



Health Administration Corporation

and

**SVA Nominees Pty Ltd (ACN 616 235 753)
as trustee of the Resolve SBB Trust (ABN 65 228
690 068)**

("Organisation")

**DEED OF IMPLEMENTATION AGREEMENT FOR
RESOLVE SOCIAL BENEFIT BOND**

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EXPERT DETERMINATION PROCEDURE

Deed of Implementation Agreement

Parties

Health Administration Corporation a corporation sole constituted by section 9 of the Health Administration Act 1982 (NSW), ABN 45 100 538 161, of Level 11, 73 Miller Street, North Sydney, New South Wales ("**HAC**")

and **SVA Nominees Pty Ltd**, ACN 616 235 753, as trustee of the **Resolve SBB Trust**, ABN 65 228 690 068 (the "**Organisation**")

Background

- A. The NSW Government wishes to undertake a social impact investment to manage mental health hospitalisations and to assist and support individuals with mental health conditions in this State.
- B. RichmondPRA Limited (now trading as Flourish Australia) and Social Ventures Australia lodged a proposal to develop a project, involving a Social Benefit Bond (SBB) arrangement, to manage mental health hospitalisations in this State. A SBB, also known as a social impact bond, is a form of social impact investment that pays a return to private investors based on the achievement of agreed social outcomes. Under a SBB, an investor provides upfront funds to a partner (non-government organisation (NGO) or intermediary) to provide services to government that will, if successful, reduce future costs to government through improved social outcomes. Part of the savings to government is used to repay this investment and provide a reward payment commensurate with the outcomes achieved.
- C. The NSW Government, through HAC, and the Organisation have agreed, following collaborative work and negotiations during a joint development phase, to undertake the project and this Agreement will be a contract for outcomes supporting the project (including the SBB arrangement).

Operative provisions

PART A – INTERPRETATION AND GENERAL MATTERS

1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Admitted Patient" (also known as inpatient) is a person who requires admission to Hospital for same-day or overnight medical care or treatment. Admitted Patients can be inpatients in Hospital or in their home under a NSW Health "hospital in the home" program.

"Agency" means any government or non-government agency, other than the LHDs, having involvement with Eligible Persons in New South Wales.

"Aggregate Cap on Payments" is the amount specified as such in Schedule 1.

"Agreed Minimum Referrals" in respect of an Enrolment Period means the lesser of:

- (a) the aggregate of the number of Requested Referrals; and
(b) the number in the following table:

Enrolment Period	Minimum Referrals for each Enrolment Period
Enrolment Period 1	66

Enrolment Period 2	48
Enrolment Period 3	46
Enrolment Period 4	66
Enrolment Period 5	104
Enrolment Period 6	84
Enrolment Period 7	Subject to clause 14.3, 84

“Agreement” means this deed of agreement which includes the schedules and any other documents that are incorporated into this Agreement by reference (including, once agreed, the Operations Manual), as amended from time to time in accordance with the terms of this Agreement.

“Agreement Details” means the details specified in Schedule 1.

“Agreed Catchment Area” means the area or areas in relation to a LHD specified and/or described in the Operations Manual as the agreed catchment area or areas for the purposes of this Agreement.

“Approved Financial Institution” means a financial institution registered in Australia and operating as a bank, credit union or building society.

“Authorised Investments” means any investments which at their date of acquisition are:

- (a) cash and/or deposits with an Approved Financial Institution or certificates of deposit issued by an Approved Financial Institution;
- (b) debt instruments and other financial products issued in Australia and that are rated at least “A-” or “A3” by at least one Recognised CRA,

or such other investments approved by HAC in writing.

“Authorised Representative” of a Party or the Services Subcontractor means the person specified as such in the Agreement Details or such other person, or person holding any position, as may be advised by that Party/Services Subcontractor as being an Authorised Representative of that Party/Services Subcontractor for the purposes of this Agreement to the other Party/ies and the Services Subcontractor in writing from time to time.

“Authority” means any government, semi-government, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity and includes a person who, under a Law, has a right to impose a requirement, or whose consent is required, in connection with the Services, delivery of the Outcomes or the Project.

“Bond” means a debt obligation or series of debt obligations issued or to be issued by the Organisation on terms (unless otherwise agreed with HAC) consistent with the Bond Model to raise funds for the Organisation’s performance of this Agreement in the Bond Issue Amount.

“Bond Deed” means the deed or deed poll to be entered into by the Organisation constituting the Bond/s.

“Bond Investor” means an investor in any Bonds.

“Bond Issue Amount” means the total amount to be raised by the issue of the Bond (or if there are to be more than one Bond issues, by all of them), as stated in Schedule 1.

“Bond Issue Documents” means the Bond Deed and all other agreements, deeds or other instruments relating to the issue of the Bonds including, any relevant security documents issued to secure the Organisation’s indebtedness to Bond Investors, applicable pricing or other issue supplements or confirmations, the dealership or subscription agreement and any conflicts management protocols.

“Bond Model” means the commercial terms described as such in Schedule 1.

“Bond Payment” means, with respect to a Bond, a payment of principal, interest or any other amount that is due and payable on that Bond in accordance with the terms of the Bond.

“Bond Settlement Date” means the first date on which the Bonds are issued.

“Business Day” means a day other than a Saturday, Sunday or a public holiday in Sydney.

“Calculation Date” means each date at which the Organisation’s delivery of the Outcomes under the Agreement will be measured, being each of the following dates;

- (a) Calculation Date 1: 30 September 2018;
- (b) Calculation Date 2: 30 September 2019;
- (c) Calculation Date 3: 30 September 2020;
- (d) Calculation Date 4: 30 September 2021;
- (e) Calculation Date 5: 30 September 2022;
- (f) Calculation Date 6: 30 September 2023; and
- (g) Calculation Date 7: 30 September 2024.

“Change in Control” means, in respect of an entity, any event such that a change occurs in the ability or capacity to determine the outcome of decisions about that entity’s financial and operating policies and procedures of that entity.

“Claim” includes any suit, claim, action demand, proceeding, penalty, fine, order or adverse judgment (at law or in equity) under, arising out of, or in any way in connection with this Agreement.

“Commencement Date” means the date on which this Agreement is last executed by the parties.

“Condition Precedent” means a condition precedent specified in clause 4.1.

“Confidential Information” means the information referred to in clause 37.1.

“Consequential Loss” means any loss not arising naturally (according to the usual course of things) from the relevant breach, act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties at the time they entered the Agreement as the probable result of the relevant breach, act or omission, and includes loss of profit, or loss of anticipated savings.

“Constituent Documents” means the document/s by which the Organisation is constituted, controlled and/or managed.

“Control Group” means the group of individuals meeting the same eligibility criteria as the Intervention Group, but living outside of the Agreed Catchment Area, who are matched to the Intervention Group in accordance with the requirements and methodology set out in the Operations Manual.

“Corporations Act” means the Corporations Act 2001 (Cth).

“Cut Off Date” means the date by which a Condition Precedent must either be satisfied by the Organisation or waived by HAC, as specified in the applicable paragraph of clause 4.1.

“Direct Agreement” means the document of that name entered into between the HAC and the Services Subcontractor in connection with the Project, the terms of which are (unless otherwise agreed by the Government Parties) substantially in the form set out in Schedule 5.

“Eligible Persons” means those individuals who at the time of Enrolment have the following characteristics:

- (a) aged 18 years or greater but less than or equal to 64 years;
- (b) have in the 12 Month period immediately prior to Enrolment:
 - (i) been an Admitted Patient for an aggregate period of not less than 40 but not greater than 270 Mental Health Days; and
 - (ii) had at least one Mental Health Admission; and
- (c) reside within the Agreed Catchment Area;

but excludes individuals that:

- (d) are according to records held by NSW Health diagnosed with dementia;
- (e) are an Admitted Patient; or
- (f) have been previously Enrolled in the Intervention Group.

“Enrol”, “Enrolment” or “Enrolled” means in relation to the Intervention Group, inclusion in the Intervention Group during any Enrolment Period in accordance with the process set out in the Operations Manual.

“Enrolment Period” means each of the following periods:

- (a) Enrolment Period 1: the 3 Month period commencing on the Services Commencement Date;
- (b) Enrolment Period 2: the 3 Month period commencing on the day that is 3 Months after the Services Commencement Date;
- (c) Enrolment Period 3: the 6 Month period commencing on the day that is 6 Months after the Services Commencement Date;
- (d) Enrolment Period 4: the 12 Month period commencing on the first anniversary of the Services Commencement Date;
- (e) Enrolment Period 5: the 12 Month period commencing on the second anniversary of the Services Commencement Date;
- (f) Enrolment Period 6: the 12 Month period commencing on the third anniversary of the Services Commencement Date; and
- (g) Enrolment Period 7: the period commencing on the fourth anniversary of the Services Commencement Date and ending on 30 September 2022.

“First Security Deed” means the document entitled “First Security Deed (Resolve SBB)” entered into between HAC and the Organisation on or before the date of this Agreement in connection with the SBB Arrangement.

“Force Majeure Event” means:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, water damage, landslide, extreme heat conditions, explosion, fire, gas leak, power failure, power surges on any sites, unexpected electromagnetic interference caused by unlicensed or illegal transmission of electromagnetic energy or interference which is not reasonably foreseeable, or collapse of structures;

- (b) disruption of facilities or systems caused by the impact of an aircraft, vessel or vehicle;
- (c) strikes or other industrial actions, other than strikes or other industrial action primarily involving some or all of the Party's employees;
- (d) war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or disorder, rebellion, illegal acts or epidemic; or
- (e) embargo, power shortage or water shortage,

the consequence of which:

- (f) is beyond the control of and was not caused or contributed to by the Party which is seeking to rely on the event;
- (g) could not have been reasonably prevented or remedied by reasonable expenditure by the Party which is seeking to rely on the event; and
- (h) cannot be circumvented by the Party which is seeking to rely on the event through the use of other practicable means including alternate sources and work-around plans which provide a viable solution for the other Party, as determined by that other Party acting reasonably,

but does not include third party non-performance (including, to avoid doubt, non-performance by a Subcontractor) or the failure of an individual component or group of components (including hardware and software) used in the performance of the Services and/or delivery of the Outcomes.

"Government Material" means any Material owned by NSW Health or in which NSW Health has any Intellectual Property Rights (other than Materials licensed to HAC and/or a LHD by the Organisation under this Agreement) and which the Organisation in performing this Agreement may use.

"GST Law" means A New Tax System (Goods & Services Tax) Act 1999 (Cth), related legislation and any delegated legislation made pursuant to such legislation.

"Health Information" has the same meaning as in the Health Records and Information Privacy Act 2002 (NSW).

"Health Secretary" means the Secretary for the Ministry or his or her delegate or nominee from time to time.

"Hospital" means an institution in the NSW public hospital system at which relief is given to sick or injured people through the provision of care or treatment.

"Independent Certifier" means an independent body, acceptable to both Parties, that is suitably qualified and experienced to undertake the certification of payments and performance as required under this Agreement, appointed in accordance with clause 22.

"Independent Evaluator" means an independent body, acceptable to both Parties, that is suitably qualified and experienced to undertake an evaluation of the Organisation's and/or any Subcontractor's service delivery, appointed in accordance with clause 18.

"Insolvency Event" means, in respect of a person, the occurrence of any one or more of the following events in relation to that person:

- (a) application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed and, in the case of an application, the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of it being made;

- (c) an administrator (as defined in section 9 of the Corporations Act) or a controller (as defined in section 9 of the Corporations Act) is appointed to any of its assets and the appointment is not terminated within 21 days of it being made;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (e) it proposes a winding-up, dissolution or re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (g) it becomes, or states that it is, an insolvent under administration (as defined in section 9 of the Corporations Act) or action is taken which could result in that event and the proceeding is not dismissed within 21 days of the date action is taken;
- (h) an order is made, a resolution is passed, proposal put forward or any other action taken, in each case which is preparatory to or could result in any of the matters referred to in paragraphs (a) – (g) inclusive;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (k) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (l) any step is taken by a mortgagee to enter into possession of or dispose of the whole or any part of the other Party's assets or business; or
- (m) anything that occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

"Intellectual Property Rights" means all intellectual and industrial property rights throughout the world, whether created before or after the Commencement Date, including copyright, trade marks, designs, patents, semiconductor or circuit layout rights, know-how, or other proprietary rights, whether or not registered or not registrable and any rights to register such rights.

"Intervention Group" means all Eligible Persons that are Enrolled in accordance with the process set out in the Operations Manual including those who are not Referred, those who are Referred and to whom the Organisation does not provide Services and those Referred who refuse Services.

"Joint Working Group" means the joint working group established in accordance with the Operations Manual.

"Law" means all statutes, rules, regulations, proclamations, ordinances, by-laws, and applicable standards, policies and guidelines of an Authority whether federal, state or local or otherwise.

"LHD" or **"Local Health District"** means each of the Western NSW Local Health District or the Nepean Blue Mountains Local Health District and **"LHDs"** or **"Local Health Districts"** means both of them.

"Loss" includes any cost, expense (including legal expenses on an indemnity basis), loss, charges, fees payments (including payments made under indemnities), damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent.

“Management Deed” means any management agreement to be entered into between the Organisation and a third party manager engaged to manage the SBB Arrangement (including investor reporting, investor distribution and transaction cash flows).

“Material” includes a Record and software.

“Media and Communications Protocol” means the media and communications protocol in connection with this Agreement, as agreed by the parties in consultation with the Services Subcontractor and documented in the Operations Manual from time to time.

“Mental Health Admission” is where a person has been an Admitted Patient for the primary purpose or treatment of a mental health disorder by a specialist mental health service.

“Mental Health Days” are the days that a person has been an Admitted Patient for a Mental Health Admission during the period commencing on the date that the person has been Admitted to hospital and ending on the date that the person is separated from the Hospital. Where a person is admitted and separated on the same day, this will be counted as one Mental Health Day.

“Minister” means the Minister for Health or his or her delegate or nominee from time to time.

“Ministry” means the Ministry of Health.

“Month” means a calendar month.

“Moral Rights” means the rights of integrity and rights of attribution of authorship and performership and other rights of a similar nature which now exists or which may exist in the future, including moral rights under Part IX of the Copyright Act 1968 (Cth) and performers protection under Part XIA of the Copyright Act 1968 (Cth).

“NSW Health” refers to anybody or organisation under the control and direction of the Minister or the Health Secretary including, for the avoidance of doubt, HAC and the LHDs.

“NWAU” or “National Weighted Activity Unit” refers to a single “currency” that expresses relative resource use for services funded on an activity basis. It provides a way of comparing and valuing public hospital admissions, emergency department presentations or non-admitted patients service events. For the purposes of this Agreement, NWAU, at any time, means the “National Weighted Activity Unit” as determined by the Independent Hospital Pricing Authority (IHPA) and applicable at that time or, where the IHPA (or a successor) no longer determines NWAU or the basis for such determinations is materially changed, an equivalent State measure of health services activity, as adopted by the Ministry, for the purposes of the NSW public health system and advised to the Organisation.

“NWAU Cumulative Reduction” has the same meaning as given in Schedule 3.

“Operations Manual” means the operations manual agreed by the Parties in accordance with clause 5 as amended from time to time in accordance with this Agreement.

“Operational Matters” means any action, step, matter or thing necessary or incidental to the day-to-day provision, management and administration of the Services.

“Outcome” means a reduction in the NWAU for the Intervention Group compared to the Control Group, determined in accordance with the provisions of Schedule 3.

“Outcome Payments” means the payment/s specified as such in Schedule 3.

“Party” means either HAC or the Organisation and **“Parties”** means both of them.

“Permitted Dealing” means any assignment, encumbrance, novation or other transfer or dealing with any right or obligation under this Agreement which arises from or under the SBB Arrangement in respect of the Trust in accordance with the terms of the Transaction Documents (including in connection with the grant of the Security) or such other assignment, encumbrance, novation or other transfer or dealing as approved by HAC in writing.

“Personal Information” has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

“Personnel” of a party means the officers, employees, agents, volunteers, contractors and Subcontractors of, respectively, that party.

“Prescribed Rate” means the applicable total rate of interest as determined under s. 22 of the Taxation Administration Act 1996 (NSW) and published quarterly on the website of the NSW Office of State Revenue (or in any replacement publication/at any replacement website as may be notified from time to time).

“Priority and Co-ordination Deed” means the document of that name entered into between the HAC, the Bond Security Trustee (named therein) and the Organisation in connection with the SBB Arrangement.

“Privacy Legislation” means:

- (a) the Privacy and Personal Information Protection Act 1998 (NSW);
- (b) the Health Records and Information Privacy Act 2002 (NSW);
- (c) the Privacy Act 1988 (Cth);
- (d) any legislation (to the extent that such legislation applies to NSW Health or the Organisation, or any other recipient of Personal Information and/or Health Information) from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia);
 - (ii) non-Australian jurisdiction (to the extent that NSW Health or the Organisation is subject to the laws of that jurisdiction in respect of any Personal Information and/or Health Information),
 affecting privacy, Personal Information, Health Information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

“Privacy Principles” means any or all of:

- (a) the information and protection principles contained in sections 8 to 19 of the Privacy and Personal Information Protection Act 1998 (NSW); and
- (b) health privacy principles contained in Schedule 1 to the Health Records and Information Privacy Act 2002 (NSW);

and includes any amendment or replacement of these principles from time to time.

“Project” means the social outcomes project to achieve the Objectives set out in clause 3.1 to be undertaken by the Parties on the terms of this Agreement and the other Transaction Documents, and includes the SBB Arrangement.

“Project Account” means the account opened by the Organisation with an Australian financial institution in the name of the Organisation and designated by notice from the Organisation to the LHDs as the account for the Project.

“Project Funds” means the funds raised, or otherwise earned, by the Organisation in connection with the Project (including the Bond Issue Amount, the Standing Charge, interest and other earnings).

“Recognised CRA” means:

- (a) S&P Global Ratings Inc., or any of its subsidiaries or successors;
- (b) Moody's Investors Service, Inc., or any of its subsidiaries or successors;
- (c) Fitch Ratings Inc., or any of its subsidiaries or successors; and/or

(d) any other internationally recognised ratings agency approved by the LHDs.

“Record” means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

“Referred” or “Referral” means in relation to the Intervention Group, referred to the Services Subcontractor during any Enrolment Period in accordance with the process set out in the Operations Manual. For the avoidance of doubt, if an Eligible Person has been contacted by a LHD but does not agree to be Referred to the Services Subcontractor that Eligible Person will still be Enrolled in the Intervention Group.

“Relevant Obligations” means any Law, statutory duty or requirement in respect of any Eligible Person including any duty of care.

“Remaining Standing Charge” means, at any point in time, the amount calculated using the formula specified in Schedule 3.

“Requested Referrals” means the number of Referrals in an Enrolment Period requested by the Services Subcontractor in accordance with the process set out in the Operations Manual.

“Resolve Centre” means a centre which is established by or on behalf of the Organisation in accordance with clause 15 of this Agreement and operated and maintained by the Organisation, or on its behalf, for the purposes of delivering the Outcomes under this Agreement.

“SBB” means a social benefit bonds issuance.

“SBB Arrangement” means the SBB arrangement documented in this Agreement and the other Transaction Documents and any other legal transaction documentation associated with any of these.

“Security” means the first ranking charge taken over the collateral described therein by the HAC pursuant to the First Security Deed and in connection with the SBB Arrangement.

“Security Documents” means the First Security Deed and the Priority and Co-ordination Deed.

“Service Delivery Material” means any Material, whether created on, before or after the Commencement Date, owned, used and/or applied by the Organisation and/or its Subcontractors in delivery of the Services under this Agreement (including Material used and/or applied in connection with the Organisation's and/or any Subcontractor's service delivery model).

“Services” means:

- (a) the services necessary to deliver the Outcomes in accordance with this Agreement (including the Operations Manual) and all statutory and other legal requirements;
- (b) the services that are otherwise necessary or incidental to, or that may be required for, the proper performance of this Agreement in accordance with its terms including any services related to transition-in; and
- (c) Transition-Out Services.

“Services Commencement Date” means subject to clause 4, 1 October 2017 or such other date as agreed by the Parties in writing, being the date from which the Services Subcontractor will request Referrals.

“Services Subcontract” means the subcontract of the Services by the Organisation to the Services Subcontractor, the terms of which are (unless otherwise agreed with HAC) consistent with the Services Subcontract Agreed Scope.

“Services Subcontract Agreed Scope” means the terms listed as such in Schedule 1.

"Services Subcontractor" means RichmondPRA Limited ACN 001 280 628 trading as Flourish Australia, or any other person approved by HAC from time to time.

"Standing Charge" means the amount specified as such in Schedule 3.

"State" means the Crown in right of the State of New South Wales.

"Subcontractor" means a person, entity or organisation engaged by the Organisation in any capacity whatsoever, either directly or through another person, to perform all or part of the Services and includes the Services Subcontractor and any subcontractor of the Services Subcontractor but does not include any employee or volunteer of the Organisation (and, to avoid doubt, does not include any person appointed as a manager of the Organisation).

"Taxes" means taxes, excluding income tax, GST, sales tax and capital gains tax, but including charges, withholding taxes, levies imposts, duties (including stamp and customs duty) excise, and other similar taxes imposed by any taxing authority in any jurisdiction in Australia or elsewhere together with any related interest, penalties, fines, expense or other statutory charge in respect of the supplies contemplated under this Agreement. It also includes taxes which are replacement taxes for the taxes referred to in this definition.

"Term" means the duration of this Agreement as specified in Schedule 1 or until the date on which this Agreement is terminated, whichever occurs first.

"Transaction Documents" means:

- (a) this Agreement;
- (b) the Management Deed;
- (b) each Bond Issue Document;
- (c) the Security Documents;
- (d) the Services Subcontract;
- (e) the Direct Agreement,

and each other document or instrument agreed by the parties to be a Transaction Document.

"Transition-Out Period" has the meaning given to it by clause 32.

"Transition-Out Plan" means the plan developed in accordance with clause 32.

"Transition-Out Services" means the services to be provided by the Organisation in accordance with clause 32.3.

"Trust" means the trust named the "Resolve SBB Trust" established by, and subject to the terms of, the Trust Deed.

"Trust Assets" means, in relation to the Trust, all the Organisation's rights, property and undertaking which are the subject of the Trust:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

"Trust Deed" means the trust deed entitled Master Trust Deed (SVA Impact Investments) dated 9 January 2016 between SVA Nominees Pty Ltd, ACN 616 235 753, Social Ventures Australia Limited, ACN 100 487 572 and another, together with the Notice of Creation of Trust dated 27 March 2017 made by SVA Nominees Pty Ltd ACN 616 235 753 as trustee of the Trust and relating to the Trust.

1.2 Except where the context otherwise requires:

- (a) **References to legislation.** A reference to a statute, regulation, ordinance or by-law ("**law**") will be deemed to extend to include a reference to all statutes, regulations,

ordinances or by-laws amending, consolidating or replacing that law from time to time.

- (b) **Reconstitution of a person.** A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (c) **Time limits and events.** Where any time limit or event pursuant to this Agreement falls or occurs on a non-Business Day then that time limit shall be deemed to have expired or occurred (as applicable) on the next Business Day.
- (d) **Grammatical forms.** Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.
- (e) **Singular and gender forms.** The singular includes the plural and vice versa and words importing gender include the other gender.
- (f) **Rules of construction.** No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it.
- (g) **Actions by HAC.** Where there occurs a reference to the doing of anything by HAC including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of HAC.
- (h) **Headings.** The headings and index in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (i) **Reasonableness.** Where a Party is required to act reasonably in the performance of this Agreement that shall be read as a requirement to act as would a party in the position of that Party which is acting reasonably in its own best interests.
- (j) **No limitation.** The words "including", "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (k) **References to groups.** A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (l) **References to persons.** Persons will be taken to include any natural or legal person.
- (m) **References to currency.** All references to currency or dollars are references to Australian dollars.
- (n) **References to good faith.** Where a Party is required to act in good faith in the performance of this Agreement that will be read as a requirement to act:
 - (i) honestly;
 - (ii) reasonably, having regard to the terms of this Agreement; and

- (iii) co-operatively, by doing everything properly and reasonably within the control of that Party to perform its or their obligations under this Agreement.
- (n) **References to documents.** A reference to a document is to that document as amended or novated from time to time (in accordance with any requirements of this Agreement, if applicable including with any required consent of HAC).

2. Administration of this Agreement by NSW Health

Nature of the Agreement between HAC and the Organisation

- 2.1 This Agreement describes the terms and conditions between HAC (representing the LHDs) and the Organisation under which the Organisation agrees with HAC to perform the Services with the aim of achieving the Outcomes for the LHDs in accordance with and subject to the terms of this Agreement.

Role of HAC

- 2.2 HAC enters into this Agreement:

- (a) as agent for the LHDs;
- (b) to provide assistance to and facilitate the LHDs acquiring the Services from the Organisation;
- (c) to monitor the delivery of the Services by the Organisation under this Agreement to the LHDs; and
- (d) to provide the Organisation with a commitment in relation to:
 - (i) Agreed Minimum Referrals; and
 - (ii) payments of the Standing Charge and Outcome Payments,
 subject to and in accordance with this Agreement.

- 2.3 For the purpose of ensuring the productive and efficient relationship between HAC and the Organisation under this Agreement, HAC may from time to time, nominate a natural person in an LHD to be its representative who will:

- (a) exercise the powers, duties, discretions and authorities as are:
 - (i) delegated by HAC to be exercised by its representative as agent for HAC;
 - (ii) expressed in this Agreement to be exercised by HAC; and
- (b) have the full power and authority, subject to the powers of delegation by HAC, to act for and on behalf of and to bind HAC under this Agreement (and communications by it may be relied on by the Organisation and/or its Subcontractors as a communication made by HAC).

Role of LHDs

- 2.4 The parties acknowledge and agree that the Operations Manual will set out, amongst other things, the key roles, responsibilities, entitlements and obligations of, or that are available to or are to be performed by, the LHDs under and in connection with this Agreement and the acquisition of the Services by the LHDs from the Organisation.

Information sharing between HAC and LHDs

- 2.5 The Organisation agrees and consents to HAC and the LHDs freely sharing information and documents (including any communications and/or correspondence) in respect of, or in connection with, this Agreement.

3. Project Parameters

Objectives

- 3.1 HAC and the Organisation acknowledge and agree that the predominant objective of the parties in entering this Agreement is:
- (a) through the Resolve SBB, to raise funds for, and otherwise assist and support, individuals with mental health conditions in New South Wales; and
 - (b) for the Outcomes to further an improvement of the economic, personal and social circumstances of individuals with mental health conditions in New South Wales.
- 3.2 The Organisation acknowledges that the HAC intends that:
- (a) this Agreement supports a successful Project and SBB Arrangement; and
 - (b) the Outcomes are achieved to the benefit of the NSW public health system, community and the NSW Government.

Adherence to Objectives

- 3.3 Each Party must, in accordance with and subject to the provisions of this Agreement, perform its obligations under this Agreement having regard to and with the aim of satisfying the objectives referred to in clause 3.1.

Outcomes and objectives

- 3.4 For the avoidance of doubt:
- (a) any failure by the Organisation to deliver or achieve any Outcomes, or to satisfy or achieve the objectives set out in clause 3.1 or 3.2; or
 - (b) any finding made in connection with an Annual Review undertaken in accordance with clause 18 that any Outcomes have not been delivered or achieved, or that the objectives set out in clause 3.1 or 3.2 have not been satisfied or achieved,
- in each case, provided that the terms of this Agreement have been complied with by the Organisation, will not of itself constitute a breach by the Organisation of this Agreement.

PART B – PRELIMINARY MATTERS

4. Conditions Precedent

Conditions Precedent

- 4.1 Subject to clauses 4.2 and 4.3 the obligations of the parties under this Agreement (other than under clauses 4, 5, 6, 8.1, 8.2, 8.4(e)(i), 8.4(e)(ii), 8.4(f), 8.4(g), 20.1(c), 20.1(e), 20.1(f), 20.2, 20.3, 20.4, 20.6, 20.7, 20.8, 33, 35, 36, 37, 38 and 43, which come into effect

on the Commencement Date) do not come into force until satisfaction, or waiver by HAC of the following Conditions Precedent on or before the applicable Cut Off Date:

- (a) on or before the date that is 1 Month after the Commencement Date:
 - (i) receipt by HAC of a legal opinion from lawyers for the Organisation substantially in the form set out in part A of Schedule 6;
 - (ii) the parties are satisfied with the arrangements for the establishment and operation of the SBB Arrangement (including, without limitation, as to tax matters); and
 - (iii) the parties have agreed and finalised in writing the financial model forming the basis of the payments to be made under this Agreement.

- (b) on or before the date that is 2 Months after the Commencement Date:
 - (i) the parties have agreed and finalised the Operations Manual in accordance with clause 5;
 - (ii) the parties have agreed the terms of:
 - A. all Transaction Documents;
 - B. the legal disclaimers to be included in any information memorandum, term sheets, issue confirmation or other marketing materials relating to the offer and issue of the Bonds (for which materials HAC expressly not responsible); and
 - C. the terms of any other legal agreement in connection with the Project, not otherwise dealt with in these Conditions Precedent, to which the Organisation will be a Party.

- (c) on or before the date that is 3 Months after the Commencement Date, receipt by HAC of:
 - (i) a certified copy of each Bond Issue Document;
 - (ii) a legal opinion from the lawyers of the Organisation substantially in the form set out in part B of Schedule 6; and
 - (iii) a copy of each duly executed document (other than the Bond Issue Documents) agreed under clause 4.1(b)(ii).

- (d) on or before the date that is 5 Months after the Commencement Date:
 - (i) receipt by HAC of:
 - A. written confirmation from the Organisation that the Bonds have been fully subscribed in the Bond Issue Amount; and
 - B. evidence of insurances as required under this Agreement;
 - (ii) the Parties have agreed the geographic location for each Resolve Centre; and
 - (iii) the Parties have agreed the terms of reference for the:

- A. Independent Certifier; and
- B. Independent Evaluator.

Satisfaction or waiver of Conditions Precedent

- 4.2 The Organisation must use all reasonable endeavours to satisfy each of the Conditions Precedent on or before the applicable Cut Off Date. For the purposes of clauses 4.1(b)(ii), the Organisation must provide to HAC the relevant documents for agreement by no later than 10 Business Days prior to the relevant Cut Off Date.
- 4.3 Each Party agrees to act in good faith and provide the other Party with reasonable assistance, including reviewing all documentation provided to it in relation to any Condition Precedent, on a timely basis during the period from the Commencement Date until the earlier of:
- (a) waiver or satisfaction of the Conditions Precedent; or
 - (b) termination of this Agreement pursuant to clause 4.7.
- 4.4 The Organisation must promptly notify HAC in writing if it considers that any Condition Precedent is satisfied or becomes incapable of being satisfied. At or around each Cut Off Date, the Organisation shall provide a confirmation to HAC in the form set out in Schedule 7 that confirms which Conditions Precedent have been satisfied as at that Cut Off Date.
- 4.5 Only HAC may waive a Condition Precedent (although, HAC may only waive Condition Precedents clause 4.1(b)(i) and clause 4.1(d)(i)(A) with the written agreement of the Organisation). HAC may in its absolute discretion extend any Cut Off Date for a Condition Precedent (including where the Organisation has requested an extension and HAC are satisfied that there are reasonable grounds for such request) provided that any new Cut Off Date must not extend beyond a date that is 6 Months after the Commencement Date.
- 4.6 Clauses 4.2, 4.3, 4.4 and 4.5 do not impose any obligation on HAC to exercise discretion, or give any approval, in any way.

Termination for non-fulfilment of Conditions Precedent

- 4.7 If any Condition Precedent is not waived or satisfied on or before the applicable Cut Off Date, either Party may, by giving written notice to the other Party within 15 Business Days following the relevant Cut Off Date, terminate this Agreement without liability.
- 4.8 If either Party terminates this Agreement under clause 4.7, this Agreement has no further effect and neither Party is liable to the other for any loss or damage arising from or in connection with such termination provided that nothing in this clause 4.8 shall affect the right of either Party to recover loss or damage suffered in connection with a breach of this Agreement by the other Party before such termination.

5. Operations Manual

- 5.1 The Parties will act in good faith to agree the Operations Manual, in consultation with the Services Subcontractor and LHDs, by the Cut Off Date, with such document to at least cover the matters outlined in Schedule 2 and be consistent with this Agreement.
- 5.2 Once agreed, the Operations Manual is incorporated into this Agreement by reference and forms part of this Agreement.
- 5.3 The Parties acknowledge that the Operations Manual is:

- (a) designed to assist them in the day to day operation of this Agreement;
- (b) intended to be a convenient repository of elements of this Agreement (and other Material that may bind the Parties by Agreement or as a consequence of this Agreement or may simply be of assistance in the operation of this Agreement) that are considered to have day to day importance; and
- (c) agreed in accordance with clause 5.1, the Operations Manual will be subject to regular review, including as part of the Annual Review and may be amended or varied by agreement of the Parties from time to time, following consultation with the Services Subcontractor, in writing.

6. Variations to agreed agreements

Subject to clause 2.3 any agreements to which the Organisation is a party that are agreed by HAC under this Agreement (including, to avoid doubt, the Services Subcontract) must not be amended (other than to correct minor or typographical errors) without the prior written consent of HAC, such consent not to be unreasonably withheld or delayed, with HAC to act expeditiously with respect to any request for such consent.

7. Application of Organisation funds

Unless and to the extent otherwise agreed, the Organisation must:

- (a) only invest the Project Funds in Authorised Investments; and
- (b) only use the Project Funds for payments permitted under the Transaction Documents (including under the Services Subcontract) or in connection with transactions contemplated by them (including under the financial model agreed by the Parties in accordance with clause 4.1(a)(iii)), making required Bond Payments and such other payments as agreed with HAC in writing.

8. Representations and warranties

General warranties

8.1 The Organisation represents and warrants to HAC:

- (a) that it has the power and the authority to enter into and observe its obligations under this Agreement; and
- (b) on the Commencement Date, that no circumstances, (including of a commercial, technical or financial nature), proceedings or obligations exist or are threatened which have had or may have a material adverse effect on the Organisation or its ability to perform any of its obligations under this Agreement.

8.2 HAC represents and warrants to the Organisation that:

- (a) it has power and authority to enter into and observe its obligations under this Agreement; and
- (b) the execution, delivery and performance of this Agreement (including the procurement of the Services by the LHDs) will not contravene any Law.

8.3 The representations and warranties given in clauses 8.1(a) and 8.2 are made on the Commencement Date and are taken to be repeated on the Bond Settlement Date and on each anniversary of the Commencement Date, with reference to the facts and circumstances then subsisting.

Warranties relating to the Services and delivery of Outcomes

- 8.4 Subject to clause 8.5, the Organisation represents, warrants and undertakes to HAC that:
- (a) it will use all reasonable endeavours to achieve the Outcomes specified under this Agreement;
 - (b) it will procure provision of the Services in accordance with this Agreement, including the Operations Manual, with due care, skill and diligence and in a professional manner, using appropriately trained, knowledgeable and experienced Personnel;
 - (c) any Materials supplied by it in connection with the Services (including all documentation and reports) will be fit for the purpose for which they are supplied;
 - (d) it will procure provision of the Services in accordance with all relevant Laws and it will not cause the Minister, the State, the Health Secretary, the Ministry, HAC or the LHDs to breach any such Laws;
 - (e) to the best of its knowledge and belief, each of:
 - (i) the Services;
 - (ii) the Organisation's Materials;
 - (iii) any other Materials (including any Service Delivery Material) created by or on behalf of the Organisation or used by it in the course of performing this Agreement;

will not infringe Intellectual Property Rights of any person or where there may be an infringement appropriate prior approval has been obtained from the holder of the Intellectual Property Rights;
 - (f) it has, or will obtain prior to the Services Commencement Date, all licences, permits, authorisations, consents or approvals required in connection with the provision of the Services and delivery of the Outcomes in accordance with this Agreement; and
 - (g) no Insolvency Event has occurred and remains current in respect of the Organisation or (to the best of its knowledge and belief) the Services Subcontractor, and there are no circumstances which could give rise to an Insolvency Event in respect of the Organisation or (to the best of its knowledge and belief) the Services Subcontractor.

8.5 The representations, warranties and undertakings in:

- (a) clauses 8.4(a), (b), (c), (d) and (e) are made on a continuing basis, throughout the Term and any Transition-Out Period; and
- (b) clauses 8.4(f) and (g) are made on the Commencement Date and are taken to be repeated on the Bond Settlement Date and on each anniversary of the Commencement Date, with reference to the facts and circumstances then subsisting.

Additional representations and warranties of Organisation

8.6 The Organisation represents and warrants to HAC that:

- (a) it has power to enter into the Trust Deed and the Transaction Documents to which it is a party and comply with its obligations under them;

- (b) except as expressly provided in the Trust Deed or under any statute or at law, the Organisation has a right to be fully indemnified out of the Trust Assets in relation to any liability of the Organisation arising under any Transaction Document to which the Organisation is a party;
- (c) the Trust Deed and the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene:
 - (i) its Constituent Documents, or cause a limitation on its powers or, if applicable, the powers of its directors to be exceeded; or
 - (ii) any law or obligation by which it is bound or to which any of its assets are subject;
- (d) it has in full force and effect the authorisations necessary for it to enter into the Trust Deed and the Transaction Documents to which it is a party, to exercise its rights and comply with its obligations under them and to allow them to be enforced;
- (e) its obligations under the Trust Deed and the Transaction Documents are valid and binding, and are enforceable against it in accordance with their terms subject to any necessary stamping and registration requirements, applicable equitable principles and laws relating to insolvency and affecting creditors' rights generally;
- (f) it is the only trustee of the Trust;
- (g) no action has been taken or proposed to remove it as trustee of the Trust;
- (h) it has no notice that action has been taken or proposed to terminate the Trust;
- (i) it is not in default under the Trust Deed; and
- (j) it has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted.

Additional obligations of Organisation as trustee

8.7 The Organisation must:

- (a) not commingle the Trust Assets with any of its other assets (including the trust assets of any other trust) or the assets of any other person;
- (b) comply with its obligations under the Trust Deed and the Transaction Documents to which it is a party;
- (c) without HAC's consent, not amend the Trust Deed or any Transaction Documents to which it is a party;
- (d) obtain, renew on time and comply with the terms of each authorisation necessary for it to enter into the Transaction Documents to which it is a party, comply with its obligations under them and allow them to be enforced; or
- (e) not take any action (other than a Permitted Dealing) to prejudice the Trustee's right of indemnity against, and equitable lien over, the Trust Assets.

9. Compliance with Law, guidelines, holding of rights, approvals and consents

- 9.1 The Organisation must, and must procure that all Subcontractors:
- (a) comply with all Laws applicable to the Services, delivery of the Outcomes and the performance of the Organisation's obligations under this Agreement; and
 - (b) hold all rights, obtain and maintain all approvals and consent required by applicable Laws to provide the Services and deliver the Outcomes and otherwise perform its obligations under this Agreement.
- 9.2 Unless otherwise expressly provided under this Agreement, the Organisation (and any Subcontractor) must continue to comply with the requirements of clause 9.1 throughout the Term, notwithstanding any changes to applicable Laws.
- 9.3 The Organisation must not, and must procure that its Subcontractors do not, through any negligent or unlawful act or omission of the Organisation/Subcontractor or its Personnel, or through any breach of this Agreement, cause the Minister, the State, the Health Secretary, the Ministry, HAC or the LHDs to breach any Relevant Obligation.
- 9.4 Without limiting this clause 9, the Organisation must, and must procure that all Subcontractors, comply with all government policies and guidelines relevant to this Agreement and applicable to the performance of the Services and delivery of the Outcomes as advised by HAC and/or the LHDs from time to time and set out in the Operations Manual including any changes to these policies and guidelines.

10. Subcontracts

Entry into subcontracts

- 10.1 Subject to clause 10.4, the Organisation must not subcontract this Agreement or any part of it without HAC's prior written consent, which consent must not be unreasonably withheld but may be given subject to conditions.
- 10.2 HAC must expeditiously consider, and promptly notify the Organisation of its determination in respect of, any request made under clause 10.1.
- 10.3 The Organisation is not relieved of any of its liabilities or obligations under this Agreement as a result of any subcontract of all or any part of this Agreement or approval of any subcontract by HAC and the Organisation is at all times responsible for the performance of all Subcontractors.

Services Subcontract

- 10.4 The parties acknowledge that the Organisation will procure performance of the Services through the Services Subcontract, and that the Services Subcontractor may itself procure performance of part of the Services by subcontracting them.
- 10.5 The Organisation must:
- (a) provide HAC with a copy of any notice issued by either party under the Services Subcontract, immediately upon its issue or receipt by the Organisation; and
 - (b) not terminate the Services Subcontract without giving HAC at least one week's prior notice of its intention to do so and the basis for termination.

Organisation obligations in respect of subcontracts

- 10.6 The Organisation must:
- (a) immediately provide HAC, on request, with a copy of each duly executed subcontract of all or part of this Agreement;
 - (b) comply with and prudently enforce as necessary any subcontract of all or part of this Agreement;
 - (c) ensure that any Subcontractor complies with the subcontract to which it is a party;
 - (d) ensure that any Subcontractor complies with clauses 9 and 11 of this Agreement;
 - (e) notify HAC of any failure by a Subcontractor to comply with clause 9 of this Agreement or of any dispute arising under a subcontract, promptly after it has become aware of such failure or dispute;
 - (f) other than a Permitted Dealing, not vary, novate, or assign rights under, a subcontract without HAC's prior consent; and
 - (g) ensure that any Subcontractor has sufficient experience, expertise and ability to perform its obligations under the subcontract to which the Subcontractor is a party; and
 - (h) ensure that the Subcontractor holds all such insurance policies as required by clause 21 of this Agreement.

Notification of alleged Services Subcontractor compliance failures by HAC

- 10.7 The HAC will promptly notify the Organisation of any alleged failure of the Services Subcontractor to comply with the equivalent provisions in the Services Subcontract to clauses 9 or 11 as soon as HAC becomes aware of any such allegation. However, a notification or failure to notify by HAC under this clause 10.7 will not affect the Organisation's responsibility to ensure compliance with clauses 9 or 11 or its liability for any breach of those provisions.

11. Workforce of Organisation

Employee Requirements

- 11.1 The Organisation:
- (a) must ensure that each Personnel of the Organisation and any Subcontractor engaged in provision of the Services or otherwise performing services in relation to this Agreement are appropriately qualified, certified, skilled and experienced to perform their assigned tasks;
 - (b) must carry out such investigations of a prospective Personnel's suitability as are legally required or otherwise appropriate given the nature of the relevant Personnel's assigned tasks;
 - (c) is, at all times, responsible for ensuring that all such Personnel engaged to provide the Services or otherwise performing services in relation to this Agreement are remunerated, receive such benefits and allowances and/or are employed subject to such conditions to which they be or become lawfully entitled to as a result of their engagement in providing such services; and

- (d) must procure that each Subcontractor complies with the same obligations and requirements as required by the Organisation under this clause 11.
- 11.2 Without limiting clauses 9 and 11.1, the Organisation must, and must ensure that its Subcontractors, comply with:
- (a) all Relevant Obligations as may apply from time to time; and
- (b) any particular requirements and processes in relation to working with Eligible Persons set out in the Operations Manual.

HAC checks

- 11.3 Notwithstanding clauses 11.1 and 11.2, HAC may carry out such searches and enquiries as it considers reasonable, to ensure the Organisation's and each Subcontractor's compliance with this clause 11 and with the equivalent provision of the relevant subcontract (as applicable).
- 11.4 The Organisation must procure, and provide to HAC, the consent of each Personnel or prospective Personnel of the Organisation or of any Subcontractor who is otherwise likely to have contact with Eligible Persons, to the making of any of the searches or enquiries referred to in clause 11.3.
- 11.5 Without limiting the Organisation's obligations under clauses 11.1 and 11.2, if, in relation to any individual engaged by the Organisation or any Subcontractor:
- (a) HAC's searches, enquiries or checks reveal information indicating that an individual does not comply with the requirements of this Agreement; or
- (b) HAC considers that an individual is unsuitable or unqualified to perform the activities assigned to that individual;

HAC must consult with the Organisation as to whether it is appropriate and lawful to discontinue engagement of that individual in connection with performance of this Agreement. HAC and the Organisation, both acting reasonably and in a timely manner, will agree and implement appropriate measures following such consultation.

Independent Contractors and Subcontractors

- 11.6 The Organisation and all Subcontractors are independent contractors and nothing contained in this Agreement will be construed as constituting any relationship with HAC other than, with respect to the Organisation, that of principal and independent contractor. Nor will anything in this Agreement be construed as creating any relationship whatsoever between HAC and the employees of the Organisation or any Subcontractor.
- 11.7 Neither the Organisation nor any Subcontractors nor any of their employees, are or will be deemed, by virtue of this Agreement or any agreement between the Organisation and any Subcontractor, to be employees of HAC.
- 11.8 The Organisation indemnifies, and must procure that any Subcontractor indemnifies and at all times holds HAC fully and effectively indemnified against any and all Claims and Losses arising directly or indirectly out of or in connection with any Claim that HAC is the employer of the Organisation's employees or any Subcontractor's employees but, subject to clause 20.3, excluding Consequential Loss. The Organisation's and each Subcontractor's liability to indemnify HAC under this clause 11.8 will be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of HAC, or its Personnel caused or contributed to the Claim or Loss.

PART C- PERFORMANCE OF SERVICES AND DELIVERY OF OUTCOMES

12. Term of Agreement

The Term of this Agreement is as stated in Schedule 1.

13. Transition-In

The parties agree to comply with their respective obligations, if any, in relation to transition-in as set out in Schedule 4.

14. Referrals to Organisation

Timeframe and process for Enrolments and Referrals

14.1 The timeframe and process for Enrolments and Referrals will be as set out in the Operations Manual.

Agreed Minimum Referral

14.2 HAC agrees, through the LHDs, to make the Agreed Minimum Referrals.

14.3 In the event that the Services Commencement Date is a date after 1 October 2017, the number of the Agreed Minimum Referrals during Enrolment Period 7 will be adjusted on a pro rata basis taking into account the actual number of days in that Enrolment Period.

14.4 If there is a failure to make a total number of Referrals over the relevant Enrolment Period at least equalling the Agreed Minimum Referrals for that period then, for the purpose of measuring the Outcomes as at the Calculation Date, the shortfall in the total number of Agreed Minimum Referrals will be taken into account in the calculation of Outcome Payments in accordance with Schedule 3.

14.5 The Organisation agrees that, provided HAC complies with clause 14.4, a failure to make a total number of Referrals at least equalling the Total Minimum Requests for Referral will not of itself constitute a breach of this Agreement.

15. Location of Resolve Centres

15.1 The Organisation must use its best endeavours to, by no later than the Services Commencement Date, establish, or cause to be established, two fully operational centres within the Agreed Catchment Area, provided that all such centres must be established within 60 days after the Services Commencement Date and any potential for delay in such establishment after the Services Commencement Date must be advised to HAC in writing, and giving reasonable details, as soon as the Organisation becomes aware.

15.2 The area each Resolve Centre is to be located shall be agreed between the parties and included in the Operations Manual and may be varied from time to time by agreement in writing.

15.3 The Organisation agrees that it will only operate Resolve Centres in areas as agreed from time to time.

16. Services and Outcomes

Performance of Services

- 16.1 The Organisation agrees, in delivery of the Outcomes, to perform the Services:
- (a) with a view to achieving the objectives referred to in clause 3.1 and in accordance with this Agreement including the Operations Manual;
 - (b) in a diligent manner and with all necessary skill, diligence and care expected in the provision of such services; and
 - (c) in accordance with all representations and warranties as to the Organisation's and any Subcontractors' experience and ability expressly made by reference to this Agreement.

Outcomes measurement

- 16.2 The Organisation's success in delivering the Outcomes for the Intervention Group will be measured as at each Calculation Date against results for the Control Group, in accordance with the methodology and process described in the Operations Manual.

17. Communication and consultation with NSW Health and Agencies

Roles and responsibilities

- 17.1 The respective roles and responsibilities of HAC, the LHDs, the Organisation and any Subcontractors and lines of communication and consultation in relation to the Project and delivery of the Outcomes by the Organisation, including the respective responsibilities of these entities in relation to Services delivery, case management and court processes, are as set out in the Operations Manual.

Organisation and Subcontractors to co-operate with Agencies

- 17.2 The Organisation agrees to, and agrees to ensure that its Subcontractors will, work collaboratively and co-operatively with all other Agencies and any other stakeholders involved in mental health care and welfare regardless of the differences in size, individual philosophies, structures and funding sources to create an integrated system across government and non-government agencies.

PART D – REVIEW AND EVALUATION

18. Reviews and Evaluation

Annual review of performance

- 18.1 Within 6 Months from each Calculation Date, the parties will commence a review of performance of this Agreement ("**Annual Review**") in accordance with the requirements and timeframes set out in the Operations Manual.
- 18.2 The Annual Review will include review of:
- (a) the performance of the parties in achieving the objectives set out in clause 3.2, including the NWAU Cumulative Reduction and the number of Referrals;
 - (b) the performance of the Services and progress in delivery of the Outcomes for the Intervention Group during the year under review;

- (c) the implementation of the Operations Manual;
 - (d) the mental health services and policy environment in New South Wales, in accordance with the requirements set out in the Operations Manual; and
 - (e) such other matters as the Parties may reasonably determine from time to time.
- 18.3 Following the Annual Review, the Parties will agree the results of the Annual Review that will be communicated to Bond Investors and the form of this communication.
- 18.4 Without limiting clauses 18.1 and 18.2, the Parties will, as part of each Annual Review conducted after Calculation Date 2, review the NWAU Cumulative Reduction. If the NWAU Cumulative Reduction, at the time of the review, is equal to or less than 15% then:
- (a) the Parties shall seek to negotiate and reach agreement on whether to continue the Agreement for the balance of the Term including, any variations and/or amendments to the Agreement for the purposes of addressing the low NWAU Cumulative Reduction; and
 - (b) in the event that the Parties are unable to reach agreement for the purposes of clause 18.4(a) on such variations and/or amendments by the date which is not later than 20 Business Days from the date of commencement of the negotiations, then either Party may immediately terminate this Agreement on 20 Business Days' written notice, and the Organisation will be paid the relevant termination payment detailed in Schedule 3.
- 18.5 Without limiting clauses 18.1, 18.2 and 18.4, the Parties will, as part of each Annual Review, review the number of Referrals. If the aggregate number of Referrals over the year preceding the relevant Calculation Date is equal to or less than 75% of the aggregate of the Agreed Minimum Referrals for this period, then:
- (a) the Parties shall seek to negotiate and reach agreement on whether to continue the Agreement for the balance of the Term including any variations and/or amendments to the Agreement for the purposes of addressing the low Referrals; and
 - (b) in the event that the Parties are unable to reach agreement for the purposes of clause 18.5(a) on such variations and/or amendments by the date which is not later than 20 Business Days from the date of commencement of the negotiations, then either Party may immediately terminate this Agreement on 20 Business Days' written notice, and the Organisation will be paid the relevant termination payment detailed in Schedule 3.

Independent Evaluation

- 18.6 The Organisation must in consultation with HAC, at its own cost and by no later than 3 Months from the Services Commencement Date, engage an Independent Evaluator to conduct an independent evaluation of and report into the Organisation's and/or any Subcontractor's service delivery under this agreement.
- 18.7 The engagement of the Independent Evaluator must be made by way of a market approach process and be approved, such approval not to be unreasonably withheld, by HAC.
- 18.8 The terms and conditions of the:
- (a) Organisation's engagement process including the services to be provided by the Independent Evaluator; and
 - (b) contract for services between the Organisation and the Independent Evaluator,

must be agreed between HAC and the Organisation, acting reasonably. Without limiting this clause 18.8, the contract for service must include a term giving HAC direct access to and contact with the Independent Evaluator for the purposes of this Independent Evaluation.

- 18.9 Subject to clause 18.10, if the contract between the Organisation and Independent Evaluator is terminated or the Independent Evaluator is otherwise unable to perform its obligations under that contract, the Organisation must replace the Independent Evaluator with another suitably qualified body on substantially the same terms and conditions as the previous evaluator and clauses 18.7 and 18.8 will apply to that engagement.
- 18.10 The Organisation must not terminate its contract with the Independent Evaluator without obtaining HACs' prior written consent, such consent not to be unreasonably withheld or delayed.
- 18.11 Subject to compliance with any legal requirements in relation to privacy, each Party must provide, on a confidential basis, all necessary information and documents within its possession or control to the Independent Evaluator to enable the Independent Evaluator to perform the services required of the Independent Evaluator by this clause 18.
- 18.12 The Organisation must, on receipt, provide to HAC a copy of any report prepared by the Independent Evaluator. Any report prepared by the Independent Evaluator may be, if agreed by the Parties, such agreement not to be unreasonably withheld, published by either or both Parties.

Organisation and Subcontractor participation and co-operation in reviews and evaluations

- 18.13 HAC may also, from time to time, at its own cost, conduct or requisition a third party provider to conduct, reviews and/or evaluations of the Project. The Organisation will in good faith participate, and will ensure that its Subcontractors participate as necessary, in any reviews and/or evaluations under this clause 18 and will provide HAC, or any third party provider, with such assistance and Material as may reasonably be required, provided that the costs of participation for the Organisation and its Subcontractors are reasonable. For the avoidance of doubt, the Organisation and/or its Subcontractors will not be responsible for the costs of any third party provider.

PART E - ADVERSE EVENTS

19. Force majeure

Force Majeure Event

- 19.1 A Party will not be liable for any failure or delay:
- (a) in the case of the Organisation, in the performance or discharge of its obligation to provide the Services, deliver the Outcomes and other services pursuant to this Agreement; and
 - (b) in the case of HAC, in the performance or discharge of its obligations pursuant to this Agreement,
- due to a Force Majeure Event.

Notification of Force Majeure Event

- 19.2 A Party whose performance or discharge of its obligations referred to in clause 19.1 is affected by a Force Majeure Event must as soon as practicable:
- (a) notify the other Party's Authorised Representative; and
 - (b) describe in a reasonable level of detail the nature of the Force Majeure Event and its likely effect in that non-performing Party's performance or discharge of its obligations under this Agreement.

Response to a Force Majeure Event

- 19.3 On the occurrence of a Force Majeure Event, the non-performing Party must use its reasonable endeavours to continue to resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, work-arounds or other means.
- 19.4 Either HAC or the Organisation may terminate this Agreement in whole by notice in writing to the other Party if any Force Majeure Event has the result that the affected Party fails to perform all or substantially all of its obligations under this Agreement for more than 3 Months.
- 19.5 Where either HAC or the Organisation terminates this Agreement in accordance with clause 19.4, the payment consequences are as detailed in Schedule 3.

PART F – LOSS, DAMAGE AND INSURANCE

20. Indemnities

- 20.1 Subject to clause 20.2, the Organisation is responsible for, and hereby releases and indemnifies the State, HAC and each of the LHDs and their respective Personnel (those indemnified) on demand from and against any Claim or Loss, including for:
- (a) death or personal injury;
 - (b) loss of or damage to property (including property belonging to those indemnified);
 - (c) any infringement or alleged infringement of any Intellectual Property Rights (including Moral Rights);
 - (d) third party suits claims, actions, demands, proceedings, penalties, costs, charges or expenses in respect of the Services;
 - (e) any unlawful, wrongful, wilful or negligent act or omission of the Organisation or its Personnel (including without limitation defamation); and
 - (f) any breach of this Agreement;

which may arise out of, or in connection with the performance or non-performance by the Organisation and/or its Personnel of this Agreement or any subcontract by the Organisation of any part of this Agreement but, except in the circumstances specified in clause 20.3, excluding Consequential Loss.

- 20.2 The Organisation's liability to indemnify those indemnified under this Agreement will be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the Claim or Loss.

- 20.3 The exclusion of Consequential Loss from the indemnities given under this Agreement shall not apply in respect of any of the following:
- (a) loss that cannot be legally excluded;
 - (b) loss arising from death or personal injury;
 - (c) loss arising from property damage caused by the Organisation or its Subcontractors;
 - (d) loss caused by the Organisation's breach of the privacy and intellectual property clauses of this Agreement; and
 - (e) loss caused by fraud or illegal conduct on the part of the Organisation or its subcontractors.

Notification of Claims by Organisation

- 20.4 The Organisation must advise HAC immediately it becomes aware of any third party claim, or likely claim, against the Organisation or its Personnel in connection with this Agreement.

Conduct of claims by HAC

- 20.5 If any action shall be brought against any of those indemnified in respect of which indemnity may be sought from the Organisation, such indemnified person shall promptly notify the Organisation in writing and shall:
- (a) employ such legal advisers as may be agreed between such indemnified person and the Organisation or failing agreement as such indemnified person may reasonably select; and
 - (b) consult with the Organisation prior to any settlement of any such action.

Continuing Liability

- 20.6 The indemnity contained in this clause 20 is a continuing obligation of the Organisation separate and independent of any other responsibility of the Organisation and will continue beyond the Term.

Indemnity on trust

- 20.7 HAC declares that it holds on trust for each of the State and the LHDs and their respective Personnel (Indemnified Parties), the benefit of each indemnity and release given by the Organisation under this Agreement in favour of an Indemnified party.
- 20.8 The Organisation acknowledges the existence of such trusts and consents to HAC exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of each Indemnified Party and each Indemnified Party exercising rights in relation to, or otherwise enforcing the indemnities and releases.

21. Insurance

Organisation's Insurance

- 21.1 The Organisation must effect and maintain the following insurances:
- (a) claims made directors and officers liability insurance for an amount of at least \$2 million in respect of each claim with runoff cover of at least 3 years after the expiration or termination of this Agreement;

- (b) professional indemnity insurance for an amount of at least \$10 million in respect of each claim with runoff cover of at least 3 years after the expiration or termination of this Agreement.

21.2 All insurance policies required under this clause must be effected with an insurance company which, if Australian, is licensed by the Australian Prudential Regulation Authority or, if the insurer is an international company, has a rating of not less than "A-" or "A3" from one or more Recognised CRAs.

21.3 Upon request by HAC, the Organisation must provide HAC with a copy of any insurance policy maintained in accordance with clause 21.1 and a certificate of currency.

Subcontractors' Insurance

21.4 The Organisation must procure the taking out and maintenance by each Subcontractor of the insurances specified in the Agreement Details at the times, in the manner and in the form specified in the Agreement Details.

No limit of Liability

21.5 Neither failure to comply nor full compliance by the Organisation or any relevant Subcontractor with the insurance provisions of this Agreement will limit or relieve the Organisation of its liabilities and obligations under this Agreement.

Evidence of Subcontractors' Insurance

21.6 The Organisation must, on request, procure from any relevant Subcontractor satisfactory evidence to HAC, acting reasonably, that the applicable insurance policies referred to in this clause 21 and required to be held and maintained by that Subcontractor have been effected and renewed.

Notification of insurance claims

- 21.7 The Organisation must ensure that all relevant Subcontractors, as soon as practicable:
- (a) inform HAC in writing of a claim, or an occurrence of an event that may give rise to a claim, under a policy of insurance required under this clause 21; and
 - (b) keep HAC fully informed of subsequent action and developments concerning the claim or event referred to in clause 21.7(a).

PART G – PAYMENT PROVISIONS

22. Payments to Organisation

Payments to Organisation

22.1 Subject to this Agreement (including clause 22.13 and clause 23), HAC will in consideration of the Organisation entering and performing its obligations under this Agreement:

- (a) irrespective of the delivery of any Outcomes, ensure that the Organisation is paid the Standing Charge as a payment on account in respect of the Services required to deliver the agreed Outcomes, in accordance with Schedule 3; and
- (b) if and to the extent that the specified Outcomes are delivered, ensure that the Organisation is paid the applicable Outcome Payment, net of the Standing Charge and other amounts identified in, and calculated in accordance with, Schedule 3.

Late Payments

- 22.2 Subject to clauses 22.3 and 22.4, if any payment due under this Agreement is not paid by its due date, interest (calculated on a daily basis) will be payable on that payment at the Prescribed Rate (converted to a daily rate of interest) from the day after the date on which payment was due to (and including) the date of payment.
- 22.3 Interest on a late payment is not payable unless the amount of interest owed exceeds \$20.

Disputed Amounts

- 22.4 If HAC disputes, in good faith, any amount set out in an Organisation invoice, HAC will be entitled to withhold payment of the disputed amount (the "**Disputed Amount**"). A Disputed Amount will be resolved in accordance with clause 39. Until the dispute is resolved, and subject to the outcome of that dispute, the Disputed Amount will be held in suspense for the duration of the dispute. Any Disputed Amount found to be payable by HAC to the Organisation shall be paid forthwith on resolution of the dispute together with interest (calculated on a daily basis) at the Prescribed Rate (converted to a daily rate of interest) from the original due date for payment of the Disputed Amount until actual payment is made to the Organisation by HAC.

Independent Certifier

- 22.5 The Organisation must, in consultation with HAC, at its own cost and by no later than 3 Months from the Services Commencement Date, appoint an Independent Certifier to verify performance data, any payment due to the Organisation and whether the Outcomes have been delivered to HAC in respect of each Calculation Date.
- 22.6 The appointment of the Independent Certifier must be made by way of a market approach process and be approved, such approval not to be unreasonably withheld, by HAC.
- 22.7 The terms and conditions of the:
- (a) Organisation's engagement process including the services to be provided by the Independent Certifier; and
 - (b) contract for services between the Organisation and the Independent Certifier,
- must be agreed between the parties, acting reasonably. Without limiting this clause 22.7, the contract for service must include a term giving HAC direct access to and contact with the Independent Certifier for the purposes of this Agreement and the Project.
- 22.8 Subject to clause 22.9, if the contract between the Organisation and Independent Certifier is terminated or the Independent Certifier is otherwise unable to perform its obligations under that contract, the Organisation must replace the Independent Certifier with another suitably qualified body on substantially the same terms and conditions as the previous certifier and clauses 22.6 and 22.7 will apply to that appointment.
- 22.9 The Organisation must not terminate its contract with the Independent Certifier without obtaining HAC's prior written consent, such consent not to be unreasonably withheld.
- 22.10 Subject to compliance with any legal requirements in relation to privacy, each Party must provide, on a confidential basis, all necessary information and documents within its possession or control to the Independent Certifier to enable the Independent Certifier to perform the services required of the Independent Certifier by this clause 22.

Independent Certifier's reports

- 22.11 The Organisation must within the timeframes specified within Schedule 3, submit to HAC together with any invoice for the Outcome Payment, a report from the Independent Certifier addressing the matters set out in Schedule 3.

Aggregate Cap on amounts payable under this Agreement

- 22.12 The Organisation agrees and acknowledges that the total aggregate amount payable to the Organisation under this Agreement during the Term (to avoid doubt, inclusive of GST and any stamp duty arising in connection with this Agreement and the other Transaction Documents) is capped at the Aggregate Cap on Payments.

Right of Set-Off

- 22.13 Without limiting any other rights it may have under this Agreement, HAC may deduct, from amounts which may be payable to the Organisation, any amount due from the Organisation to HAC in connection with this Agreement (including any amount of the Standing Charge owed to HAC by the Organisation in consequence of the early termination of this Agreement). If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Organisation to HAC.

Project Account

- 22.14 All payments made to the Organisation under this Agreement will be made to the Project Account.

23. Repayment of Standing Charge on early termination

In the event of early termination of this Agreement, the Organisation must repay the Remaining Standing Charge in accordance with Schedule 3.

24. GST

GST exclusive

- 24.1 The consideration expressed in this Agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST. For the avoidance of doubt, the amounts specified in Schedule 3 are inclusive of GST and all payments calculated in accordance with Schedule 3 are calculated on a GST inclusive basis.
- 24.2 Subject to clause 24.5, if anything supplied under or in connection with this Agreement constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply ("**GST Amount**").
- 24.3 The GST Amount will be:
- (a) equal to the value of the supply calculated in accordance with GST Law multiplied by the prevailing GST rate; and
 - (b) subject to clauses 24.5 and 24.6, payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.
- 24.4 The supplier of a taxable supply made under or in connection with this Agreement must issue a tax invoice for the supply in accordance with the GST Law to the recipient of the supply.

Non-monetary consideration or partly non-monetary and partly monetary consideration

24.5 If a party makes a supply to any other party for consideration which is wholly non-monetary consideration, or partly non-monetary and partly monetary consideration, then:

- (a) if the consideration is wholly non-monetary:
 - (i) the supply will for the purposes of this clause be styled a "Consideration in Kind Supply";
 - (ii) the consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under clause 24.2;
 - (iii) the parties agree that the GST inclusive market value of each of the Consideration in Kind Supply and the consideration for that supply (being in turn, a Consideration in Kind Supply) are equal;
 - (iv) the parties will each include in any tax invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the tax invoice relates being the price for that supply;
 - (v) prior to the issue of the tax invoices referred to in clause 24.5(a)(iv), the parties will use all reasonable endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement, will accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the parties shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia.
- (b) if the consideration is, in part, monetary and, in part non-monetary then:
 - (i) part of the supply will be treated as made for the non-monetary consideration and will for the purposes of this clause be styled a "Consideration in Kind Supply" and will be subject to the operation of clause 24.5(a); and
 - (ii) the remaining part of the supply shall be treated as made for monetary consideration which is GST exclusive and subject to the operation of clause 24.3.

24.6 If the Commissioner of Taxation or a court determines for any reason whatsoever that the Consideration in Kind Supplies referred to in clause 24.5 which each of the parties make in return for the other do not have an equal GST inclusive market value for GST purposes, then:

- (a) if the Consideration in Kind Supply made by a party ("the first party") to the other party ("the second party") is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the second party to the first party, the first party will pay to the second party an additional amount equal to the GST payable on 10% of the difference within 10 Business Days of the date the relevant determination is made;

- (b) if the Consideration in Kind Supply made by the second party to the first party is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the first party to the second party, then the second party will pay to the first party an additional amount equal to the GST payable on 10% of the difference within 10 Business Days of the date the relevant determination is made;
- (c) the parties will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determination by the Commissioner or court; and
- (d) any amount payable under this clause 24.6 is GST inclusive and will not be increased on account of GST under clause 24.3.

Adjustment notes

- 24.7 If in relation to a taxable supply under or in connection with this Agreement an adjustment event occurs that gives rise to an adjustment, then the GST Amount will be adjusted accordingly and, where necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supply in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 Business Days of the issue of an adjustment note by the payee who must issue an adjustment note immediately upon becoming aware of the adjustment event concerned.

Reimbursements of costs, expenses or other amounts

- 24.8 Notwithstanding any other provision of this Agreement, any amount payable under or in connection with this Agreement, which is calculated by reference to a cost, expense, or amount paid or incurred by a party to this Agreement, will be reduced by an amount equal to any input tax credit to which that party is entitled in respect of that cost, expense or amount.

Input tax credits

- 24.9 Any amount on account of GST payable by NSW Health to the Organisation under this clause 24 will be limited to the amount of an input tax credit to which NSW Health is entitled in respect of the relevant supply which NSW Health acquires.

GST groups

- 24.10 If a party is a member of a GST group, references to GST for which the party is liable and to input tax credits to which the party is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- 24.11 Where a word or phrase is defined under GST Law, it has the same meaning in this Agreement.

25. Other Taxes, future changes in law

- 25.1 Subject to clause 24 and this clause 25, the Organisation must pay, and must keep HAC indemnified against, any Taxes payable upon, or in respect of this Agreement or the supply of the Services and delivery of the Outcomes wherever and however such Taxes arise.
- 25.2 HAC will on application by the Organisation consider reimbursing the Organisation for:

- (a) any stamp duty paid by the Organisation on:
 - (i) this Agreement; and/or
 - (ii) the Bonds; and/or
- (b) any additional tax paid by the Organisation as a direct result of changes to Commonwealth tax legislation specifically directed at social impact investment arrangements.

25.3 In the event that:

- (a) any future change to Commonwealth tax legislation has a materially adverse impact on the tax that the Organisation is required to pay as a direct consequence of this Agreement; or
- (b) any future change to any Law has or is likely to have a materially adverse impact on the Organisation's reasonably expected financial return from its performance of this Agreement in accordance with its terms (and to avoid doubt excluding any adverse impact referable to a Force Majeure Event, lack of Referrals or breach of this Agreement),

and in either case the Parties are unable to reach agreement on how to manage that impact, the Organisation may terminate this Agreement on 1 Months' notice, such notice to be given no later than 1 Month following reasonable details of the proposed change in Law becoming publicly available or being made available to the Organisation (as applicable), and the Parties' respective rights to any payment in consequence of such termination are as detailed in Schedule 3.

25.4 The Parties acknowledge and agree that if any reimbursement or additional payment is agreed pursuant to clause 25.3, then the Aggregate Cap on Payments will be increased by an amount equivalent to the amount of that reimbursement or additional payment.

Part H – BREACH AND TERMINATION

26. Pre-termination discussions

26.1 Where practicable, neither Party will seek to exercise a right to terminate this Agreement without first giving the other Party 2 Business Days' notice of its intention to do so and, if requested by the other Party, will, to the extent reasonable and appropriate, engage in "without prejudice" discussions with the other Party at a senior level in that notice period, such discussions not to exceed 5 Business Days unless otherwise agreed, to explore possible options for the Agreement to continue.

26.2 The Parties are obligated by clause 26.1 only to the extent that such discussions did not occur or could not reasonably have occurred during any period of notice, grace or remedy contained in the relevant clause dealing with the existence or exercise of rights to terminate.

27. Termination for poor performance

Either Party may terminate this Agreement with immediate effect, within 20 Business Days from the date on which the Parties have both received a copy of the Independent Certifier's report in relation to the Outcome Payment payable in respect of Calculation Date 4, if that report indicates that the Outcome Payments payable for all Calculation Dates up to and including Calculation Date 4 is \$0.

28. Termination by HAC for Convenience

HAC may terminate this Agreement at its convenience and without cause at any time by giving the Organisation at least 20 Business Days' notice in writing.

29. Termination by HAC for Cause and on Other Grounds**For Cause**

29.1 HAC may terminate this Agreement at any time with immediate effect by giving notice to the Organisation if:

- (a) the Organisation has committed a material breach of any provision of this Agreement, the breach is not capable of being remedied and the parties have not agreed in writing a basis upon which this Agreement can continue within 20 Business Days of the Organisation receiving notice of that breach;
- (b) the Organisation commits a material breach of this Agreement that is capable of remedy and the Organisation fails to remedy that breach within 20 Business Days following receipt of a notice requiring it to do so;
- (c) the Organisation commits any breach of this Agreement of the same or a similar kind on a recurring basis in any rolling 3 Month period being a breach in respect of which HAC have, during that 3 Month period, issued at least 3 notices under clause 29.1(b);
- (d) the Organisation breaches clause 15;
- (e) the Organisation or the Services Subcontractor is the subject of or suffers an Insolvency Event;
- (f) the Organisation or the Services Subcontractor abandons the Services or expresses or demonstrates an intention to cease or substantially cease performance of this Agreement or the Services Subcontract;
- (g) the Organisation or the Services Subcontractor suffers a Change in Control which HAC reasonably considers will have an adverse impact on the performance of the Services or the delivery of the Outcomes under this Agreement;
- (h) HAC are entitled to terminate as a result of a conflict of interest in accordance with clause 43.6;
- (i) the repayment of principal by the Organisation is accelerated under the terms of the Bond upon an event of default under the Bond/s;
- (j) any Transaction Document or Constituent Document is amended (other than to correct minor or typographical errors) without the prior written consent of HAC;
- (k) the Services Subcontract is terminated for any reason;
- (l) the Services Subcontractor has committed a material breach of the Services Subcontract, the breach is not capable of being remedied and the parties to the Services Subcontract have not agreed in writing, with the concurrence of HAC, a basis upon which the Services Subcontract can continue within 20 Business Days of the Services Subcontractor receiving notice of that breach;
- (m) the Services Subcontractor commits a material breach of the Services Subcontract that is capable of remedy and the Services Subcontractor fails to remedy that breach

within 20 Business Days following receipt of a notice from the Organisation requiring it to do so;

- (n) any Transaction Document (other than this Agreement and the Direct Agreement) is declared invalid or unenforceable by a court or is terminated owing to a material breach by the Services Subcontractor;
- (o) without the prior written consent of HAC, the Organisation ceases to be the trustee or the only trustee of the Trust or any action is taken (other than by HAC) to remove the Organisation as trustee of the Trust or to appoint another person as trustee in addition to the Organisation.

Other Grounds

- 29.2 HAC may terminate this Agreement if HAC is otherwise entitled under a specific provision of this Agreement to terminate this Agreement, provided that HAC complies with any conditions or restrictions applying to such a provision.

30. Termination by Organisation

Termination for cause

- 30.1 The Organisation may terminate this Agreement at any time with immediate effect by giving notice to HAC if:
- (a) HAC has committed a material breach of any provision of this Agreement, the breach is not capable of being remedied and the parties have not agreed in writing the basis upon which this Agreement can continue within 20 Business Days of HAC receiving notice of that breach; and/or
 - (b) HAC commits a material breach of this Agreement that is capable of remedy and HAC fails to remedy that breach within 20 Business Days following receipt of a notice requiring it to do so.

Other grounds

- 30.2 The Organisation may terminate this Agreement if the Organisation is otherwise entitled under a specific provision of this Agreement to terminate this Agreement, provided that the Organisation complies with any conditions or restrictions applying to such a provision.

31. Consequences of Termination

- 31.1 Except as otherwise required in accordance with relevant legislative requirements and the Organisation's and the Services Subcontractor's reasonable commercial record keeping requirements, the Organisation must, and must cause its Subcontractors to, as soon as is reasonably practicable following expiry or earlier termination of this Agreement, deliver, return to HAC, or, if expressly required by HAC, destroy (at HAC's sole option and in the manner reasonably specified by HAC), all:
- (a) Confidential Information of NSW Health;
 - (b) Government Material;
 - (c) all the Material referred to in clauses 38.3, 38.4, 38.5, 38.6, 38.7 and copies of the consents referred to in clause 38.8 in such form, including electronic, as may be requested;

- (d) all Records referred to at clauses 35.3, and 37.5 to the extent that they are requested by HAC; and
- (e) other tangible property and materials of NSW Health,

which is or are in the possession, custody or control of the Organisation, a Subcontractor or any Personnel or either of them as at the date of expiry or earlier termination and which the Organisation is not expressly entitled, in accordance with the terms of this Agreement, to retain following such expiry or termination.

31.2 Except as otherwise required in accordance with relevant legislative requirements and NSW Health reasonable commercial record keeping requirements, NSW Health must, immediately following expiry or earlier termination of this Agreement, return to the Organisation, or destroy (at the Organisation's sole option and in the manner reasonably specified by the Organisation), all Materials and Confidential Information of the Organisation or the Services Subcontractor which:

- (a) are in the possession, custody or control of NSW Health or any Personnel of NSW Health as at the date of expiry or earlier termination of this Agreement; and
- (b) NSW Health is not expressly entitled, in accordance with the terms of this Agreement, to retain following such expiry or termination.

31.3 Where the Agreement is terminated by either Party, each Party must make or cause to be made the relevant payments required in consequence of such termination as detailed or referenced in Schedule 3 and subject to the obligations of the Parties under clause 22.

31.4 Any payment referred to in clause 31.3 made to the Organisation will be in total satisfaction of any liability to the Organisation in respect of this Agreement and its termination. Upon request by HAC, the Organisation must execute a deed of release on terms acceptable to the requesting party or organisation.

31.5 Subject to clause 31.4, termination of this Agreement will not affect the accrued rights and remedies of either Party.

31.6 On and from the date of termination, the Organisation must provide the Transition-Out Services in accordance with its obligations under clause 32 and the Transition-Out Plan.

31.7 HAC and the Organisation acknowledge that the termination of this Agreement may constitute a default event under the Bonds.

32. Transition-Out

32.1 This clause 32 applies, in the event this Agreement is terminated, during the period commencing on the date of termination and ending on a date to be determined by HAC after consultation with the Organisation.

32.2 In the event of termination of this Agreement prior to the expiry of the Term, the parties agree to develop a Transition-Out Plan in accordance with the arrangements and timeframes set out in the Operations Manual for transition-out on early termination of this Agreement.

32.3 Services disengaged in accordance with this clause 32 (whether encompassing all or part of the Services or Outcomes), and any additional services which the Organisation is required to provide under this clause 32, are referred to as Transition-Out Services.

- 32.4 Once the Transition-Out Period has commenced the Organisation must do all things necessary to provide the Transition-Out Services described in the Transition-Out Plan as being the obligations of the Organisation.

PART I – ADMINISTRATION OF PROJECT

33. Authorised Representatives

- 33.1 Subject to this clause 33 and clause 2, the Authorised Representatives are the primary contact for their respective parties.
- 33.2 Subject to clause 41 and clause 2, the Authorised Representative of each Party has authority to deal with all matters relating to the administration of this Agreement on behalf of the relevant party and otherwise as described in this Agreement.
- 33.3 The Authorised Representative of a Party may not agree to vary or terminate this Agreement except on the basis of satisfactory written evidence of authority from that Party. To avoid doubt, the Authorised Representative of the Services Subcontractor has no authority to amend or terminate this Agreement on behalf of the Organisation.

34. Project Oversight Framework

- 34.1 A Joint Working Group will be established in accordance with the Operations Manual to review and discuss Operational Matters, monitor Outcomes achieved and seek to resolve any disputes arising under this Agreement.
- 34.2 The frequency of, and procedure for, Joint Working Group meetings will be in accordance with the Operations Manual, which may also establish more detailed terms of reference for the group.

35. Records, data and other information

Maintenance of records

- 35.1 The Organisation must, and must ensure that its Subcontractors (to the extent relevant to the particular subcontract), during the Term:
- (a) prepare and maintain up to date, comprehensive, true and accurate computerised Records of, and supporting documentation for, the Services and the delivery of Outcomes and other services provided under and/or in relation to this Agreement, in accordance with generally accepted industry standards, accounting principles and applicable Law;
 - (b) unless otherwise required by HAC, retain the Records for the period of 7 years after the expiry or earlier termination of this Agreement ("**Additional Period**").
- 35.2 Without limiting clause 35.1
- (a) the Organisation must maintain, and must ensure that its Services Subcontractor maintains, complete and accurate Records and supporting documentation in relation to the matters set out in the Operations Manual and in accordance with any records management protocol established for NSW Health and/or this Project and included in the Operations Manual; and
 - (b) HAC may, from time to time and in consultation with the Organisation, approve protocols for the maintenance and management of Records, with which, once approved, the Organisation and its Subcontractors will comply.

Access to records

- 35.3 HAC will be entitled during the Term and the Additional Period to:
- (a) have access to all such Records at any time upon giving the Organisation reasonable notice;
 - (b) take extracts, make and/or obtain copies of any such Records (at HAC's cost) as HAC considers appropriate; and

the Organisation and its Personnel must give HAC all reasonable assistance to enable HAC to exercise its rights under this clause 35.3.

Government Information (Public Access) Act 2009 (NSW)

- 35.4 Without limiting clause 35.3 and for the purposes of the Government Information (Public Access) Act 2009 (NSW), the Organisation must provide, and ensure that its Subcontractors provide, HAC and each LHD with immediate access to the following information contained in Records held by the Organisation/the Subcontractor (as applicable):

- (a) information that relates directly to the performance of the Services and the delivery of the Outcomes and any other services provided to HAC and/or the LHD by the Organisation pursuant to this Agreement;
- (b) information collected by the Organisation from members of the public to whom it provides, or offers to provide, the Services pursuant to this Agreement; and
- (c) information received by the Organisation from HAC and or the LHD to enable it to provide the Services and deliver the Outcomes and any other services pursuant to this Agreement.

- 35.5 For the purposes of clause 35.4, information does not include:

- (a) information that discloses or would tend to disclose the Organisation's/Subcontractor's financing arrangements, financial modeling, cost structure or profit margin;
- (b) information that the Organisation/Subcontractor is prohibited from disclosing to HAC and/or the LHD by provision made by or under any Law, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to HAC and/or the LHD, could reasonably be expected to place the Organisation/Subcontractor at a substantial commercial disadvantage in relation to HAC and/or the LHD, whether at present or in the future.

- 35.6 The Organisation will provide, and will ensure that its Subcontractors provide, copies of any of the Records, and Material referred to in this clause 35, as requested by HAC and /or the LHD, at the Organisation's/Subcontractor's own cost.

Reports and other information

- 35.7 Without limiting this clause 35, the Organisation must:
- (a) promptly provide, and must ensure that the Services Subcontractor provides, HAC with such information and reports as HAC may from time to time reasonably require in relation to this Agreement, the Project and the Organisation's/Services Subcontractor's financial position; and

- (b) use best endeavours to procure that its other Subcontractors provide HAC with such information and reports as HAC may from time to time reasonably require in relation to this Agreement, the Project and the Subcontractor's financial position.

Exchange of information between NSW Government Agencies

- 35.8 The Organisation authorises HAC and each LHD and their respective Personnel to make available to NSW Government departments and/or agencies information concerning the Organisation, including any information provided by the Organisation to HAC and/or each LHD relating to the Organisation's performance under this Agreement or the Organisation's financial position.
- 35.9 The Organisation acknowledges that information about the Organisation from any source including any substantial reports of unsatisfactory performance, may be taken into account by NSW Government departments or agencies in considering whether or not to offer the Organisation future opportunities for NSW Government work and services.
- 35.10 HAC and each LHD regard provision of information about the Organisation to any NSW Government department or agency as privileged within section 30 of the Defamation Act 2005 (NSW).
- 35.11 The Organisation releases and indemnifies HAC, each LHD and the State from any Claim in respect of any matter arising out of the provision of information disclosed under clause 35.8. Without limiting the above, the Organisation releases HAC, each LHD and the State from any Claim it may have for any loss to the Organisation arising out of the provision of information and/or relating to the use of such information by recipient of the information.

36. Privacy

- 36.1 During this Agreement, the Organisation must comply, and must ensure that its Subcontractors and Personnel comply, with the Privacy Legislation to the extent that the Organisation/Subcontractors is/are required to do so at Law.
- 36.2 Without limiting its obligations under clause 36.1, the Organisation agrees, and must ensure that its Subcontractors agree (so far as applicable):
- (a) not to do any act, or engage in any practice, that would breach a Privacy Principle, or which if done or engaged in by HAC and/or the LHD, would be a breach of a Privacy Principle;
 - (b) to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the Privacy Principles as if it were HAC and/or the LHD carrying out and discharging those obligations and to comply with all reasonable directions of HAC and/or the LHD in relation to these obligations;
 - (c) to notify HAC and/or the LHD immediately upon becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 36, whether by the Organisation or its Personnel;
 - (d) to ensure that any Personnel of the Organisation who is required to deal with Personal Information and/or Health Information for the purposes of this Agreement is made aware of the obligations in this clause 36; and
 - (e) to ensure that any other agreement with a Subcontractor, who may be fulfilling a requirement in relation to this Agreement which includes the handling of Personal Information and/or Health Information, contains the same or equivalent obligations as

this clause 36 which are enforceable by the Organisation against the Subcontractor, as applicable.

36.3 This clause 36 will survive termination or expiry of this Agreement for a period of 7 years.

37. Confidentiality

Obligation to keep confidential

37.1 The Organisation and HAC must:

- (a) keep confidential:
 - (i) information relating to negotiations concerning this Agreement and/or the commercial arrangements between the parties;
 - (ii) information regarding Eligible Persons;
 - (iii) reports, files, professional advice, information and data required to be prepared or maintained under or for the purposes of this Agreement;
 - (iv) any information which is marked or identified as confidential by either HAC or the Organisation (for the avoidance of doubt, this will include any information marked by the Services Subcontractor or either of the LHDs as confidential); and
 - (v) any information which is required to be kept confidential at Law.
- (b) use all reasonable endeavours to prevent their Personnel from making any disclosure to any person of any such matters.

Permitted Disclosure

37.2 Clause 37.1 will not apply to:

- (a) any disclosure of any information the disclosure of which is agreed between the Organisation and HAC or the LHD (as the case may be), in accordance with that agreement;
- (b) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a Party under this Agreement (including any Subcontractor or LHD);
- (c) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of clause 37.1;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction) or in accordance with clause 39;
- (e) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to the disclosure by the disclosing Party;
- (f) any provision of information to Bond Investors and potential investors and assignees in the Bonds but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

- (g) any disclosure or provision of information that is required to be disclosed to the Independent Certifier;
- (h) any disclosure by HAC and/or the LHDs of any information or document relating to this Agreement to any department, office or agency of the government of New South Wales including Cabinet and any Minister or member of a Minister's staff;
- (i) any disclosure of information that is reasonably required by a person in order to exercise or enjoy the rights under any licence granted under clause 38;
- (j) any disclosure of information to the advisers of a party to this Agreement, a Bond Investor, or investors and potential investors and assignees in the Bond but so as not to identify any Eligible Person (unless legally required or permitted);
- (k) any disclosure of information to any ratings agency, stock exchange, Authority (including the Australian Taxation Office and the Office or Commissioner of State Revenue) or regulatory agency (including the Australian Prudential Regulation Authority) that is required in connection with this Agreement, the Services (including as required by any Subcontractor) or the Bonds or the Organisation, a Bond Investor or an investor in the Bond's involvement in the Project or the SBB Arrangement, but, in each case, so as not to identify any Eligible Person (unless legally required or permitted); and
- (l) any disclosure of information to the extent such disclosure is required to apply for, obtain or maintain any licences or approvals in connection with this Agreement, the Services (including as required by any Subcontractor) or the Bonds, but so as not to identify any Eligible Person (unless legally required or permitted).

Disclosure subject to confidentiality

- 37.3 Where disclosure is permitted under clause 37.2, other than clauses 37.2(c), 37.2(d), 37.2(h), 37.2(j), 37.2(k) and 37.2(l), the Party making the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this Agreement.

No exploitation of information

- 37.4 The Organisation must not make use of this Agreement or any information issued or provided by or on behalf of HAC and/or a LHD in connection with this Agreement otherwise than for purposes connected with this Agreement, except with the prior written consent of HAC and/or the LHD, as the case may be.

Return of certain information on request

- 37.5 Without limiting clause 31, on or before the expiration or earlier termination of the Term, the Organisation must, if requested by HAC, ensure that all Records in the Organisation's possession, custody or control which contain information relating to any Eligible Person, including the documents in the possession, custody or control of any Subcontractor, are delivered up to HAC or HAC's nominee, to the extent requested by HAC.

Organisation's confidentiality obligations to clients

- 37.6 Without limiting this clause 37, HAC and the Organisation will ensure the rights to confidentiality of any Eligible Person and staff are protected in both policy and practice in accordance with any relevant Law, subject to any requirements to disclose information in relation to such persons for the purposes of this Agreement or at Law.

38. Intellectual Property

Pre-existing Intellectual Property Rights

- 38.1 This Agreement does not assign ownership of any Intellectual Property Rights existing on the Commencement Date and no Party may assert ownership of all or any part of the other Party's pre-existing Intellectual Property Rights.
- 38.2 If the Organisation has any pre-existing Intellectual Property Rights (excluding rights in relation to Service Delivery Material) as at the Commencement Date that are applied in the performance of this Agreement, the Organisation grants to the State, HAC and each of the LHDs by this clause 38.2 an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty-free licence of those pre-existing Intellectual Property Rights for use in relation to or in connection with the implementation and evaluation of this Agreement by the State, HAC and/or each of the LHDs, or on their respective behalves.

Intellectual Property Rights created in the course of the Agreement

- 38.3 If any Intellectual Property Rights (excluding rights in relation to Service Delivery Material) are developed solely by, or on behalf of, the Organisation, or jointly by or on behalf of the parties, in the course of the parties performing their obligations under this Agreement, or are developed by or on behalf of any Subcontractor and vest in the Organisation under the terms of the applicable subcontract, the State owns those Intellectual Property Rights and such Intellectual Property Rights on their creation vest, or are otherwise assigned or transferred to the State without the need for further assurance.
- 38.4 To the extent that any Intellectual Property Rights (excluding rights in the Service Delivery Material) are developed by, or on behalf of, any Subcontractor in performing the Services and does not vest in the Organisation under the applicable services subcontract, the Organisation undertakes to promptly procure the transfer of ownership of those Intellectual Property Rights to the State.
- 38.5 If ownership of the Intellectual Property Rights referred to in clause 38.3 and 38.4 is not capable of being vested in or transferred to the State under clause 38.3 or 38.4 (as applicable) because the Organisation does not own or is unable at a reasonable cost to procure transfer of ownership of those Intellectual Property Rights, the Organisation must at its own cost ensure that the State, HAC and each LHD are granted an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty free licence to use, reproduce, communicate to the public, modify, enhance, adapt and to otherwise exploit these Intellectual Property Rights and to sub-license these Intellectual Property Rights (but to avoid doubt subject to the confidentiality requirements of this Agreement) in connection with:
- (a) the implementation and evaluation of this Agreement; a SBB or similar other products, services or programmes within Australia and overseas; and/or
 - (b) subject to clause 38.9, provision, or procurement, of the same or similar services and/or outcomes contemplated by or under this Agreement.

Service Delivery Material

- 38.6 The Organisation grants to the State, HAC and each of the LHDs an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty-free licence of all Intellectual Property Rights in the Service Delivery Material to use, reproduce, communicate to the public, modify, enhance, adapt and to otherwise exploit these Intellectual Property Rights and to sub-license these Intellectual Property Rights in connection with:

- (a) the implementation and evaluation of this Agreement;
- (b) a SBB or similar other products, services or programmes within Australia and overseas; and/or
- (c) subject to clause 38.9, provision, or procurement, of the same or similar services and/or outcomes contemplated by or under this Agreement.

38.7 To the extent that any Intellectual Property Rights in the Service Delivery Material are:

- (a) developed by, or on behalf of, any Subcontractor in performing the Services and do not vest in the Organisation under the applicable services subcontract; or
- (b) owned by a third party,

the Organisation undertakes to promptly procure for the State, HAC and each of the LHDs an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty-free licence of all Intellectual Property Rights in the Service Delivery Material to use, reproduce, communicate to the public, modify, enhance, adapt and otherwise exploit these Intellectual Property Rights and to sub-license these Intellectual Property Rights in connection with:

- (c) the implementation and evaluation of this Agreement;
- (d) a SBB or similar other products, services or programmes within Australia and overseas; and
- (e) subject to clause 38.9, provision, or procurement, of the same or similar services and/or outcomes contemplated by or under this Agreement.

Moral Rights

38.8 The Organisation must hold or obtain at its own cost all necessary consents from any individual that has Moral Rights in the Intellectual Property to its use, adaptation and all other actions by the State, HAC and each of the LHDs (or any of their officers, employees, contractor and agents) or the Organisation in the exercise of the rights conferred under this clause 38. Such consents must be without restriction and without any requirement to attribute authorship or performership, including any act or omission that might otherwise infringe the Moral Rights of any individual.

38.9 The State (acting through HAC) by this Agreement agrees to attribute authorship or performership of any Service Delivery Materials in which the Organisation or any Subcontractor has in the Intellectual Property Rights for those materials to the Organisation or Subcontractor (as applicable) in the manner set out in the Operations Manual.

Licence to Organisation

38.10 The State (acting through HAC) by this Agreement grants to the Organisation an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty-free licence of any Intellectual Property Rights referred to in clause 38.3 (but to avoid doubt subject to the confidentiality requirements of this Agreement) for use in connection with:

- (a) the implementation and evaluation of this Agreement;
- (b) an SBB or similar other products, services or programmes within Australia and overseas; and

- (c) provision, or procurement, of the same or similar services and/or outcomes contemplated by or under this Agreement.

38.11 If the Organisation requires a licence (including any right to sublicense) additional to that granted under clause 38.10 to use the State's Intellectual Property Rights referred to in clause 38.3, the Organisation must make a written request to the State, through HAC, stating the nature of the additional licence required and the reason why such licence is required. The State will consider the request in good faith and, if the State considers it reasonable to do so in the circumstances, grant to the Organisation a further licence subject to the parties entering into a written agreement as to the terms of any additional licence.

Perfection of rights and provision of Material

38.12 The Organisation must, at its cost,

- (a) execute all documents and do all acts and things (including procuring that any Subcontractor execute all documents and do all acts and things), required for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property Rights; and
- (b) if required by HAC, deliver to HAC, or HAC's nominee, the Material referred to in clauses 38.3, 38.4, 38.5, 38.6, 38.7 and copies of the consents referred to in clause 38.8 in such form, including electronic, as may be requested.

38.13 Without limiting any other rights which the State may have under this Agreement or at law, the Organisation agrees to compensate the State, HAC and each of the LHDs and their respective officers, employees, contractors and agents ("**those compensated**"), against all damage, liability or loss incurred or suffered by any of those compensated (including legal costs on a solicitor client basis) arising directly or indirectly out of or in connection with:

- (a) a breach by the Organisation of this clause 38, whether by any act or omission and whether negligent, wilful reckless or unlawful; and/or
- (b) any claim for infringement or alleged infringement of any Intellectual Property and Moral Rights in relation to or in connection with this Agreement and its implementation or any material provided or created under this Agreement including any modifications, variations or adaptations to that material.

38.14 The Organisation's liability will be reduced to the extent the damage, liability or loss incurred or suffered was caused by those compensated.

39. Dispute resolution

Dispute resolution procedure

39.1 Subject to clause 39.12, the HAC and the Organisation must attempt to resolve any dispute in relation to this Agreement in accordance with this clause 39 before resorting to court proceedings or other external dispute resolution mechanisms except as specified in this clause.

Notice of dispute

39.2 A Party claiming a dispute has arisen in relation to this Agreement must immediately notify the other party ("**Notice of Dispute**") in accordance with clause 40.

39.3 The Notice of Dispute must specify in reasonable detail the nature of the dispute.

Referral to Joint Working Group

- 39.4 If a dispute is notified under clause 39.2 the Joint Working Group will attempt to resolve the dispute.

Escalation

- 39.5 If the dispute is not resolved by the Joint Working Group within 10 Business Days of it being referred to them then the dispute will be escalated by each Party to:
- (a) in the case of the Organisation, the Chief Executive Officer of Social Ventures Australia Limited; and
 - (b) in the case of HAC, the Deputy Secretary, Ministry of Health or the Deputy Secretary's nominee; and
 - (c) in the case of each LHD, the Director of Operations (however described) of the LHD or the Director of Operation's nominee.
- 39.6 If the dispute is not resolved within 10 Business Days of the dispute being referred to the parties' respective senior representatives in accordance with clause 39.5, or within 20 Business Days of the dispute being notified in accordance with clause 39.2, either Party may, by notice to the other specifying the issue for determination ("**ED Referral Notice**"), refer the dispute to independent expert determination under clause 39.7, provided that (for the purposes of clause 39.11) an ED Referral Notice must be given within 5 Business Days of the right to refer the dispute to expert determination having arisen.

Expert determination

- 39.7 If a dispute is referred to expert determination under this clause 39, unless otherwise agreed the Parties will be bound by the procedure set out in Schedule 8.
- 39.8 The fees and expenses of the expert will be borne by the Parties equally.
- 39.9 The determination of the expert, if made within the period stated in clause 39.11, will be binding on the Parties.
- 39.10 The expert must:
- (a) act as an expert, not an arbitrator;
 - (b) be independent of both Parties;
 - (c) have no interest or duty that conflicts with his/her role as an independent expert;
 - (d) keep confidential all materials and information made available to that expert in respect of the dispute; and
 - (e) issue a written decision giving reasons within the period stated in clause 39.11.
- 39.11 If an ED Referral Notice is not submitted within the time specified in clause 39.5 (or such longer period as may be agreed), or if the dispute is not determined within 2 Months of being referred to the expert (or such longer period as the parties may agree in writing), either party is free to pursue resolution of the dispute by legal proceedings or any other external dispute mechanism.

Exclusions

- 39.12 This clause 39 does not apply:
- (a) to restrict, in any way, the exercise by either Party of its rights to terminate this Agreement; or
 - (b) in connection with the commencement of legal proceedings by either Party seeking urgent interlocutory relief.

Continued performance of Agreement

- 39.13 Notwithstanding the existence of a dispute, unless and to the extent otherwise agreed, each Party must continue to perform this Agreement.

40. Notices

- 40.1 A notice under this Agreement must be:
- (a) in writing, directed to the Authorised Representative of the other Party (and copied to each recipient for copies of notices (if any) specified as such in Schedule 1); and
 - (b) forwarded to the address or email address of that Authorised Representative or the address last notified by the intended recipient to the sender.
- 40.2 A notice under this Agreement will be deemed to be served:
- (a) in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
 - (b) in the case of delivery by post – within three business days of posting;
 - (c) in the case of delivery by email:
 - (i) when the relevant email appears in the sender's sent log with properties disclosing and appropriate routing; and
 - (ii) the sender does not receive a message from the system operator to the effect the relevant email was undeliverable.
- 40.3 Notwithstanding the preceding clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9.00 am (local time at that place) on the next business day in that place.

41. Communications with Services Subcontractor

The Authorised Representative of the Services Subcontractor will act on behalf of the Organisation as its primary contact in relation to all Operational Matters, and any communication by or from the Services Subcontractor with regard to such may be relied on by HAC and/or LHDs as a communication made on behalf of the Organisation and is binding on the Organisation.

42. Liability of Organisation

Limitation of Organisation's liability

- 42.1 The Organisation enters into this Agreement only in its capacity as trustee of the Trust and in no other capacity. Notwithstanding any other provisions of this Agreement, a liability arising under or in connection with this Agreement is limited to and can be enforced against the Organisation only to the extent to which it can be satisfied out of the Trust Assets out of which the Organisation is actually indemnified for the liability. This limitation of the Organisation's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Organisation in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- 42.2 HAC, and any other person (other than the Organisation) with an interest in this Agreement, may not sue the Organisation in any capacity other than as trustee of the Trust, including by seeking the appointment of a receiver (except in relation to the Trust Assets), a liquidator, an administrator or any similar person to the Organisation or by proving in any liquidation, administration or arrangement of or affecting the Organisation (except in relation to the Trust Assets).
- 42.3 The provisions of this clause 42 shall not apply to any obligation or liability of the Organisation to the extent that it is not satisfied because under this Agreement or by operation of law there is a reduction in the extent of the Organisation's indemnification out of the Trust Assets as a result of the Organisation's fraud, negligence or Wilful Default in relation to the Trust.
- 42.4 It is acknowledged by the parties that:
- (a) HAC is responsible under this Agreement for performing a variety of obligations relating to the Services;
 - (b) the Services will be performed by the Services Subcontractor pursuant to the Services Subcontract; and
 - (c) the Organisation is not responsible for monitoring the performance by the Services Subcontractor of the Services subject to the Services Subcontract.
- 42.5 No act or omission of the Organisation (including any related failure to satisfy its obligations or breach of representation or warranty or undertaking under this Agreement) will be considered fraud, negligence or Wilful Default of the Organisation for the purpose of clause 42.3 to the extent to which the act or omission was caused or contributed to by any failure by HAC, the Services Subcontractor or any other person to fulfil its obligations relating to the Services or by any other act or omission of HAC, the Services Subcontractor or any other person.
- 42.6 Neither the Services Subcontractor nor any attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement has authority to act on behalf of the Organisation in a way which exposes the Organisation to any personal liability and no act or omission of any such person will be considered fraud, negligence or Wilful Default of the Organisation for the purpose of clause 42.3.
- 42.7 The Organisation is not obliged to do or refrain from doing anything in connection with this Agreement (including incur any liability) unless the Organisation's liability is limited in the same manner as set out in this clause.

- 42.8 In this clause **“Wilful Default”** means, in respect of the Organisation, any intentional failure to comply with or intentional breach by the Organisation of any of its obligations under this Agreement, other than a failure or breach:
- (a) which arose as a result of a breach by HAC, the Services Subcontractor or any other person to fulfil its obligations relating to the Services or by any other act or omission of HAC, the Services Subcontractor or any other person;
 - (b) which is in accordance with a lawful court order or direction or required by law; or
 - (c) which is in accordance with a proper instruction or direction given by HAC or is in accordance with an instruction or direction given to it by any person in circumstances where that person is entitled to do so at law.

43. General

No fetter

- 43.1 Nothing in this Agreement is to be construed as requiring HAC (including the Health Secretary) or either or both of the LHDs to do anything that would cause any of them to be in breach of any of its obligations at Law, and without limitation nothing in this Agreement is to be construed as limiting, fettering or otherwise preventing in any way the exercise of any statutory function (including a power, discretion or duty).
- 43.2 No action or decision by HAC (including the Health Secretary) and/or either or both of the LHDs in the lawful exercise of a statutory function (including a power, discretion or duty) in connection with any Eligible Person will give rise to any liability for breach of this Agreement.

Publicity and Media and Communications Protocol

- 43.3 The Parties must, and the Organisation must ensure its Subcontractors, use/s best endeavours to observe the Media and Communications Protocol.
- 43.4 The Parties will make reasonable efforts to consult with each other before the making of any press or other announcements or releases relating to this Agreement or its subject matter.

Disclosure of Conflict of Interest

- 43.5 The Organisation must:
- (a) notify HAC in writing immediately upon becoming aware of the existence or possibility of a conflict of interest that affects the Organisation (which to avoid doubt does not include any conflict that might affect its equity investors or Bond holders); and
 - (b) subject to clause 43.6 comply with any reasonable direction by HAC in relation to managing that conflict of interest.
- 43.6 Where, in HAC’s reasonable view a conflict of interest referred to in clause 43.5 cannot be appropriately managed, HAC may terminate this Agreement for cause with immediate effect by giving notice to the Organisation.

Assignment or Novation

- 43.7 Other than a Permitted Dealing, the Organisation must not assign, encumber, novate or otherwise transfer any right or obligation under this Agreement without HAC’s prior consent which consent may be withheld at HAC’s absolute discretion.

43.8 The Organisation acknowledges that HAC may conduct financial and other inquiries or checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment, novation or transfer.

43.9 HAC, at its own cost, may assign, novate or transfer this Agreement to a new legal entity where, by operation of statute or executive decision of the NSW Government, HAC is reconstituted into that new legal entity.

Writing

43.10 All amendments to this Agreement and all consents, approvals, waivers and agreements made under or pursuant to this Agreement must be evidenced in writing.

Consents

43.11 A Party may give its consent or approval conditionally or unconditionally or may withhold its consent, in its absolute discretion, unless this Agreement specifically provides otherwise.

Non-waiver

43.12 No failure or delay by a Party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by that Party of any time or other consideration, will operate as a waiver of the breach or a default by the other Party. Any waiver of a default of this Agreement will not be construed as a waiver of any further breach of the same or any other provision.

Severability

43.13 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

Relationship

43.14 The relationship between the Parties is one of principal and independent contractor. No Party has the power, right or authority to bind any other person or to assume or create any obligation on behalf of any other Party or in that Party's name, other than as expressly provided in this Agreement. No Party may represent that it has any such right, power or authority.

43.15 Other than as expressly provided in this Agreement, nothing in this Agreement is to be construed as constituting the Parties as partners, joint ventures or as creating a fiduciary, trust, employment or principal and agency relationship between any of them.

Rights cumulative

43.16 Unless otherwise indicated, the rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

43.17 No indemnity in this Agreement limits the effect or operation of any other indemnity in this Agreement. Unless expressly provided otherwise, each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties.

43.18 A Party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given. Each indemnity in this Agreement (and each release and each exclusion in respect thereof) survives the expiry or earlier termination of this Agreement.

Inconsistency

43.19 In the event of an inconsistency between the terms of this Agreement, or the terms of this Agreement and any other document (as applicable) for the purpose only of resolving the inconsistency, the following order of decreasing priority applies, unless otherwise agreement between the Parties in writing:

- (a) operative provisions of this Agreement;
- (b) Schedule 1 (Agreement Details);
- (c) Schedule 3 (Payment Schedule);
- (d) the Operations Manual;
- (e) Schedule 2 (Scope of Operations Manual);
- (f) Schedule 5 (Form of Direct Agreement); and
- (g) other Schedules, attachments or documents (if any).

Survival

43.20 Notwithstanding clause 12, and without limiting any other provision of this Agreement relating to survival the following clauses survive any termination or expiration of this Agreement:

- (a) clause 8 (Representations and warranties);
- (b) clause 19.5 (Force majeure – payments on termination);
- (c) clause 20 (Indemnities);
- (d) clause 21 (Insurance);
- (e) clause 22 (Payments to Organisation);
- (f) clause 23 (Repayment of Standing Charge on early termination)
- (g) clause 24 (GST);
- (h) clause 28 (Termination by HAC for Convenience);
- (i) clause 31 (Consequences of Termination);
- (j) clause 32 (Transition-Out);
- (k) clause 35 (Records, data and other information);
- (l) clause 36 (Privacy);
- (m) clause 37 (Confidentiality);
- (n) clause 38 (Intellectual Property);
- (o) clause 39 (Dispute Resolution); and

- (p) any other provision of this Agreement (including Schedule 3) which contemplates performance or observance following any termination or expiration of this Agreement including where referenced by, or necessary to, the operation of a clause the survival of which is expressly provided for in this clause 43.20.

Legal advice and costs

- 43.21 Except as otherwise agreed in writing each Party will bear its own costs and expenses incurred in relation to this Agreement including the negotiation, preparation and negotiation of this Agreement or any related document.
- 43.22 A Party to this Agreement that has an obligation to do anything under this Agreement must perform that obligation at its cost, unless this Agreement expressly provides otherwise.
- 43.23 A Party that requests any consent, waiver, amendment, supplement, replacement, novation, assignment or transfer under this Agreement or any related document must pay all costs associated with such consent, waiver, amendments, supplement, replacement, novation, assignment or transfer unless this Agreement expressly provides otherwise.

Counterparts

- 43.24 This Agreement may be executed by counterparts by the respective Parties, which together will constitute one agreement.

Applicable law

- 43.25 This Agreement is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.

Submission to jurisdiction

- 43.26 Each Party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

Executed as a deed on of 2017

Executed as a deed by the Health Administration Corporation:

EXECUTED by HEALTH ADMINISTRATION CORPORATION by THE SECRETARY OF THE MINISTRY OF HEALTH but not so as to incur personal liability

..... Elizabeth Koff, Secretary of the Ministry of Health

in the presence of:

..... Signature of witness

..... Name of witness (block letters)

Executed as a deed by the Organisation:

EXECUTED by SVA NOMINEES PTY LTD AS) A TRUSTEE OF THE RESOLVE SBB TRUST in) accordance with section 127(1) of the) Corporations Act 2001 (Cth) by authority of its) directors:)

..... Signature of director

..... Signature of director/company secretary

..... Name of director (block letters)

..... Name of director/company secretary (block letters)

SCHEDULE 1 AGREEMENT DETAILS

Item 1 Health Administration Corporation

Details

Name: Health Administration Corporation

ABN: 45 100 538 161

Address: Level 11, 73 Miller Street, North Sydney NSW

Authorised Representative

Name: Dr Nigel Lyons

Position: Deputy Secretary, NSW Ministry of Health

Address: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

Item 2 Organisation

Name: SVA Nominees Pty Ltd, ACN 616 235 753, as trustee of the Resolve SBB Trust, ABN 65 228 690 068

Address: Level 6, 6 O'Connell Street, Sydney NSW 2000

Authorised Representative:

Name: Elyse Sainty

Position: Director

Address: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

Item 3 SERVICES SUBCONTRACTOR
Details

Name: RichmondPRA Limited

ABN: 66 001 280 628

Address: [REDACTED]

Authorised Representative

Name: Andrew O'Brien

Position: General Manager Operations (South/East)

Address: [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

Item 4 TERM OF AGREEMENT

This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, will expire on the later to occur of 31 March 2025 and 8 years from the Commencement Date.

Item 5 BOND MODEL

Bond Model	Element	Detail
1	Bond Issue Amount	\$7,000,000, funded in two equal tranches of \$3,500,000 settled on each of the Bond Settlement Date and the first anniversary of the Bond Settlement Date. The minimum aggregate subscription amount for each investor is \$50,000.
2	Fixed Coupon	Effective rate of 2% per annum payable in respect of each Outcome Payment Dates 1, 2, 3 and 4 (with the first Fixed Coupon amount adjusted for the separate issuance of the two tranches of Bonds).

3	Performance Coupon	<p>A variable amount payable in respect of Outcome Payment Dates 5, 6 and 7 (or any final redemption date, if occurring earlier) which is determined as:</p> <p>(a) the aggregate amount of all assets of the Trust,</p> <p>less the aggregate of:</p> <p>(b) the maximum prospective amount of all fees and expenses payable by the Trustee under the terms of the Service Subcontract and the Management Deed (in respect of the Manager's appointment as manager of the Trust) at any time up to the scheduled maturity date for the Bonds; and</p> <p>(c) an appropriate allowance for all future debts and liabilities of the Trust and the Organisation (including, without limitation, the costs, charges and expenses of the Trust that are or may be payable at any time up to the winding up of the Trust and payments to the Independent Certifier); and</p> <p>the aggregate outstanding principal of the Bonds then on issue.</p>
4	Principal Repayments	<p>Application of an amount to redeem Bonds (by repayment of the outstanding principal amount of those Bonds) within 10 Business Days of Outcome Payment Dates 5, 6 and 7, which amount is determined as:</p> <p>(a) the aggregate amount of all assets of the Trust,</p> <p>less the aggregate of:</p> <p>(b) the maximum prospective amount of all fees and expenses payable by the Trustee under the terms of the Service Subcontract and the Management Deed (in respect of the Manager's appointment as manager of the Trust) at any time up to the scheduled maturity date for the Bonds; and</p> <p>(c) an appropriate allowance for all future debts and liabilities of the Trust and the Issuer (including, without limitation, the costs, charges and expenses of the Trust that are or may be payable at any time up to the winding up of the Trust and payments to the Independent Certifier),</p> <p>subject to an overall cap on redemptions of Bonds in respect of Calculation Dates 5 and 6 of a total of \$6,000,000 in aggregate principal amount of the Bonds.</p>
5	Tenor	<p>Approximately 7 years and 9 months (with scheduled maturity date to occur within 10 Business Days of Outcome Payment Date 7)</p>

Item 6 SERVICES SUBCONTRACT AGREED SCOPE

The Services Subcontract will be back to back with this Agreement, to the extent applicable.

The Services Subcontractor will represent and warrant that it has made its own assessment of the risks, contingencies and other circumstances which might affect the Project and has satisfied itself as to the Project's viability and its ability to successfully deliver the Outcomes.

Payment for Services under the Subcontract will be by fixed quarterly instalments (in advance), with adjustments for:

- (a) resourcing levels being lower than planned;
- (b) centre opening dates being later than planned; and
- (c) salary escalation rates being different than planned.

Item 7 AGGREGATE CAP ON PAYMENTS

The Aggregate Cap on Payments to the Organisation under this Agreement is \$23.9 million (inclusive of GST).

Item 8 INSURANCES

1. Insurances required to be held and maintained by each Subcontractor for and in respect of the period of the Term and any additional period stated for the particular policy are listed below.
 - (a) broad form public liability policy of insurance which includes:
 - (i) occurrence based public liability insurance of the value of at least \$20 million in respect of each occurrence and of at least \$20 million in the annual aggregate;
 - (ii) products liability insurance arising out of the provision of the Services for the period of cover, for an amount of at least \$20 million in respect of each occurrence and of at least \$20 million in the annual aggregate;
 - (b) workers' compensation insurance in accordance with applicable legislation for all the relevant employees;
 - (c) professional indemnity insurance for an amount of at least \$5 million in respect of each claim and of at least \$5 million in the annual aggregate. The professional indemnity insurance:
 - (i) must cover liability owed to or incurred by the Organisation, HAC and/or the LHDs in respect of the Services and any products supplied ancillary to the Services;
 - (ii) must be maintained until the expiry or termination of this Agreement and for a period of not less than 6 years after the expiry or termination of this Agreement;
 - (d) all risk property insurance for the insurable value of all of the equipment and materials used in the provision of the Services;
 - (e) business continuity insurance for an appropriate amount to cover business interruption in respect of the Services;
 - (f) personal accident (volunteers) insurance insuring volunteers for personal injury risk arising during voluntary duties in respect of the Services; and
 - (g) such other insurance policies to be effected by the relevant Subcontractor as reasonably required by HAC and/or the LHDs from time to time in respect of the Services.

2. For all public liability insurance policies required under this Item 8, all such insurance policies must:
 - (a) name HAC, the LHDs and the Organisation as additional insured for their respective rights and interests;
 - (b) contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have to acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy;
 - (c) provide that a notice of claim given to the insurer by HAC and/or the LHDs, the Organisation or any Subcontractor (as applicable) will be accepted by the insurer as a notice of claim given by all of the insured;
 - (d) upon its terms and subject to relevant policy limits, deductibles, exclusions and conditions, cover HAC, the LHDs or the Organisation in respect of the Services; and
 - (e) not exclude liability assumed by the Organisation under this Agreement ("indemnity") or by the Subcontractor under any subcontract to the extent the liability would have arisen in the absence of such indemnity (for example, under the common law).
3. All insurance policies required under this Item 8 must be effected with an insurance company which, if Australian, is licensed by the Australian Prudential Regulation Authority or, if the insurer is an international company, has a rating of not less than "A-" or "A3" from one or more Recognised CRAs.

SCHEDULE 2

SCOPE OF OPERATIONS MANUAL

The Operations Manual will cover the following subject areas:

Services Description

1. Services overview, including key elements and the intensity/nature of support
2. Role descriptions and team structure

Resolve Centres

3. Agreed Locations.

Enrolment and Referral process

4. Eligibility Criteria
5. Agreed Catchment Area
6. Minimum Agreed Referrals
7. Process for Referral requests
8. Process for assessment and recording of Enrolment into the Intervention Group
9. Process for making and recording Referrals

Outcomes Measurement Framework

10. Requirements and methodology for constructing the Control Group including the Propensity Scoring Method
11. Outcome data definitions and sources
12. Process and methodology for measuring Outcomes
13. Processes and timelines for provision of information to the Independent Certifier
14. Roles and responsibilities for the Independent Certification Process

Data Collection, Submission Requirements and Minimum Data Set

15. Contents of the Minimum Data Set
16. Data collection by the Services Subcontractor
17. Data collection by HAC, through each LHD
18. Data collection process (timing, flow, roles and responsibilities)
19. Data linkage requirements

Records management and Information Exchange Protocols

20. List of records that HAC, through the LHDs, requires the Organisation and its Subcontractors to maintain and those for which copies are required, including documents/records which HAC, through the LHDs, will require the Organisation and its Subcontractors to hand over on termination/maturity of the Agreement and that will be required for Project evaluation
21. Records management protocol agreed by the Parties
22. Privacy controls and data sharing protocols, including information technology arrangements and electronic sharing of data

Reporting Requirements & Materials

23. Frequency and nature of reporting
24. Roles and responsibilities
25. Service Delivery Materials
26. Material in which there is existing IP and newly created IP owned by the State
27. Material licensed to the State, HAC and the LHDs
28. Attribution of works

Joint Working Group

29. Membership

30. Terms of reference
31. Frequency of meetings
32. Procedures

Annual Review

33. Content of the Annual Review which will include but is not limited to:
 - a. review of the performance of the Parties in achieving the objectives set out in clause 3.1, including the NWAU Cumulative Reduction and the number of Referrals;
 - b. performance of the Organisation in delivering the Outcomes under the Agreement;
 - c. implementation of the Operations Manual;
 - d. the mental health services and policy environment in New South Wales; and
 - e. such other matters that the Parties may reasonably determine from time to time
34. Timeframes for Annual Reviews

Government Policies and guidelines

35. Any HAC or other Government policies (including across NSW Health) and guidelines with which the Organisation and its Subcontractors must comply. E.g. Privacy Guidelines, Incident Management Policy, data Protection and transition of care policy

Communications and Media Protocol

36. Protocols for communications with Investors
37. Protocols for communications with media
38. Protocols for communications with other parties

Transition Out

39. Process for agreeing the Transition-Out Plan (content and timeframes) in the event of early termination

Contract Management

40. Contract Representatives of the Parties and the Services Subcontractor
41. Payment processes including invoicing arrangements and process for agreeing variations to timeframes for payment in Schedule 3
42. Dispute resolution processes
43. Independent certification
 - a. process for requesting certification of annual performance data that evidences a breach of the Agreement
 - b. process for disputing the Independent Certifier's Report

Authorised Representatives

44. Current Authorised Representatives for HAC, Organisation and Services Subcontractor as listed in the Agreement Details
45. Process for changing Authorised Representatives

SCHEDULE 3 PAYMENT SCHEDULE

INTRODUCTION

This Schedule 3 (the **"Payment Schedule"**) sets out the terms and amounts for specified payments to be made under the terms of the Agreement. The information in this Payment Schedule reflects the financial model agreed between the parties prior to the Effective Date as the basis on which payment amounts will be calculated, increased and/or discounted.

All amounts specified in the Payment Schedule are inclusive of GST. All payments calculated in accordance with Schedule 3 are calculated on a GST inclusive basis.

DEFINITIONS

Unless otherwise indicated, capitalised terms used but not defined in this Payment Schedule have the same meanings as in the Agreement and the following terms have these meanings:

"Annual Base Cost" means, at each Calculation Date, the amount specified in **Table 1: Annual Base Cost** below:

Table 1: Annual Base Cost

Calculation Date	Annual Base Cost (\$)
1	██████
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████

"Annual Program Savings" or **"APS"** means the amount calculated in accordance with Part B of this Payment Schedule.

"Avoided NWAUs" means, as at any Calculation Date, the Counterfactual NWAUs less the Recorded NWAUs.

"Break Costs" means the amount payable to the Organisation by way of contribution to the Organisation's break costs as specified in item 1 of Part D of this Payment Schedule.

"Counterfactual NWAUs" means, as at any Calculation Date, the total NWAUs recorded by NSW Health for each individual in the Control Group over the 12 Month period ending on the relevant Calculation Date, excluding any NWAUs attributable to days that did not occur during an individual's Measurement Period, as determined in accordance with the methodology set out in the Operations Manual.

"Cumulative Program Savings" or **"CPS"** means, on any date, the aggregate of all Annual Program Savings determined as at each of the Calculation Dates that have occurred prior to and including that date.

"Date of Termination" means the date on which termination of this Agreement takes effect.

"Deemed Enrolment Date" means, for each Deemed Enrolment, the last day of the relevant Enrolment Period.

"Deemed Enrolment Measurement Days" means, as at any Calculation Date or on the Date of Termination, the aggregate number of days in the Measurement Period for all Deemed Enrolments during the period:

- (a) commencing on the date immediately after the previous Calculation Date, or, for Calculation Date 1, the Services Commencement Date; and
- (b) ending on the relevant Calculation Date or Date of Termination.

"Deemed Enrolments" means, in any Enrolment Period, the Agreed Minimum Referrals for that Enrolment Period less the aggregate number of Referrals during that Enrolment Period, with a minimum of Nil.

"Earned Payment" means, as at any Calculation Date, the amount determined in accordance with Part B of this Payment Schedule.

"Effective Date" means, subject to clause 4, the date on which all Conditions Precedent are satisfied or waived in full in accordance with clause 4.

"Enrolment Date" means the date an Eligible Person is Enrolled in the Intervention Group by the relevant LHD in accordance with the process set out in the Operations Manual.

"Evaluation Report" means a report produced by the Independent Evaluator appointed under clause 18.

"Inflation Adjustment Payment" has the same meaning it has in the Services Subcontract.

"Intervention Group Measurement Days" means, as at any Calculation Date or on the Date of Termination, the aggregate number of days in the Measurement Period for all individuals in the Intervention Group during the period:

- (a) commencing on the date immediately after the previous Calculation Date, or, for Calculation Date 1, the Services Commencement Date; and
- (b) ending on the relevant Calculation Date or on the Date of Termination.

"Measurement Period" means, at each Calculation Date or on the Date of Termination, for each individual in the Intervention Group or the Control Group, and for each Deemed Enrolment, as the case may be, the period of time that falls between:

- (c) the later of the individual's Enrolment Date, date of inclusion in the Control Group, or the Deemed Enrolment Date, as the case may be, and the date immediately after the previous Calculation Date (if one has occurred); and
- (d) the earlier of the second anniversary of the individual's Enrolment Date, date of inclusion in the Control Group, or the Deemed Enrolment Date, as the case may be, and the relevant Calculation Date or the Date of Termination.

"NWAU Annual Reduction" means, as at any Calculation Date, the Avoided NWAUs divided by the Counterfactual NWAUs.

"NWAU Cumulative Reduction" means, on any date:

- (a) the aggregate of all Avoided NWAUs determined at each of the Calculation Dates that have occurred prior to and including this date; divided by
- (b) the aggregate of all Counterfactual NWAUs determined at each of the Calculation Dates that have occurred prior to and including this date,

provided that, if Calculation Date 2 has not yet occurred, the NWAU Cumulative Reduction shall be deemed to be 0.25.

“Outcome Payment Date” means, subject to any payment conditions set out in the Agreement, including this Payment Schedule, the date that is 30 calendar days after the HAC receives a valid tax invoice in accordance with the requirements set out in the Operations Manual and the Independent Certifier’s Report from the Organisation in relation to the Outcome Payment.

“Outcome Payment Tier 1, 2 or 3” means the amount specified in **Table 2: Outcome Payment Tiers** below:

Table 2: Outcome Payment Tiers

Outcome Payment Tier 1	\$700,000 for each partial or complete quarter that has elapsed since the Effective Date, with a maximum of \$19,500,000
Outcome Payment Tier 2	\$900,000 for each partial or complete quarter that has elapsed since the Effective Date, with a maximum of \$25,000,000
Outcome Payment Tier 3	\$1,600,000 for each partial or complete quarter that has elapsed since the Effective Date, with a maximum of \$45,000,000

“Recorded NWAUs” means, as at any Calculation Date, the aggregate NWAUs recorded by NSW Health for all individuals in the Intervention Group over the 12 Month period ending on the relevant Calculation Date, excluding any NWAUs attributable to days that did not occur during an individual’s Measurement Period, as determined in accordance with the methodology set out in the Operations Manual.

“Remaining Standing Charge” means at any date the amount calculated as follows:

- (a) the aggregate Standing Charge payments made as at that date; less
- (b) \$500,000 multiplied by the number of complete and partial quarters that have elapsed since the Effective Date, this amount not to exceed \$9,000,000,

provided that the Remaining Charge must not be less than \$0.

“Salary Adjustment Payment” means the aggregate of all Inflation Adjustment Payments made by the Organisation to the Services Subcontractor under the terms of the Services Subcontract, each such payment amount inflated at a rate of [REDACTED] per annum from the date of the payment to the date the Salary Adjustment Payment is made, up to a capped amount of [REDACTED]

“Standing Charge Payment Date” means each of:

- (a) 1 August 2017;
- (b) 1 July 2018; and
- (c) 1 July 2019.

“Termination Accrued Savings” or **“TAS”** means the amount calculated in accordance with Part C of this Payment Schedule.

“Termination Earned Payment or “TEP”” means, as at the Date of any Termination, the amount determined in accordance with item 7 of Part C of this Payment Schedule.

“Termination Payment” means the payment due in the event of termination of this Agreement as specified and calculated in accordance with Part C of this Payment Schedule.

“Termination Payment Date” means, subject to any payment conditions set out in the Agreement, including this Payment Schedule, the date that is 30 calendar days after HAC receives a valid tax invoice in accordance with the requirements set out in the Operations Manual and the Independent Certifier’s Report from the Organisation in relation to the Termination Payment.

“Termination Program Savings” or “TPS” means the aggregate of:

- (a) Cumulative Program Savings determined as at the Calculation Date immediately preceding the Date of Termination (if one has occurred); and
- (b) the Termination Accrued Savings.

PART A: STANDING CHARGE PAYMENTS

1. The Standing Charge is \$9,000,000 and is a pre-payment of part of the Outcome Payments that may be paid in accordance with this Payment Schedule. The Standing Charge is payable in three equal instalments of \$3,000,000, one on each of the Standing Charge Payment Dates.
2. The Organisation will issue an invoice in accordance with the requirements set out in the Operations Manual for payment of each Standing Charge instalment no later than 30 calendar days prior to each Standing Charge Payment Date. Subject to receipt of the invoice in accordance with this item 2, HAC will ensure the invoice is paid on or before the Standing Charge Payment Date.
3. In the event that the Agreement is terminated in accordance with this Agreement, the Organisation will refund the Remaining Standing Charge calculated as at the Date of Termination.
4. Where the Remaining Standing Charge is required to be refunded, the Organisation will pay the Remaining Standing Charge on or before the Termination Payment Date.

PART B: OUTCOME PAYMENTS

Outcome Payment timeframe

1. Where an Outcome Payment is payable to the Organisation under this Agreement, that Outcome Payment will be paid on or before the Outcome Payment Date for that Outcome Payment, such date being determined with reference to items 2 and 3 below and Part F of this Payment Schedule.
2. The Organisation will in relation to any Outcome Payment that is payable, within 2 Business Days of receipt of the relevant Independent Certifier’s Report, in accordance with the requirements set out in the Operations Manual:
 - (a) issue an invoice(s) for the total amount payable to the Organisation, including itemisation of the relevant Outcome Payment (if any); and
 - (b) provide NSW Health with a copy of the Independent Certifier’s Report prepared in accordance with the requirements of this Agreement, and any documents that are referred to in or accompany the Independent Certifier’s Report.
3. Subject to the Organisation complying with the requirements set out in item 2 above and HAC, in consultation with the LHDs, being satisfied (acting reasonably) as to the conclusions in the Independent Certifier’s Report, HAC will ensure that the Organisation is paid the total amount payable for that Outcome Payment within 30 calendar days of receipt of the invoice.

Outcome Payment calculation

4. The Organisation may be paid an Outcome Payment (“**OP**”) based on the Cumulative Program Savings (“**CPS**”) determined as at each Calculation Date.
5. The Annual Program Savings (“**APS**”) is calculated as at each Calculation Date using the following formula:

$$\text{APS} = \text{NWAU Annual Reduction} \times \text{Annual Base Cost} \times [(\text{Intervention Group Measurement Days} + \text{Deemed Enrolment Measurement Days})/365]$$

6. The Earned Payment (“EP”) is calculated as at each Calculation Date as:
- (a) if the Cumulative Program Savings is less than or equal to Outcome Payment Tier 1 (“OPT1”), then:
EP = CPS; or
 - (b) if CPS is greater than OPT1 and less than Outcome Payment Tier 2 (“OPT2”), then:
EP = OPT1 + (25% x (CPS – OPT1)); or
 - (c) if CPS is greater than OPT2 and less than Outcome Payment Tier 3 (“OPT3”), then:
EP = OPT1 + (25% x (OPT2 – OPT1)) + (15% x (CPS – OPT2)); or
 - (d) if CPS is greater than OPT3 then:
EP = OPT1 + (25% x (OPT2 – OPT1)) + (15% x (OPT3 – OPT2)).
7. The Outcome Payment payable at each Outcome Payment Date is equal to the Earned Payment at the relevant Calculation Date less the aggregate of all previous Standing Charge payments and the aggregate of any previous Outcome Payments, provided that the Outcome Payment must not be less than \$0. For the avoidance of doubt, the Outcome Payment may be \$0, that is the Organisation may not be paid an Outcome Payment.

PART C: TERMINATION PAYMENTS

1. No Outcome Payment will be payable to the Organisation in respect of the termination of this Agreement prior to the expiry of the Term (but without affecting Outcome Payments previously made).
2. Notwithstanding item 1 of this Part C, the Organisation may be entitled to a Termination Payment calculated and paid in accordance with this Part C in the event that:
 - (a) HAC terminates for convenience under clause 28 of the Agreement;
 - (b) HAC terminates for cause under clause 29 of the Agreement;
 - (c) Either party terminates for low Referrals under clause 18.5 of the Agreement;
 - (d) Either party terminates due to Force Majeure under clause 19.4 of the Agreement;
 - (e) The Organisation terminates for cause under clause 30 of the Agreement;
 - (f) Either party terminates for low NWAU Cumulative Reduction under clause 18.4 of the Agreement; or
 - (g) The Organisation terminates for a change of tax legislation or Law under clause 25.3 of the Agreement.

Termination Payment timeframe

3. Where a Termination Payment is payable to the Organisation under this Agreement, that Termination Payment is payable on or before the Termination Payment Date, such date being determined with reference to items 4 and 5 below and Part F of this Payment Schedule.
4. The Organisation will in relation to any Termination Payment that is payable, within 5 Business Days of receipt of the Independent Certifier’s Report prepared in accordance with Part F of this Payment Schedule, in accordance with the requirements set out in the Operations Manual:
 - (a) issue an invoice for the total amount payable to the Organisation, including itemisation of the relevant Termination Payment (if any); and

- (b) provide NSW Health with a copy of the Independent Certifier's Report prepared in accordance with the requirements of this Agreement including this Payment Schedule, and any documents that are referred to in or accompany the Independent Certifier's report.
5. Subject to the Organisation complying with the requirements set out in item 4 above and HAC, in consultation with the LHDs, being satisfied (acting reasonably) as to the conclusions in the Independent Certifier's Report, HAC will ensure that the Organisation is paid the total amount payable for that Termination Payment within 30 calendar days of receipt of the invoice.

For avoidance of doubt, any Termination Payment cannot be calculated and paid until the Cumulative Program Savings as at the Calculation Date immediately prior to the date of termination have been determined by the Independent Certifier.

Termination Payment - General

6. The Organisation will (subject to this Payment Schedule) be paid a Termination Payment ("TP") based on the Termination Program Savings ("TPS").
7. Termination Accrued Savings is calculated as at the Date of Termination using the following formula:

$$TAS = NWAU \text{ Cumulative Reduction} \times \text{Annual Base Cost} \times [(Intervention \text{ Group Measurement Days} + \text{Deemed Enrolment Measurement Days})/365]$$

where Annual Base Cost is the value in **Table 1: Annual Cost Base** above for the Calculation Date immediately prior to the Date of Termination, inflated at an annual rate of 3% for the period of time between that Calculation Date and the Date of Termination. If the Date of Termination is prior to Calculation Date 1, the Annual Base Cost is \$106,000.

8. The Termination Earned Payment ("TEP") is calculated as at the Date of Termination as:
- (a) if the Termination Program Savings is less than or equal to Outcome Payment Tier 1 ("OPT1"), then:
TEP = TPS; or
- (b) if TPS is greater than OPT1 and less than Outcome Payment Tier 2 ("OPT2"), then:
TEP = OPT1 + (25% x (TPS – OPT1)); or
- (c) if TPS is greater than OPT2 and less than Outcome Payment Tier 3 ("OPT3"), then:
TEP = OPT1 + (25% x (OPT2 – OPT1)) + (15% x (TPS – OPT2)); or
- (d) if TPS is greater than OPT3 then:
TEP = OPT1 + (25% x (OPT2 – OPT1)) + (15% x (OPT3 – OPT2)).
9. The Termination Payment payable at the Termination Payment Date is equal to:
- (a) the Termination Earned Payment; less
- (b) the aggregate of all previous Standing Charge payments and the aggregate of any previous Outcome Payments; plus
- (c) any Remaining Standing Charge refundable to HAC as set out in Part A of this Payment Schedule.

The Termination Payment must not be less than \$0. For the avoidance of doubt, the Termination Payment may be \$0, that is the Organisation may not be paid a Termination Payment.

10. Notwithstanding the above, if the Date of Termination is before Calculation Date 2 then the Termination Payment shall be calculated as the greater of the relevant amount specified in

Table 3: **Minimum Termination Payment where Date of Termination is before Calculation Date 2** below and the amount calculated under item 9 of this Part C.

Table 3: Minimum Termination Payment where Date of Termination is before Calculation Date 2

Termination Date Occurs in Quarter Ending	Terminated by Organisation for Cause (clause 30) or by HAC for Convenience (clause 28) (\$)	Termination by either party due to Force Majeure (clause 19.4) or by Organisation change in Federal Law (clause 25.3) or by HAC for low Referrals (clause 18.5) (\$)	Termination for any other reason (\$)
30 September 2017	██████████	█	█
31 December 2017	██████████	██████████	█
31 March 2018	██████████	██████████	█
30 June 2018	██████████	██████████	█
30 September 2018	██████████	██████████	█
31 December 2018	██████████	██████████	█
31 March 2019	██████████	██████████	█
30 June 2019	██████████	██████████	█
30 September 2019	██████████	██████████	█

PART D: SALARY ADJUSTMENT PAYMENTS

At the Outcome Payment Date following Calculation Date 7, or on the Termination Payment Date if one occurs, HAC will ensure the Organisation is paid the Salary Adjustment Payment.

PART E: BREAK COSTS

1. Break Costs that may be recoverable by the Organisation, subject to this Agreement, comprise costs related to:
 - (a) the Services Subcontractor's transition out services, being the cost of provision of 3 Months services after the Date of Termination (column (a) of **Table 4: Capped amounts for Break Costs**);
 - (b) the Services Subcontractor's staff redundancy costs incurred as a consequence of winding up the Services (column (b) of **Table 4: Capped amounts for Break Costs**);
 - (c) costs incurred by the Services Subcontractor as a consequence of the termination of property leases (column (c) of **Table 4: Capped amounts for Break Costs**);
 - (d) costs in relation to the provision of 3 Months additional services under the Management Agreement (column (d) of **Table 4: Capped amounts for Break Costs**); and/or
 - (e) other costs related to the termination, including the Independent Certifier's Report and legal costs (column (e) of **Table 4: Capped amounts for Break Costs**).

These costs are each capped at the amounts, if any, set out in **Table 4: Capped amounts for Break Costs** below that correspond to the period in which the Date of Termination falls, subject to adjustment as set out in items 6 and 7 of this Part E. For the avoidance of doubt, the parties acknowledge that Break Costs are not payable in certain circumstances, including as provided under **Table 4: Capped amounts for Break Costs**.

2. In addition to any Termination Payment payable under Part C of this Payment Schedule, where:
 - (a) the Organisation terminates this Agreement for cause under clause 30; or
 - (b) the HAC terminates this Agreement for convenience under clause 28,

HAC will ensure the Organisation is paid 100% of its Break Costs in relation to the categories of costs specified at item 1 of this Part D actually incurred by the Organisation and capped at the relevant amounts specified in **Table 4: Capped amounts for Break Costs** below.

3. In addition to any Termination Payment payable under Part C of this Payment Schedule, where:
 - (a) either party terminates due to Force Majeure under clause 19.4;
 - (b) the Organisation terminates for a change of tax legislation or Law under clause 25.3;
 - (c) either party terminates for poor performance under clause 27;
 - (d) either party terminates for low Referrals under clause 18.5; or
 - (e) either party terminates for low NWAU Cumulative Reduction under clause 18.4,

HAC will ensure that the Organisation is paid 100% of the Break Costs related to the delivery of Transition-Out Services capped at the relevant amount specified in column (a) of **Table 4: Capped amounts for Break Costs** below and 50% of all other Break Costs incurred by the Organisation and capped at the relevant amounts specified in columns (b), (c), (d) and (e) of **Table 4: Capped Amounts for Break Costs** below.

For the avoidance of doubt the parties acknowledge that no Termination Payment is payable if either party terminates for poor performance under clause 27, but the Organisation will be entitled to Break Costs in accordance with this item 3.

4. In addition to any Termination Payment payable under Part C of this Payment Schedule, where the HAC terminates this Agreement for cause under clause 29, HAC will ensure the Organisation is paid 100% of the Break Costs related to the delivery of Transition-Out Services and capped to the relevant amount specified in column (a) of **Table 4: Capped Amounts for Break Costs** below. For the avoidance of doubt, the HAC is not required to pay the Organisation any amount related to other Break Costs referred to in columns (b), (c), (d) and (e) of **Table 4: Capped Amounts for Break Costs** if the HAC terminates this Agreement for cause under clause 29.
5. Notwithstanding this Part E, the Organisation and the Services Subcontractor must use reasonable endeavours to mitigate any Break Costs and must, on request, provide evidence to the HAC that they have done so.

Table 4: Capped amounts for Break Costs

Date of termination occurs in quarter ending	(a) Break Costs related to transition out services (\$)	(b) Break Costs related to staff redundancies (\$)	(c) Break Costs related to lease termination (\$)	(d) Break Costs related to fees under Management Agreement (\$)	(e) Other Break Costs (termination certification & legal costs) (\$)
30 September 2017	██████	█	█	██████	██████
31 December 2017	██████	█	██████	██████	██████
31 March 2018	██████	█	██████	██████	██████
30 June 2018	██████	█	██████	██████	██████
30 September 2018	██████	██████	██████	██████	██████
31 December 2018	██████	██████	██████	██████	██████
31 March 2019	██████	██████	██████	██████	██████
30 June 2019	██████	██████	██████	██████	██████
30 September 2019	██████	██████	██████	██████	██████
31 December 2019	██████	██████	██████	██████	██████
31 March 2020	██████	██████	██████	██████	██████
30 June 2020	██████	██████	██████	██████	██████
30 September 2020	██████	██████	██████	██████	██████
31 December 2020	██████	██████	██████	██████	██████
31 March 2021	██████	██████	██████	██████	██████
30 June 2021	██████	██████	██████	██████	██████
30 September 2021	██████	██████	██████	██████	██████
31 December 2021	██████	██████	██████	██████	██████
31 March 2022	██████	██████	██████	██████	██████
30 June 2022	██████	██████	██████	██████	██████
30 September 2022	██████	██████	██████	██████	██████
31 December 2022	██████	██████	██████	██████	██████
31 March 2023	██████	██████	██████	██████	██████
30 June 2023	██████	██████	██████	██████	██████

30 September 2023	██████	██████	██████	██████	██████
31 December 2023	██████	██████	██████	██████	██████
31 March 2024	██████	██████	██████	██████	██████
30 June 2024	██████	██████	██████	██████	██████
30 September 2024	█	█	█	██████	██████
31 December 2024	█	█	█	█	█
31 March 2025	█	█	█	█	█

6. The cap for Break Costs associated with the Services Subcontractor's transition out services and the additional quarter of services under the Management Agreement will be calculated as a proportion of the capped amount in **Table 4: Capped amount for Break Costs** above (see column (a) and (d) that aligns with the proportion of the quarter in which the date of termination occurs that has elapsed as at the date of termination. For the avoidance of doubt this means that if the 3 Month period following the Date of Termination includes one month for which the Services Subcontractor has already received payment from the Organisation under the Services Subcontract, the capped amount owed under Break Costs in respect of Transition - Out Services will be 67% of the amount in **Table 4: Capped amounts for Break Costs** above.
7. If HAC determines that a final Evaluation Report is to be commissioned, the cost of that Evaluation Report (up to a capped amount of ████████) shall be added to any Break Costs payable under this Part E.
8. The Organisation must demonstrate to HAC that the Break Costs were actually incurred, or will be incurred, by the Organisation or the Services Subcontractor and that the Break Costs will not otherwise be recoverable by the Organisation or Services Subcontractor as a result of any insurance policy or action for reimbursement by the Organisation or the Services Subcontractor.

PART F: INDEPENDENT CERTIFIER'S REPORT

1. Each Party must provide to the Independent Certifier the information required to enable the Independent Certifier to prepare its report following each Calculation Date. The information required to determine and report on items 2(a), 2(b) and 2(c) in this Part F must be provided within 20 Business Days of each Calculation Date, and all other required information must be provided at least 7 Business Days prior to the date that is 5 Months after the Calculation Date.
2. The Independent Certifier must determine and report on the following matters for each relevant period for which a payment is due, based on information and data supplied by the Parties and in accordance with the provisions of this Payment Schedule and any relevant calculation and measurement methods set out in the Operations Manual:
 - (a) the number of individuals in the Intervention Group, and a reconciliation with the number of individuals in the Intervention Group at the previous Calculation Date (if any), with reference to the number of Enrolments and individuals reaching the second anniversary of their Enrolment Date;
 - (b) the number of Intervention Group Measurement Days;
 - (c) The number of Deemed Enrolments and Deemed Enrolment Measurement Days;

- (d) The process followed for construction of the Control Group, including verification that the Measurement Days for the Control Group equals the Intervention Group Measurement Days;
 - (e) the Counterfactual NWAUs for the 12 Month period immediately preceding the Calculation Date and the aggregate of all Counterfactual NWAUs determined at each of the Calculation Dates that have occurred;
 - (f) the Recorded NWAUs for the 12 Month period immediately preceding the Calculation Date and the aggregate of all Recorded NWAUs determined at each of the Calculation Dates that have occurred;
 - (g) the Avoided NWAUs for the 12 Month period immediately preceding the Calculation Date and the aggregate of the Avoided NWAUs determined at each of the Calculation Dates that have occurred;
 - (h) the NWAU Annual Reduction and the NWAU Cumulative Reduction;
 - (i) the Annual Program Savings for the 12 Month period immediately preceding the Calculation Date and the Cumulative Program Savings;
 - (j) the aggregate of all:
 - (i) previous Standing Charge payments paid; and
 - (ii) previous Outcome Payments paid; and
 - (k) the calculated value of the Outcome Payment to be made to the Organisation.
3. The Independent Certifier must in providing its report include details in relation to the determination of the matters in item 2 of this Part F, setting out the evidence used in the determination and the formula or method by which the matters were determined.
 4. The Independent Certifier must provide its final report to the Organisation within 5 Business Days of the day it receives the information from the Organisation and HAC required for it to prepare its report in respect of each Calculation Date.
 5. In the event of a termination of the Agreement prior to the expiry of the Term, the Independent Certifier will be required to certify the data and information required to calculate the amount of any Remaining Standing Charge, Termination Payment and Break Costs payable under this Payment Schedule. In addition, the report will include details of the determination of the data, information and calculations relating to the payments. The Independent Certifier must provide its final report to the Organisation within 15 Business Days of the day it receives the information from the Organisation and the HAC required for it to prepare its report in respect of any payments payable in relation to that termination.
 6. Either Party may dispute the findings in the Independent Certifier's report within 10 Business Days of receipt of the report.
 7. The process for disputing any report by the Independent Certifier is as set out in the Operations Manual.

SCHEDULE 4 TRANSITION-IN

[Not Used]

SCHEDULE 5 FORM OF DIRECT AGREEMENT

Deed of Direct Agreement

Parties:

Health Administration Corporation ("HAC")

and

RichmondPRA Limited (ACN 001 280 628) (the "Services Subcontractor")

Background

- A. HAC and SVA Nominees Pty Ltd (ACN 616 235 753) (the "**Organisation**") have entered into a Deed of Implementation Agreement for a Social Benefit Bond Transaction in the area of mental health services (in this Background section and in the Operative Provisions, referred to as the "**Implementation Deed**") under which the Organisation has agreed with HAC to deliver certain outcomes through a subcontract with the Services Subcontractor.
- B. The Organisation has accordingly entered into a subcontract with the Services Subcontractor of its obligations under the Implementation Deed to provide the services necessary to deliver the agreed outcomes (in this Background section and in the Operative Provisions, referred to as "**Services Subcontract**").
- C. As part of its arrangements to mitigate risk, HAC wishes to obtain directly from the Services Subcontractor, and the Services Subcontractor has agreed to provide HAC with:
- (a) certain undertakings given by the Services Subcontractor under the Services Subcontract; and
 - (b) rights to certain intellectual property owned and used by the Services Subcontractor, or created by the Services Subcontractor, in connection with the Services Subcontract.

Operative Provisions

1. Definitions

Applicable definitions contained in the Services Subcontract are taken to be incorporated, mutatis mutandis, into this Direct Agreement.

2. Repeated representations, warranties, undertakings and indemnities

- 2.1 The Services Subcontractor repeats to, and for the benefit of, HAC the representations, warranties, undertakings and indemnities that it has given to the Organisation in the following clauses of the Services Subcontract (in accordance with their terms):

Clause 9 (Compliance with Law, guidelines, holding of rights, approvals and consents)
Clause 10.7 (Subcontracts)
Clause 11 (Workforce of Services Subcontractor)

Clause 20 (Indemnities)
 Clause 21 (Insurance)
 Clause 35 (Records, data and other information)
 Clause 36 (Privacy)
 Clause 37 (Confidentiality)
 Clauses 43.3-43.4 (Publicity and Media Communications Protocol)

Drafting Note: these provisions to be checked against Services Subcontract.

- 2.2 In construing the above clause references as they are repeated under this Direct Agreement, references in those clauses, where appearing in the Services Subcontract, to “the Organisation” are taken to be references to [“HAC”], and references to “the Agreement” or “this Agreement” are taken to be references to the Services Subcontract, unless the context yields a contrary meaning.

Drafting Note: clause 2.2 need to be reviewed against the clauses referred to in clause 2.1.

- 2.3 Any limitation of liability in favour of the Services Subcontractor as against a third party other than HAC, in any other document and in whatever capacity and however expressed, does not apply in any way to the Services Subcontractor in its dealings with HAC and relevant clauses and definitions from the Services Subcontract referred to or taken to apply in this Direct Agreement are to be construed and take effect as though no such limitation of liability existed and likewise as though any provisions of the Services Subcontract concerning the “pass through” of corresponding rights, entitlements and remedies of the Organisation under the Implementation Deed to the Services Subcontractor did not exist.
- 2.4 The Services Subcontractor is not required to give any notice by reference to clause 2.1 if the Services Subcontractor knows or has reasonable grounds to believe that it would be a duplicate of a corresponding notice already given by the Organisation.
- 2.5 The Services Subcontractor is not required to pay an amount by reference to clause 2.1 if and to the extent such payment would duplicate a corresponding payment already made by the Organisation under, or in respect of, any applicable or corresponding provision of the Implementation Deed.

3. Additional Representation

- 3.1 The Services Subcontractor represents and warrants to HAC on the Commencement Date that it has made its own assessment of the risks, contingencies and other circumstances which might affect the Project and has satisfied itself as to the Project's viability and its ability to successfully deliver the Outcomes.
- 3.2 The Services Subcontractor undertakes not to amend the Services Subcontract (other than to correct minor or typographical errors) without the prior written consent of HAC, such consent not to be unreasonably withheld or delayed, with HAC to act expeditiously with respect to any request for such consent.

4. Intellectual Property

- 4.1 The Services Subcontractor repeats to, and for the benefit of, HAC and each LHD the undertakings that it has given to the Organisation in the Services Subcontract with respect to Intellectual Property Rights and in addition the parties to this Direct Agreement agree as between themselves as follows:
- (a) This Direct Agreement does not assign ownership of any Intellectual Property Rights existing at the Commencement Date and no party may assert ownership of all or any part of the other party's pre-existing Intellectual Property Rights.

- (b) If the Services Subcontractor has any pre-existing Intellectual Property Rights (excluding rights in the relation to the Service Delivery Material) as at the Commencement Date that are applied in the performance of the Services Subcontract, the Services Subcontractor grants to the State, HAC and each of the LHDs by this clause an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty-free licence of those pre-existing Intellectual Property Rights for use in relation to or in connection with the Implementation Deed (including performance of any agreed roles and responsibilities associated with performance of the Services Subcontract).
- (c) If any Intellectual Property Rights (excluding rights in relation to the Service Delivery Material) are developed solely by, or on behalf of, the Services Subcontractor, or jointly by or on behalf of the State, HAC or the LHDs and the Services Subcontractor, in the course of performance of the Implementation Deed and/or the Services Subcontract, the State owns those Intellectual Property Rights and such Intellectual Property Rights on their creation vest or are otherwise assigned or transferred to the State without the need for further assurance.
- (d) If ownership of Intellectual Property referred to in clause 4.1(c) is not capable of being vested in or transferred to the State under that clause because the Services Subcontractor does not own or is unable at a reasonable cost to obtain ownership of that Intellectual Property, the Services Subcontractor must at its own cost ensure that the State, HAC and each LHD is granted an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty free licence to use and to sub-license the use of those Intellectual Property Rights in connection with:
 - (i) the implementation and evaluation of the Implementation Deed; and
 - (ii) an SBB or similar other products, services or programmes within Australia and overseas; and/or
 - (iii) subject to clause 4.5, provision, or procurement of, the same or similar services and/or outcomes contemplated by or under the Implementation Deed.

4.2 To the extent that any Intellectual Property Rights in the Service Delivery Material are developed by, or on behalf of, the Services Subcontractor in the course of performance of the Implementation Deed and/or the Services Subcontract and are owned by the Services Subcontractor, the Services Subcontractor grants to the State, HAC and each LHD an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty free licence to use and to sub-license the use of those Intellectual Property Rights in connection with:

- (a) the implementation and evaluation of the Implementation Deed; and
- (b) an SBB or similar other products, services or programmes within Australia and overseas; and/or
- (c) subject to clause 4.5, provision, or procurement of, the same or similar services and/or outcomes contemplated by or under the Implementation Deed.

4.3 To the extent that any Intellectual Property Rights in the Service Delivery Material are developed by, or on behalf of, the Services Subcontractor in the course of performance of the Implementation Deed and/or the Services Subcontract and are not owned by the Services Subcontractor or the Organisation, the Services Subcontractor must promptly procure for the State, HAC and each LHD an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty free licence to use and to sub-license the use of those Intellectual Property Rights in connection with:

- (a) the implementation and evaluation of the Implementation Deed; and
 - (b) an SBB or similar other products, services or programmes within Australia and overseas; and/or
 - (c) subject to clause 4.5, provision, or procurement of, the same or similar services and/or outcomes contemplated by or under the Implementation Deed.
- 4.4 The Services Subcontractor must hold or obtain at its own cost all necessary consents from any individual that has Moral Rights in the Intellectual Property Rights to its use, adaptation and all other actions by the State, HAC and each of the LHDs (or any of their officers, employees, contractor and agents) or the Organisation in the exercise of the rights conferred under this clause 4. Such consents must be without restriction and without any requirement to attribute authorship or performership, including any act or omission that might otherwise infringe the Moral Rights of any individual.
- 4.5 The State (acting through HAC) by this Agreement agrees to attribute authorship or performership of any Service Delivery Materials in which the Services Subcontractor has Intellectual Property Rights for those materials to the Services Subcontractor in the manner set out in the Operations Manual.
- 4.6 The State (acting through HAC) by this Direct Agreement grants to the Services Subcontractor an irrevocable, non-exclusive, perpetual, royalty-free licence of any Intellectual Property referred to in clause 4.1(c) (but to avoid doubt subject to the confidentiality requirements of the Services Subcontract, in respect of which the Services Subcontractor repeats the undertakings given by it to and for the benefit of the State) for use in connection with:
- (a) the implementation and evaluation of the Implementation Deed and the Services Subcontract;
 - (b) an SBB or similar other products, services or programmes within Australia and/or overseas; and
 - (c) the provision of the same or similar services and/or outcomes contemplated by or under this Implementation Deed by the Services Subcontractor in the ordinary course of its operations.
- 4.7 If the Services Subcontractor requires a licence (including any right to sub-licence) additional to that granted under clause 4.6 to use the State's Intellectual Property referred to in clause 4.1(c), the Services Subcontractor must make a written request to the State, through HAC, stating the nature of the additional licence required and the reason why such licence is required. The State will consider the request in good faith and, if the State considers it reasonable to do so in the circumstances, grant to the Services Subcontractor a further licence subject to the parties entering into a written agreement as to the terms of any additional licence.
- 4.8 The Services Subcontractor must, at its cost:
- (a) execute all documents and do all acts and things (including procuring that and Subcontractor execute all documents and do all acts and things), required for the purposes of giving effect to the provisions of this Direct Agreement dealing with Intellectual Property Rights; and
 - (b) if required by HAC and or a LHD, deliver to HAC and/or the LHD as the case may be, or their respective nominee, the Material referred to in this clause 4 and any consents referred to in clause 4.4 in such form, including electronic, as may be requested.

- 4.9 Without limiting any other rights which HAC may have under this Agreement or at law, the Services Subcontractor agrees to compensate the State, HAC and each of the LHDs and their respective officers, employees, contractors and agents ("**those compensated**") against all damage, liability or loss incurred or suffered by any of those compensated (including legal costs on a solicitor client basis) arising directly or indirectly out of or in connection with:
- (a) a breach by the Services Subcontractor of this clause 4, whether by any act or omission and whether negligent, wilful reckless or unlawful; and/or
 - (b) any claim for infringement or alleged infringement of any Intellectual Property Rights and Moral Rights in connection with the Implementation Deed, the Services Subcontract and/or this Direct Agreement and its/their implementation or any material provided or created under any of these agreements including any modifications, variations or adaptations to that material.
- 4.10 The Services Subcontractor's liability will be reduced to the extent the damage, liability or loss incurred or suffered was caused by those compensated.

5. Enforcement

The Services Subcontractor acknowledges and agrees that HAC can seek to enforce this Direct Agreement in the event of any breach by the Services Subcontractor of the above undertakings and obligations.

6. Termination

This Direct Agreement shall terminate immediately upon the termination of the Services Subcontract in accordance with its terms and each party shall be released from their respective obligations under it, without prejudice to the rights, obligations and liabilities of a party incurred or accrued before or in conjunction with the termination of this Direct Agreement.

7. Survival

Notwithstanding clause 6 (Termination), the following clauses survive termination or expiry of this Direct Agreement:

- (a) clause 2.1 (Repeated representations, warranties, undertakings and indemnities), insofar as it operates with reference to any of the following clauses of the Services Subcontract:
 - (i) clause 20 (Indemnities)
 - (ii) clause 21 (Insurance)
 - (iii) clause 35 (Records, data and other information)
 - (iv) clause 36 (Privacy)
 - (v) clause 37 (Confidentiality);

Drafting Note: these provisions to be checked against Services Subcontract.

- (b) clause 4 (Intellectual Property); and
- (c) any other provision of this Direct Agreement (including any provision of the Services Subcontract to which such provision refers) that is referenced by, or necessary to, the operation of clause 2.1 (to the extent that the survival of that clause is expressly provided for in clause 7(a) or clause 4 of this Direct Agreement, including, without limitation, clauses 2.2, 2.3, 2.4 and 2.5 of this Direct Agreement.

8. GST

- 8.1 The consideration expressed in this Direct Agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST.
- 8.2 Subject to clause 8.5, if anything supplied under or in connection with this Direct Agreement constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply ("**GST Amount**").
- 8.3 The GST Amount will be:
- (a) equal to the value of the supply calculated in accordance with GST Law multiplied by the prevailing GST rate; and
 - (b) subject to clauses 8.5 and 8.6, payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.
- 8.4 The supplier of a taxable supply made under or in connection with this Direct Agreement must issue a tax invoice for the supply in accordance with the GST Law to the recipient of the supply.
- 8.5 If a party makes a supply to any other party for consideration which is wholly non-monetary consideration, then:
- (a) the supply will for the purposes of this clause be styled a "Consideration in Kind Supply";
 - (b) the consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under clause 8.2;
 - (c) the parties agree that the GST inclusive market value of each of the Consideration in Kind Supply and the consideration for that supply (being in turn, a Consideration in Kind Supply) are equal;
 - (d) the parties will each include in any tax invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the tax invoice relates being the price for that supply;
 - (e) prior to the issue of the tax invoices referred to in clause 8.5(d), the parties will use all reasonable endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement, will accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the parties shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia.
- 8.6 If the Commissioner of Taxation or a court determines for any reason whatsoever that the Consideration in Kind Supplies referred to in clause 8.5 which each of the parties make in return for the other do not have an equal GST inclusive market value for GST purposes, then:
- (a) if the Consideration in Kind Supply made by a party ("the first party") to the other party ("the second party") is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the second party to the first party, the first party will pay to the second party an additional amount equal to the

GST payable on 10% of the difference within 10 Business Days of the date the relevant determination is made;

- (b) if the Consideration in Kind Supply made by the second party to the first party is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the first party to the second party then the second party will pay to the first party an additional amount equal to the GST payable on 10% of the difference within 10 Business Days of the date the relevant determination is made;
 - (c) the parties will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determination by the Commissioner or court; and
 - (d) any amount payable under this subclause is GST inclusive and will not be increased on account of GST under clause 8.2.
- 8.7 If in relation to a taxable supply under or in connection with this Direct Agreement an adjustment event occurs that gives rise to an adjustment, then the GST Amount will be adjusted accordingly and, where necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supply in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 Business Days of the issue of an adjustment note by the payee who must issue an adjustment note immediately upon becoming aware of the adjustment event concerned.
- 8.8 Notwithstanding any other provision of this Direct Agreement, any amount payable under or in connection with this Direct Agreement, which is calculated by reference to a cost, expense, or amount paid or incurred by a party to this Agreement, will be reduced by an amount equal to any input tax credit to which that party is entitled in respect of that cost, expense or amount.
- 8.9 Any amount on account of GST payable by HAC and/or a LHD to the Services Subcontractor under this clause will be limited to the amount of an input tax credit to which HAC and/or the LHD is entitled in respect of the relevant supply which HAC and/or the LHD acquires.
- 8.10 If a party is a member of a GST group, references to GST for which the party is liable and to input tax credits to which the party is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- 8.11 Where a word or phrase is defined under GST Law, it has the same meaning in this Agreement.

9. Applicable law and jurisdiction

- 9.1 This Direct Agreement is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 9.2 Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

Executed as a deed

[Execution clauses]

SCHEDULE 6

FORMS OF LEGAL OPINION

Each legal opinion to be delivered in connection with this Implementation Deed:

1. must be given in respect of the laws of New South Wales and the Commonwealth of Australia (the “**Relevant Jurisdictions**”);
2. must be addressed to HAC and must expressly permit disclosure of the opinion by HAC to departments of the New South Wales Government, the Audit Office of New South Wales and the Parliament of New South Wales;
3. may be provided in a legal adviser’s standard form, including as to assumptions, qualifications and limitations. However, the legal opinion must not be subject to assumptions, qualifications or limitations that are unduly restrictive and all assumptions must be specific, factual and adequately explained in the legal opinion.

PART A

1. Documents reviewed. Must include: (A) the Implementation Agreement and (B) the Constituent Documents.
2. Opinions: Must include opinions that:
 - a. the Organisation:
 - i. is duly constituted and validly existing under the laws of Australia and is capable of suing and being sued in its own name;
 - ii. has the power to enter into the Implementation Deed and to observe its obligations under it; and
 - iii. has taken all action required on its part under the Constituent Documents and the laws in force in the Relevant Jurisdictions to authorise the execution, delivery and observance of its obligations under it;
 - b. the Implementation Deed has been correctly executed by the Organisation; and
 - c. the obligations of the Organisation under the Implementation Deed are valid, binding and (subject to its terms) enforceable.

PART B

1. Documents reviewed. Must include: (A) the Implementation Agreement, (B) the Constituent Documents, and (3) each other Transaction Document.
2. Opinions: Must include opinions that:
 - a. the Organisation has:
 - i. the corporate power to enter into the Transaction Documents to which it is a party and to issue the Bonds and, in each case, to observe its obligations under them; and
 - ii. taken all corporate action required on its part to authorise the execution and delivery of the Transaction Documents to which it is a party and to issue the Bonds and, in each case, the observance of its obligations under them;

- a. the obligations of the Organisation:
 - i. under each Transaction Document to which it is a party are valid, binding and (subject to the terms of the Transaction Document) enforceable against it; and
 - ii. under the Bonds will be, upon their issue, valid, binding and (subject to their terms) enforceable against it;
- b. the execution and delivery by or on behalf of the Organisation of the Transaction Documents to which it is a party and the observance of its obligations under them has not violated and will not contravene:
 - i. any law in force in the Relevant Jurisdictions; or
 - ii. the Constituent Documents;
- c. it is not necessary in the Relevant Jurisdictions to provide a copy of a Transaction Document to a court or governmental agency in order to ensure the legality, validity, enforceability or admissibility in evidence of the Transaction Documents; and
- d. the courts of New South Wales and the federal courts of Australia will give effect to:
 - i. the choice of the laws of New South Wales to govern the Transaction Documents; and
 - ii. the submission to the jurisdiction of the courts of New South Wales by the Organisation,

and must confirm whether any stamp duty, mortgage duty or other similar Tax is payable in the Relevant Jurisdictions on the execution of the Transaction Documents or the issue of the Bonds or, in either case, in connection with the observance of obligations under them.

SCHEDULE 7

FORM OF CONDITIONS PRECEDENT SATISFACTION CONFIRMATION

To: HAC [*Relevant Minister (Portfolio) and Department*]

Deed of Implementation Agreement for Social Benefit Bond Transaction dated [*insert date*] (“Implementation Deed”) between HAC, and SVA Nominees Pty Ltd (ACN 616 235 753) (“the Organisation”) – Conditions Precedent Confirmation

We refer to the Implementation Deed and the Conditions Precedent set out under clause 4.1 thereof. Capitalised terms used in this letter but not defined have the meaning given to them in, and references to a clause are to a clause under, the Implementation Deed.

The Organisation confirms that:

[complete and include the following confirmations as appropriate, otherwise delete:]

1. [for the purposes of clause 4.1(a)(ii), it is satisfied with the arrangements for the establishment and operation of the SBB Arrangement (including, without limitation, as to tax matters);]
2. [for the purposes of clause 4.1(a)(iii), it agrees that the financial model forming the basis of the payments to be made under the Implementation Deed has been finalised in writing;]
3. [for the purposes of clauses 4.1(b)(i) and 5, it agrees that the Operations Manual is in a final form;]
4. [for the purposes of clause 4.1(d)(i)(B) of the Implementation Agreement, the Organisation confirms that it, and its Subcontractors, hold and currently maintain the insurances set out in Item 8 under Schedule 1 to the Implementation Deed;]
5. [for the purposes of clause 4.1(d)(i)(A), the Bonds have been fully subscribed in the Bond Issue Amount pursuant to [*describe Bond subscription arrangements*];]
6. [for the purposes of clause 4.1(d)(ii) it agrees that the geographic location of each Resolve Centre has been agreed];
7. [for the purposes of clause 4.1(d)(iii) and
8. [for the purposes of clause 3.4, the Conditions Precedent set out under clauses [*insert applicable Implementation deed clause references*][4.1(a)(i) / 4.1(d)(iii) / 3.1(b)(ii) / 3.1(c)(i) / 3.1(c)(ii) / 3.1(c)(iii)] have been satisfied.]

*[Include if previous confirmation(s) have been provided, otherwise delete: [As confirmed under the letter[s] dated [*insert date(s)*] from the Organisation to HAC, , the Conditions Precedent set out under clauses [*insert applicable Implementation Deed clause references*] have also been satisfied.]End of option]*

This letter is governed by the laws of New South Wales.

For and on behalf of

[*Insert name of Organisation*]

[*Execution block*]

Date:

SCHEDULE 8

EXPERT DETERMINATION PROCEDURE

Expert Determination

1. If an ED Referral Notice is submitted, the expert is to be agreed between the Parties. If they cannot agree within 10 Business Days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre of NSW.
2. The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the subject matter of the dispute, unless otherwise agreed. The expert must not be:
 - (a) an employee of or consultant to the parties;
 - (b) a person who has been connected with the Agreement or has a conflict of interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
3. When the person to be the expert has been agreed or nominated, the Organisation, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Department) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the details of the dispute;
 - (c) the expert's fees;
 - (d) the procedure for the determination set out in this Schedule; and
 - (e) any other matter which is relevant to the engagement.
4. The expert is authorised to initiate such enquiries and investigations as it considers necessary or desirable for the purposes of performing its functions including:
 - (a) informing itself independently as to the facts to which the dispute relates;
 - (b) receiving submissions, statements and documents and acting upon same;
 - (c) consulting with other qualified persons as it in its absolute discretion considers fit; and
 - (d) taking such measures as it thinks fit to expedite the resolution of the dispute.

Submissions

5. The procedure for submissions to the expert is as follows:
 - (a) The Party that has referred the issue to expert determination ("Referring Party") must make a submission in respect of the issue, within 5 Business Days after the date of the letter of engagement referred to above.
 - (b) The other Party ("Responding Party") must respond within 5 Business Days after receiving a copy of that submission. That response may include cross-claims.

- (c) The Referring Party may reply to the response, but must do so within 5 Business Days after receiving the response, and must not raise new matters.
- (d) The Responding Party may comment on the reply, but must do so within 5 Business Days after receiving the reply, and must not raise new matters.
- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this item 4, unless the parties agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

Conference

- 6. The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.
- 7. Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.
- 8. The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.
- 9. The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule the character of arbitration.
- 10. In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

Questions to be determined by the Expert

- 11. The expert must determine for each issue any questions required by the Parties, having regard to the nature of the issue.
- 12. The expert must make his or her determination only in respect of matters expressly referred by the Parties for resolution;
- 13. Any determination of the expert will include a determination as to the award of costs. The expert must not tax the costs of a Party.
- 14. Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Agreement:
 - (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

15. The expert is released by the parties to this Agreement from liability (other than for fraud, negligence or wilful misconduct) in acting as an expert.