project Material in a different context to that originally envisaged, but does not include false attribution of authorship.
- 11.2 The Subcontractor must use its best endeavours to ensure that:
- (a) where there is no consent already in place, a written consent will be given by the author of any Project Material, other than Existing Material, to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
 - (b) where there is no consent already in place, a written consent will be given by the author of any Existing Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to the Commonwealth's licensed use of the Existing Material.
- 11.3 This clause survives expiration or early termination of this Subcontractor Deed.

12. ACKNOWLEDGEMENT AND PUBLICATIONS

- 12.1 The Subcontractor acknowledges that the Funds provided by the Participant under this Subcontractor Deed are Commonwealth funds and agrees to acknowledge the financial and other support of the Commonwealth and the Participant in all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Project or any products, processes or inventions developed as a result of the Project.
- 12.2 Where the Subcontractor has been provided with Funds to produce any publication, the Subcontractor must:
- (a) provide the Participant and the Commonwealth with draft copies of the proposed publication at least 4 weeks prior to publication and obtain the Participant's and the Commonwealth's written approval of the proposed publication; and
 - (b) on completion of the Project Period, provide the Participant and the Commonwealth with a minimum of 2 copies of the publication.
- 12.3 The Subcontractor must also provide the Participant and the Commonwealth with draft copies of any proposed publication (including any abstract, manuscript, conference paper, presentation, report or media release) which uses the Project Material, or part thereof, at least 4 weeks prior to publication and obtain the Commonwealth's written approval of the proposed publication.
- 12.4 In granting the approval under clauses 12.2(a) or 12.3, the Participant or the Commonwealth may impose any conditions, restrictions or directions that it considers appropriate in respect of the proposed publication and the Subcontractor must comply with any such conditions, restrictions or directions.
- 12.5 This clause 12 survives the expiration or early termination of this Subcontractor Deed for a period of seven years.

13. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 13.1 The Subcontractor is not by virtue of this Subcontractor Deed, or for any purpose, an employee, partner or agent of the Participant or of the Commonwealth, or invested with any power or authority to bind or represent the Participant or the Commonwealth.
- 13.2 The Subcontractor must not represent itself, and must use its best endeavours to ensure that the Subcontractor Personnel do not represent themselves, as being an officer, employee, partner or agent of the Participant or of the Commonwealth, or as otherwise able to bind or represent the Participant or the Commonwealth.

14. REPAYMENT OF FUNDS

- 14.1 If:
- (a) on the expiry or any early termination of this Subcontractor Deed, any Funds:
 - (i) remain Unspent; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Subcontractor (as reported to the Participant by the Subcontractor in any of the Financial Statements referred to in clause 6), be shown to the reasonable satisfaction of the Participant to have been spent or Committed in accordance with this Subcontractor Deed or the Principal Agreement; or
 - (b) at any time the Participant forms the reasonable opinion that any Funds have been used, spent or Committed by the Subcontractor other than in accordance with this Subcontractor Deed or the Principal Agreement,
- the Participant may by written notice to the Subcontractor require the Subcontractor to repay that part of the Funds, and the Subcontractor must repay to the Participant the amount specified in the notice, within 20 Business Days of the date of the notice.
- 14.2 If the Subcontractor fails to repay the Funds in accordance with a notice issued under clause 14.1:
- (a) the Subcontractor must pay the Participant Interest on the amount specified in the notice from the date it was due, for the period it remains unpaid; and
 - (b) the amount specified in the notice, and Interest owed under this clause will be recoverable by the Participant as a debt due to the Participant by the Subcontractor.
- 14.3 The Subcontractor acknowledges that Interest payable under clause 14.2(a) represents a reasonable pre-estimate of the loss incurred by the Participant or by the Commonwealth as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.
- 14.4 This clause survives the expiration or early termination of this Subcontractor Deed.

15. INDEMNITY - PARTICIPANT

- 15.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Subcontractor under or in connection with this Subcontractor Deed.
- 15.2 The Subcontractor agrees to indemnify the Participant, its officers, employees and agents from and against any:
- (a) loss or liability incurred by _____ the Participant;

- (b) loss of or damage to property of the Participant; or
 - (c) loss or expense incurred by the Participant in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Participant,
- arising from:
- (a) any act or omission by the Subcontractor or the Subcontractor Personnel in connection with this Subcontractor Deed, where there was fault (including, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
 - (b) any breach by the Subcontractor of its obligations or warranties under this Subcontractor Deed.
- 15.3 The Subcontractor's liability to indemnify the Participant under clause 15.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Participant contributed to the relevant liability, loss, damage, or expense.
- 15.4 The right of the Participant to be indemnified under this clause:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
 - (b) does not entitle the Participant to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 15.5 The Subcontractor agrees that the Participant will be taken to be acting as agent or trustee for and on behalf of its officers, employees and agents from time to time solely for the purpose of those officers, employees and agents being able to enforce this clause 15.
- 15.6 This clause survives the expiration or early termination of this Subcontractor Deed.

15A. INDEMNITY - COMMONWEALTH

- 15A.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Subcontractor under or in connection with the Principal Agreement.
- 15A.2 The Subcontractor agrees to indemnify the Commonwealth, its officers, employees and agents from and against any:
- (a) loss or liability incurred by the Commonwealth;
 - (b) loss of or damage to property of the Commonwealth; or
 - (c) loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,

arising from:

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

- 15A.3 The Subcontractor's liability to indemnify the Commonwealth under clause 15A.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant liability, loss, damage, or expense.
- 15A.4 The right of the Commonwealth to be indemnified under this clause:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
 - (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 15A.5 The Subcontractor agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of its officers, employees and agents from time to time solely for the purpose of those officers, employees and agents being able to enforce this clause 15A.
- 15A.6 This clause survives the expiration or early termination of this Subcontractor Deed.

16. INSURANCE

- 16.1 The Subcontractor warrants that it has taken out or will take out and maintain all appropriate types and amounts of insurance to cover the Subcontractor's obligations under this Subcontractor Deed, including those which survive its expiration or early termination, which insurance must include the types and corresponding amounts of insurance specified in Item J of the relevant schedule to the Principal Agreement.
- 16.2 The Subcontractor must, on request, promptly provide to the Participant any relevant insurance policies or certificates of currency for inspection.
- 16.3 This clause survives the expiration or early termination of this Subcontractor Deed.

17. CONFIDENTIALITY

- 17.1 The Subcontractor agrees not to disclose to any person other than the Participant any Confidential Information relating to this Subcontractor Deed or the Principal Agreement or the Project without prior approval in writing from the Participant.
- 17.2 The Participant may impose any conditions it considers appropriate when giving its approval under clause 17.1 and the Subcontractor agrees to comply with those conditions.
- 17.3 The Participant may at any time by notice in writing to the Subcontractor, require the Subcontractor to give, and to arrange for the Subcontractor Personnel to give, written undertakings, in a form required by the Participant, relating to the non-disclosure of Confidential Information.
- 17.4 If the Subcontractor receives a request under clause 17.3, it agrees to promptly arrange for all such undertakings to be given.
- 17.5 The obligations on the Subcontractor under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.
- 17.6 The Participant gives no undertaking to treat Subcontractor information, or this Subcontractor Deed, as confidential. The Subcontractor acknowledges that the Participant may disclose information relevant to this Subcontractor Deed, or this Subcontractor Deed itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure

on request to other Government Agencies, and
a request for information by Parliament (State or Federal) or a Parliamentary
Committee (State or Federal) or a State or Commonwealth Minister; or

- (d) for any other requirement of the Participant, including a requirement in the
Head Funding Agreement.

17.7 The obligations contained in this clause are in addition to those specified in clause 20
and will survive the expiration or early termination of this Subcontractor Deed.

18. ACCESS TO DOCUMENTS

18.1 In this clause, '**document**' and '**Commonwealth contract**' have the same meaning
as in the *Freedom of Information Act 1982* (Cth).

18.2 This clause only applies if this is a contract which complies with the description of
'**Commonwealth contract**'.

18.3 Where the Commonwealth has received a request for access to a document
created by or in the possession of, the Participant or the Subcontractor that relates
to the performance of this Subcontractor Deed or the Principal Agreement (and not
to the entry into this Subcontractor Deed or the Principal Agreement), the
Commonwealth may at any time by written notice require the Participant to provide
the document to the Commonwealth and the Participant must, at no additional
cost to the Commonwealth, promptly comply with the notice.

18.4 If the Participant receives a written notice from the Commonwealth under clause
18.3, the Subcontractor agrees to provide all assistance reasonably requested by
the Participant or by the Commonwealth to enable the Participant to comply with
the written notice.

19. FREEDOM OF INFORMATION REQUESTS

19.1 In the event that the Participant receives a request under the relevant State
Freedom of Information legislation for access to a document, information or
government information created by, or in the possession of, the Participant or any
subcontractor that relates to the performance of this Subcontractor Deed or the
Principal Agreement, the Participant must immediately consult with the
Commonwealth in relation to the request.

19.2 If the Participant receives a written request under clause 19.1, the Subcontractor
agrees to provide all assistance reasonably requested by the Participant to enable
the Participant to comply with the written notice.

20. PROTECTION OF PERSONAL INFORMATION

20.1 This clause applies only where the Subcontractor deals with Personal Information
when, and for the purpose of, performing this Subcontractor Deed.

20.2 Expressions defined in section 6 and 95B of the Privacy Act 1988 (Cth) (the 'Privacy
Act') have the same meaning as used in this clause.

20.3 The Subcontractor must:

- (a) only use or disclose Personal Information that the Subcontractor obtains in
performing this Subcontractor Deed for the purposes of this Subcontractor
Deed;
- (b) not to do anything that would breach an Australian Privacy Principle if it was
done by an agency;
- (c) notify individuals whose Personal Information the Subcontractor holds that
complaints about the Subcontractor's acts or practices may be investigated
by the Information Officer who may award compensation in certain
circumstances;

- (d) comply with:
 - (i) an Australian Privacy Principle or a Registered APP Code that applies to the Subcontractor unless this Subcontractor Deed requires the Subcontractor to do something inconsistent with the Australian Privacy Principle or Registered APP Code; and
 - (ii) any directions, guidelines, determinations or recommendations of the Information Officer to the extent that they are consistent with this clause;
 - (e) immediately notify the Participant if the Subcontractor becomes aware of an actual breach or possible breach of this clause by the Subcontractor or any of the Subcontractor's Personnel;
 - (f) ensure that Subcontractor Personnel who deal with personal information for the purposes of this Subcontractor Deed are aware of the Participant's obligations under clause 27 of the Principal Agreement;
 - (g) if the Subcontractor provides a health service to an individual it must:
 - (i) comply with the requirements in the Privacy Act regarding the use and disclosure of health information or other sensitive information about the individual to the extent those requirements apply to the Subcontractor;
 - (ii) disclose that health information and any other sensitive information to another Australian health service provider when the Participant directs the Subcontractor to do so; and
 - (iii) inform the individual as required by the Privacy Act and at the time the information is collected that the information may be disclosed to a new health service provider if required by the Participant.
- 20.4 The Participant may at any time by notice in writing to the Subcontractor require the Subcontractor to give, and to arrange for the Subcontractor Personnel to give, undertakings in writing, in a form required by the Participant, relating to the non-disclosure of Personal Information.
- 20.5 If the Subcontractor receives a request under clause 20.4, it agrees to promptly arrange for all such undertakings to be given.
- 20.6 The Subcontractor agrees to indemnify the Participant in respect of any loss, liability or expense suffered or incurred by the Participant which arises directly or indirectly from a breach of any of the obligations of the Subcontractor under this clause.
- 20.7 The Subcontractor's obligations under this clause are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to the Subcontractor but for the application of this clause.
- 20.8 This clause survives expiration or early termination of this Subcontractor Deed.

21. COMPLIANCE WITH LAWS AND POLICIES

- 21.1 The Subcontractor acknowledges that it may be subject to investigation by the Commonwealth Ombudsman in relation to the subject matter of this Subcontractor Deed.
- 21.2 The Subcontractor acknowledges and agrees that it will bear the cost of any investigation of its activities by the Commonwealth Ombudsman in connection with the subject matter of this Subcontractor Deed.

22. SUBCONTRACTOR WARRANTIES AND UNDERTAKINGS



- 22.1 The Subcontractor represents, warrants and undertakes to the Participant that:
- (a) it will promptly notify and fully disclose to the Participant in writing any event or occurrence actual or threatened arising during the term of this Subcontractor Deed which could have an adverse effect on the Subcontractor's ability to perform any of its obligations under this Subcontractor Deed;
 - (b) it has full power and authority to enter into, perform and observe its obligations under this Subcontractor Deed;
 - (c) the execution, delivery and performance of this Subcontractor Deed has been duly and validly authorised by the Subcontractor;
 - (d) the unconditional execution and delivery of, and compliance with its obligations by it under this Subcontractor Deed do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a government agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any agreement or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
 - (e) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Subcontractor which could have an adverse effect upon either the Subcontractor's capacity to perform its obligations under this Subcontractor Deed or the Subcontractor's reputation;
 - (f) it has not made any false declaration in respect of any current or past dealings with the Participant, the Commonwealth or any government agency, including in any tender or application process or in any agreement;
 - (g) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Participant, the Commonwealth or any government agency;
 - (h) it has, and will continue to have and to use, the skills, qualifications and experience, to perform the Project in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Subcontractor Deed; and
 - (i) it has and will continue to have the necessary resources, including financial resources, to perform the Project and will use those resources to perform the Project.
- 22.2 The Subcontractor acknowledges that the Participant in entering into this Subcontractor Deed is relying on the warranties and representations contained in this Subcontractor Deed.
- 22.3 Each representation and warranty survives the execution of this Subcontractor Deed.
- 23. NOTICES**
- 23.1 A party giving notice under this Subcontractor Deed must do so in writing that is:
- (a) directed to the party's address set out in this Subcontractor Deed and marked for the attention of the liaison officer; and

- (b) hand delivered or sent by pre-paid post or facsimile to that address.
- 23.2 A notice given in accordance with clause 23.1 is received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, on the third Business Day after the date of posting;
 - (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

Schedule 1**LIAISON OFFICERS**

(Clauses 6, 7 and 23)

The Participant's Liaison Officer

The Participant's Liaison Officer is the person holding, occupying or performing the duties of Principal Data Analyst. This position is currently occupied by John Bird available at:

Address: Department of Health L1, B Block, 189 Royal Street, East Perth WA 6004

Phone: (08) 9222 2010 or (08) 9222 2166

Fax: (08) 9222 0278

E-mail: wactn@health.wa.gov.au

Subcontractor Liaison Officer

The Subcontractor's Liaison Officer is
available at:

Address:

Phone:

Fax:

E-mail:

Schedule 2

That part of the Project to be undertaken by the Subcontractor under this Subcontractor Deed in support of the objectives and outcomes of the Program.

That part of the Project to be undertaken by the Subcontractor under this Subcontractor Deed in support of the objectives and outcomes of the Program.	Undertaking the evidence-based research to promote or enhance the use of simulated learning in clinical training in Western Australia as offered by the Subcontractor in the Subcontractor's Application Form Dated XXXXX YYYY etc.
Due date for completion of that Part of the Project by the Subcontractor.	15 th June 2016
The maximum amount of Funds to be paid by the Participant to the Subcontractor.	\$ Excluding any Goods and Services Tax that may apply

Executed by the parties as a Deed

Signed for and on behalf of the State of Western Australia by the Minister for Health through the Department of Health ABN 28 684 750 332 by its duly authorised delegate in the presence of:

Signature of signatory

← _____ ←
Signature of witness

Name and position of signatory

Name of witness

Date:

Date:

By signing this Subcontractor Deed the signatory warrants that he or she has the authority to bind the **State of Western Australia** by the Minister for Health through the Department of Health ABN 28 684 750 332

Signed for and on behalf of XXXYYY
ABN [redacted] by its duly authorised officers:

Signature of director

← _____ ←
Signature of director/secretary



Name of Director
Date:

Name of witness
Date:



Annexures

Agreement FA/2011/026, between Health Workforce Australia ABN 21 295 050 589 and the State of Western Australia by the Minister for Health through the Department of Health of WA ABN 28 684 750 332 in relation to the Simulated Learning Environments Program in Western Australia.

Deed of Variation 1

Deed of Variation 2

Deed of Variation 3

Deed of Variation 4