NSW Health Grant Agreement

Grant Details

This is an agreement for the provision of fixed-wing Inter-hospital Transfer Services and related services from each of the Broken Hill and Dubbo Bases.

Parties:

Agency	Name:	**Health Administration Corporation** a corporation sole constituted by section 9 of the *Health Administration Act 1982* (NSW) as represented by NSW Ambulance
	ABN	69 291 930 156
	Address	State Headquarters, Balmain Road, Rozelle NSW 2039
Your Organisation	Name	Royal Flying Doctor Service of Australia (South Eastern Section)
	ACN / ABN	000 032 422 / 86 000 032 422
	Address	Broken Hill Airport, Airport Road, Broken Hill NSW 2880
	Trustee of a Trust	Your Organisation is not entering into the Agreement as a trustee of a Trust.
	Incorporation details	Incorporated under *Corporations Act 2001* (Cth)

Background

The Agency agrees to provide Your Organisation, and Your Organisation agrees to accept, the Grant for the purpose of Your Organisation carrying out the Activity in accordance with the terms and conditions of the Agreement.

Scope of this Agreement

The Agreement is on the terms and conditions of the following documents:

(a) this document, the **Grant Details**;

(b) the attached **Grant Schedule**;

(c) the **Standard Conditions** (version June 2018) (attached at Schedule 1);

(d) the **Payment Schedule** (attached at Schedule 2);

(e) the **Supplementary Dictionary** (attached at Schedule 3);

(f) the **Statement of Work** (attached at Schedule 4);

(g) the **Insurance Terms** (attached at Schedule 5); and

(h) any other document incorporated in the Grant Schedule.

If there is any ambiguity or inconsistency in or between the documents comprising the Agreement, the Agency may direct Your Organisation as to the resolution of the ambiguity or inconsistency and Your Organisation must comply with any such direction at its own cost and is not entitled to make, and the Agency is not liable for, any Claim arising out of or in connection with any such direction, or failure by the Agency to give a direction.

The Agreement may be signed and dated by the parties on separate, but identical, counterparts. All signed counterparts constitute an original of the Agreement and all together constitute one (1) Agreement.

Nothing in the Agreement:

(a) confers on Your Organisation any exclusive right to carry out the Activity; or

(b) restricts the Agency from engaging others to provide services similar to the Activity in the Area of Operations or any other regions.

Grant Schedule

This Grant Schedule forms part of the Agreement between the Agency and Your Organisation.

Activity

Item 1 Activity description

Activity name: Provision of fixed-wing Inter-hospital Transfer Services and related services from each of the Broken Hill and Dubbo Bases in accordance with the Agreement.

Activity aims and objectives: Your Organisation agrees to carry out the Activity in such a way that promotes the aims and objectives for the Activity stated in the Statement of Work.

Activity background: The Agency operates the Air Ambulance Service (**AAS**) to provide equity of access to health facilities for all NSW residents by providing a fast, safe and reliable method of transporting sick and injured patients over long distances.

The AAS provides state-wide inter-hospital and pre-hospital transfer services including:

(a) fixed-wing emergency medical services to patients who are in a serious or potentially life threatening condition and who cannot be safely treated at the relevant hospital or health facility, including pre-hospital missions;

(b) where required, fixed-wing transport to the nearest suitable hospital and medical or nursing care during transport; and

(c) scene responses.

Activity description: The Activity to be provided is:

(a) the provision of fixed-wing Inter-hospital Transfer Services from each of the Broken Hill and Dubbo Bases, 24 hours a day, seven days a week;

(b) the provision of fixed-wing Primary Evacuations from each of the Broken Hill and Dubbo Bases, 24 hours a day, seven days a week;

(c) subject to section 12A of the Statement of Work, the provision of road vehicle Inter-hospital Transfer Services and road vehicle Pre-hospital Transfer Services from each of the Broken Hill and Dubbo Bases, 24 hours a day, seven days a week; and

(d) the operation of Medical Services Clinics from the Broken Hill Base to the Medical Services Clinic Communities,

as further described in, and reasonably inferred from, the Statement of Work.

Item 2 Carrying out the Activity

Activity Period: Your Organisation must carry out the Activity on and from the Activity Commencement Date to the Activity End Date in accordance with the Agreement.

Activity Commencement Date: 1 January 2022.

Activity End Date: 30 June 2024, as may be extended under Item 17 of this Grant Schedule.

Performance measures: Your Organisation must in carrying out the Activity meet the Key Performance Indicators (**KPIs**).

Item 3 Compliance with specific Laws, standards and policies

1 General

Without limiting the Standard Conditions, Your Organisation agrees to comply with:

(a) all applicable Approvals (including any conditions attached to an Approval);

(b) Civil Aviation Law and relevant Civil Aviation Orders;

(c) all Policies and Procedures; and

(d) any other codes, standards, policies and guidelines set out in the Statement of Work or which Your Organisation is otherwise obliged to comply with, either as a matter of Law or by virtue of its obligation to perform the Activity in accordance with Good Industry Practice.

2 Air Operator's Certificate

(a) Your Organisation must:

(i) obtain and maintain, at all times during the Term (and any extended period), an Air Operator's Certificate for the purpose of operating the Aircraft as part of performing the Activity; and

(ii) satisfy all conditions required to obtain, renew and maintain that Air Operator's Certificate; and

(iii) comply with, and operate the Aircraft in accordance with, that Air Operator's Certificate (including any conditions attached to the Air Operator's Certificate).

3 Industrial relations

(a) **Your Organisation's responsibility**

Your Organisation is responsible for the industrial relations management of Your Organisation's Personnel. The Parties acknowledge that it is a condition of the Agreement essential to the satisfactory performance of the Activity that Your Organisation must at all times promptly take the steps necessary to maintain good labour relations with Your Organisation's Personnel to the extent that such requirement is consistent with sound business practice.

(b) **Notice of claims**

Your Organisation must keep the Agency informed of all industrial claims and industrial disputes affecting Your Organisation's Personnel and must use its best endeavours to settle the industrial claims or disputes. The parties agree that they will fully consult with each other with respect to the resolution of all industrial claims and industrial disputes affecting Your Organisation's Personnel.

(c) **Information**

Your Organisation must, whenever requested by the Agency, furnish to the Agency such details as are requested of rates of pay, benefits and conditions of employment for Your Organisation's Personnel engaged in the performance of the Activity.

4 Work health and safety

Your Organisation must:

(a) comply with, and ensure that Your Organisation's Personnel comply with, the applicable WHS Legislation when performing the Activity including the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Agency and any other person who, concurrently with Your Organisation, has a work health and safety duty under the WHS Legislation in relation to the same matter; and

(b) in performing the Activity ensure, so far as is reasonably practicable, the health and safety of:

(i) Agency Personnel;

(ii) Your Organisation's Personnel; and

(iii) all other persons,

in connection with the performance of the Activity.

5 Child protection

(a) Your Organisation must ensure that it complies with its obligations, and ensures that its Associates comply with their obligations, as an employer under the *Child Protection (Working with Children) Act 2012* (NSW) (**Working with Children Act**) and the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**Children and Young Persons Act**).

(b) Without affecting the obligations imposed by the Working with Children Act and the Children and Young Persons Act:

(i) if any work performed in relation to the Activity is "child-related work", as defined in the Working with Children Act (**Child-related Work**), Your Organisation:

(A) must obtain, and ensure that its Associates obtain, a working with children check clearance in accordance with Part 3 of the Working with Children Act of a class applicable to the work from any person who is to perform the work; and

(B) must conduct, and ensure that its Associates conduct, a working with children check on any person who is to perform the work;

(ii) Your Organisation must not, and must ensure that its Associates do not, engage any person who is a "disqualified person", as defined in the Working with Children Act, to perform work under the Agreement that is "Child-related Work" under that Act; and

(iii) Without limitation, the Agency may require the immediate removal of a "disqualified person", a person who is the subject of a child abuse allegation or investigation or any other person the Agency's Representative believes (acting reasonably) is unacceptable to be performing Child-related Work from performance of Child-related Work under the Agreement.

Item 4 Approved subcontracting and auspicing arrangements

Your Organisation agrees that it must not subcontract any of its obligations under the Agreement without the Agency's prior written approval unless the subcontractor is identified below in relation to that obligation:

Subcontractor details:

Subcontractor	Activities to be carried out or performed	ACN/ABN
	To provide aircraft charter services on an occasional basis from the Broken Hill Base to Medical Services Clinic Communities.	

Item 5 Review meetings

If requested by the Agency, Your Organisation must attend a monthly review meeting with the Agency within 15 Business Days after the end of a Reporting Period to review any aspect of the Activity or Your Organisation's capacity and capability to undertake the Activity.

Records and Reporting

Item 6 Records and audit

1 Records

Without limiting clause 5 of the Standard Conditions, Your Organisation must:

(a) maintain comprehensive and accurate records (in the form required by the Agency or as set out in the Statement of Work) in relation to the Activity in accordance with the Agreement and any reasonable request made by the Agency from time to time. For the avoidance of doubt, this includes Your Organisation inserting all relevant information relating to the Activity into the Agency's Air Maestro system, as contemplated by the Statement of Work;

(b) maintain minimum organisational records (including accounting and financial records) in accordance with the form of Your Organisation's incorporation legislation in external scrutiny of Your Organisation's yearly activities;

(c) maintain financial statements in accordance with Australian Accounting Standards and maintain accounts and records so that they can be audited in accordance with Australian Auditing Standards;

(d) maintain proper operational records so that the carrying out or performance of the Activity is able to be verified;

(e) keep true and accurate accounts and records of any invoice or other claim submitted by Your Organisation for payment by the Agency in such a manner and detail as to permit verification of the accuracy of any such record and must make such records available to the Agency or its nominee upon request;

(f) provide to the Agency a copy of Your Organisation's Conflict of Interest policy for its executive and Personnel, on request;

(g) maintain any records referred to in or required by this Item 6 for at least seven (7) years following expiration of the Term. Any such records maintained by Your Organisation in electronic form must be capable of being accessed in electronic form or hard copy throughout this period; and

(h) ensure the accuracy of all records and other documentation generated by Your Organisation.

2 Audit

(a) Without limiting clause 9 of the Standard Conditions, upon reasonable notice in writing to Your Organisation, the Agency may audit Your Organisation's accounts and records, insofar as they relate to an invoice under the Agreement, at any time during the Term and for a period of six (6) years after expiration thereof.

(b) Audits will be performed during business hours at the place where the accounts and records are maintained. The Agency may have any audit carried out by a nominee.

(c) If the Agency carries out an audit under the Agreement and the audit discloses any inaccuracy or error in an invoice or a claim or that an invoice or a claim cannot be verified, then the Agency is not liable under the Agreement to pay Your Organisation the amount of such error or inaccuracy or which is not able to be verified.

(d) The Agency and Your Organisation must do everything necessary to correct any inaccuracy or error and the consequences of it as soon as possible after it is discovered. If Your Organisation is required to make payment to the Agency to correct the consequences of an error, interest calculated daily at the current Reserve Bank of Australia rate may be charged on the amount of such payment from the date on which the overpayment was made.

(e) If an audit discloses an error or an inaccuracy in an invoice or a claim of more than 5% in favour of Your Organisation, Your Organisation must pay the Agency's costs of and incidental to the audit.

Item 7 Reports and notifications

1 Reporting requirements

(a) Your Organisation must comply with Part I of the Statement of Work.

(b) Without limiting paragraph 1(a) of this Item 7, Your Organisation must provide to the Agency:

(i) all daily, monthly, annual and other reports required by Part I of the Statement of Work; and

(ii) all other reports or information (in such form as the Agency may request) as reasonably requested by the Agency from time to time.

(c) Without limiting any other provision of the Agreement, Your Organisation must ensure that it makes and provides to the Agency all records and reports necessary to enable the Agency to track the performance of Your Organisation against the KPIs required under the Agreement.

(d) Promptly upon any failure to meet any KPI, Your Organisation must ensure that it makes and provides to the Agency all records and reports necessary to enable the Agency to track the performance of the Agency against the KPIs required under the Agreement.

2 Compatibility of information systems

(a) Any financial, operational or other information, data, records or reports required to be provided to the Agency must be provided in a form which is compatible with the electronic data and records systems of

the Agency current on the Activity Commencement Date, or such other form as otherwise notified by the Agency to Your Organisation from time to time.

(b) Your Organisation must, at your sole cost and expense, install hardware, office equipment and software to enable its system to interact with the Agency's data and records systems at all times.

3 Progress Reports

(a) Your Organisation must prepare and provide to the Agency's Representative a report on the progress of the Activity:

(i) for each 1 January to 30 June period during the Term, by the first occurrence of 15 August after that period;

(ii) for each 1 July to 31 December period during the Term, by the first occurrence of 15 February after that period; and

(iii) otherwise as reasonably requested by the Agency from time to time,

(each a "**Progress Report**").

(b) Each Progress Report, which may be in a sample form advised by the Agency from time to time, must include, but need not be limited to, the following information for the relevant period:

(i) (**Summary of Activity**) a clear summary of the Activity carried out in the period; and

(ii) (**Details of Activity**) if relevant, details of progress against any agreed Activity, including monitoring, evaluation and reporting activities set out in the agreed Activity.

(c) Each Progress Report must be signed by Your Organisation's Representative certifying that:

(i) the information contained in the report is true and correct;

(ii) the Grant and any Assets have been spent and used solely for the purpose for which they were provided and in accordance with the Agreement;

(iii) all the terms and conditions of the Agreement have been complied with; and

(iv) there is no other matter or circumstance that the Representative is aware, that would constitute a breach by Your Organisation of any term or condition of the Agreement that has not been notified to the Agency.

(d) Your Organisation agrees that the Progress Reports are Confidential Information and agrees to treat the information as confidential in accordance with the Standard Conditions.

4 Notifications in accordance with the Standard Conditions

Your Organisation acknowledges and agrees to notify the Agency of:

(a) Alleged Misconduct or Serious Incidents, to be notified immediately;

(b) changes to the name, address and contact details, material changes to Your Organisation's constitution and articles of association (however described) or any Change in Control, to be notified as soon as practicable;

(c) action or proposed action regarding an Insolvency Event or external administration, to be notified immediately; and

(d) financial assistance from another governmental authority in relation to the Activity (that is not a Co-contribution), to be notified within 10 Business Days.

Financial

Item 8 Payment of the Grant

(a) The Grant will be paid to Your Organisation in accordance with the Payment Schedule.

(b) Your Organisation is required to ensure that the Grant is held in an Australian bank account. Your Organisation's nominated bank account into which the Grant is to be paid and kept is:

Key Performance Indicators

Item 9 Key Performance Indicators

(a) The KPIs apply from the Activity Commencement Date.

(b) Your Organisation must:

(i) make and keep sufficient records to accurately measure its performance of the Activity against each KPI; and

(ii) at the same time as providing the invoice under clause 3.1(a) of the Payment Schedule, provide a comprehensive report of Your Organisation's performance against each KPI for the corresponding Reporting Period.

(c) Without limiting Item 9(b), Your Organisation must implement and maintain all measurement, monitoring and reporting tools and procedures which:

(i) are required to measure, monitor, report and audit its performance against the KPIs; and

(ii) permit reporting at a level of detail sufficient to determine compliance with the KPIs,

including measuring, monitoring and reporting tools and procedures that an industry best practice provider of services similar to the Activity acting in accordance with Good Industry Practice would use.

(d) Your Organisation must ensure that before a reporting tool or procedure under Item 9(c) is used it is approved by the Agency.

(e) Your Organisation agrees that the Agency (or its nominee) may, by giving Your Organisation at least 10 Business Days' prior notice, audit all measurement, monitoring and reporting tools and procedures and will give the Agency (or its nominee) all reasonable assistance in undertaking such audit.

(f) The Agency may from time to time propose amendments to the KPIs in order to meet changed circumstances, including the demands and expectations of patients.

(g) The Agency will assess and determine Your Organisation's performance against the KPIs.

Item 10 KPI Failure

(a) If a KPI Failure occurs in a Reporting Period, then Your Organisation must promptly and at no additional cost to the Agency:

(i) use all reasonable endeavours to remedy any fault(s) or other matters which led to the KPI Failure (including conducting a root-cause analysis); and

(ii) arrange all additional resources reasonably necessary to perform the Activity in accordance with the KPIs as soon as practicable.

(b)

General

Item 11 Assets

Your Organisation:

(a) must not use the Grant to purchase Assets with a value over $10,000 except as permitted in accordance with the Statement of Work. Spare Parts may be purchased in accordance with the requirements for the

Activity under the Statement of Work and the Budget, provided the Agency has approved the total cost of Spare Parts over the Activity Period;

(b) must maintain an Asset Register as amended from time to time;

(c) must ensure that the Assets, at all relevant times, comply with the terms of the Agreement and any applicable Laws;

(d) must, where any new Aircraft or Equipment will be introduced as part of the Activity during the Activity Period:

(i) give the Agency written notice detailing the proposed change;

(ii) if required by the Agency, develop for approval by the Agency a Handover Plan for the new Aircraft or Equipment (as applicable);

(iii) ensure that it achieves "Readiness for Handover" in respect of the new Aircraft or Equipment (as applicable) in accordance with any approved Handover Plan; and

(iv) not use such Aircraft or Equipment for the Activity until Your Organisation receives a Certificate of Readiness for Handover stating that the Agency is satisfied that the Aircraft or Equipment (as applicable) is acceptable and ready for use in relation to the Activity, including where required in accordance with an agreed Handover Plan; and

(e) must not, without the prior consent of the Agency, make additions to or deletions from the Equipment or make modification to any Aircraft other than:

(i) a mandatory modification to any Aircraft which is required to comply with the Law; or

(ii) modifications to the Aircraft required in accordance with any applicable airworthiness directive or as may be required from time to time to meet the mandatory standards of the Aviation Authority,

and in which case Your Organisation must give the Agency written notice detailing that mandatory modification) as soon as possible; and

(f) acknowledges that there are no Security Interests created in favour of Your Organisation in connection with any equipment made available by the Agency.

Item 12 Intellectual property

Your Organisation acknowledges that it will give the Agency on request a copy of:

(a) the New Material; and

(b) Your Organisation's Existing Material, but only in conjunction with the New Material,

in a format reasonably required by the Agency.

Item 13 Acknowledgement and publicity

Your Organisation is to acknowledge the funding support of the Agency:

(a) in all publications, promotional and advertising Material, public announcements, products and activities in relation to the Activity;

(b) by inviting representatives of NSW Health to any formal public opening or any formal public functions as appropriate in relation to the Activity; and

(c) in the form reasonably advised by the Agency from time to time.

The NSW Government, NSW Health or the Agency may publicise and report on the awarding of the Grant in media releases, general announcements about the Activity and annual reports.

Your Organisation agrees to undertake or participate in any publicity related to the Activity as reasonably required by the Agency from time to time.

In addition to the requirements in clause 11 of the Standard Conditions, Your Organisation must obtain the prior written approval of the Agency in respect of each publication, item of advertising or promotional material, press or other announcement or releases, relating to the Agreement or the Activity. The parties will

subsequently agree in writing protocols around the approval process for publications, advertising and promotional material, press or other announcements or releases, relating to the Agreement or the Activity in accordance with the Agency's Policies and Procedures.

Item 14 Insurance

Your Organisation must comply with clause 12.1 of the Standard Conditions and the Insurance Terms.

Item 15 Dispute Resolution Officer

If the parties cannot agree on an issue of a notified dispute within an agreed number of business days (default of 20 Business Days unless otherwise agreed), then the dispute is referred to the Dispute Resolution Officer. The Dispute Resolution Officer is:

Position: General Manager Corporate Services

Name: Polly Doak

Address: Level 5, 418a Elizabeth Street, Surry Hills NSW 2010

Item 16 Party Representatives

(a) The parties agree to each appoint a Representative responsible for the management and administration of the Agreement and for accepting and issuing any written notices in relation to the Agreement. The parties may appoint administrative officers for day-to-day administration of the Agreement.

Agency's Representative

Person occupying the position of:	Manager Contracts & Performance
Currently being:	Anita Tsoi
Address:	Level 2, Sydney Ambulance Centre, Garden Street, Eveleigh NSW 2015
Telephone number:	
Email	

Your Organisation's Representative

Person occupying the position of:	General Manager Operations and Service Delivery
Currently being:	Claudio Grasso
Address:	Level 5, 418a Elizabeth Street, Surry Hills NSW 2010
Telephone number:	
Email	

(b) Your Organisation must comply with any direction of the Agency or the Agency's Representative given or purported to be given under a provision of the Agreement. If Your Organisation does not agree that the direction is consistent with the Agreement, safe or in compliance with law and governing regulations, it must be raised immediately with the Agency's Representative and if not agreed, Your Organisation must still comply with the direction, but may refer the matter to the Dispute Resolution Officer as a dispute.

(c) Except where the Agreement otherwise provides, the Agency or the Agency's Representative may give a direction orally but must as soon as practicable confirm it in writing.

(d) If Your Organisation fails to comply with any direction, the Agency's Representative may have the direction complied with by any person at the expense of Your Organisation. For the purposes of this clause, "direction" includes agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Agency or the Agency's Representative may make, give or issue under the Agreement.

Item 17 Supplementary Conditions

1. Term

Clause 1.3 of the Standard Conditions is replaced with the following:

The Term of the Agreement commences on the Date of the Agreement and will continue until the earlier of:

(a) the expiry of the Activity Period; and

(b) the date on which the Agreement is terminated.

2. Extension of Activity End Date

(a) The Agency may, at its sole discretion and at any time, by written notice to Your Organisation, extend the Activity End Date by a period of up to three (3) years.

(b) If the Agency exercises the option to extend the Activity End Date under Supplementary Condition 2(a):

(i) the Agreement will be deemed to be extended; and

(ii) the parties will continue to be bound by the terms of the Agreement, including any pricing terms set out in the Payment Schedule, for the period of the relevant extended term.

3. Action Plan

If requested by the Agency, Your Organisation must:

(a) as soon as possible after the request, develop, complete and provide to the Agency an Action Plan for the Agency's approval; and

(b) following approval by the Agency of an Action Plan until the Activity Commencement Date, meet with the Agency, as reasonably required by the Agency, to determine Your Organisation's progress against such approved Action Plan.

4. Exclusion of proportionate liability scheme

(a) To the extent permitted by Law, the Relevant Proportionate Liability Legislation is excluded in relation to all and any rights, obligations or liabilities of either party under the Agreement whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

(b) Without limiting Supplementary Condition 4(a), the rights, obligations and liabilities of the Agency and Your Organisation under the Agreement with respect to proportionate liability are as specified in the Agreement and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

(c) To the extent permitted by Law:

(i) Your Organisation must not seek to apply the provisions of the Relevant Proportionate Liability Legislation in relation to any claim by the Agency against Your Organisation (whether in contract, tort or otherwise); and

(ii) if any of the provisions of the Relevant Proportionate Liability Legislation are applied to any claim by the Agency against Your Organisation (whether in contract, tort or otherwise), Your Organisation will indemnify the Agency against any loss, damage, cost or expense that forms part of a claim by the Agency against Your Organisation which the Agency cannot recover from Your Organisation because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

(d) Your Organisation must, in each subcontract into which it enters for the performance of the Activity, include a term that (to the extent permitted by Law) excludes the application of the Relevant Proportionate Liability Legislation in relation to all and any rights, obligations or liabilities of either party under each subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

5. Issued Equipment

(a) Your Organisation acknowledges that, except as expressly provided by the Agreement, no representation, warranty or advice of any kind has been or is given by or on behalf of the Agency or the Agency's Personnel in respect of the functionality, condition, accuracy, adequacy, suitability, completeness, fitness for purpose or current application of any Issued Equipment or its suitability in facilitating Your Organisation to meet its obligations or otherwise derive revenue under the Agreement.

(b) Your Organisation hereby releases and indemnifies the Agency and the Agency's Personnel on demand, from and against any loss or Claim incurred, suffered or arising from:

(i) any reliance on, or use by Your Organisation or Your Organisation's Personnel of, the Issued Equipment;

(ii) any unsuitability, unfitness for any purpose or inadequacy or incompleteness of any kind whatsoever in the Issued Equipment; and

(iii) any failure to make available to the Your Organisation any Issued Equipment except where such failure constitutes a breach by the Agency of its express obligations under the Agreement.

(c) Your Organisation must ensure (and must procure that Your Organisation's Personnel ensures) that all Issued Equipment which is portable or otherwise removable from the Aircraft, but which is ordinarily used within or from the Aircraft during trips, are installed within the Aircraft prior to the commencement of each trip and (other than for their use in the ordinary course) remain with the Aircraft for the duration of each trip.

(d) Your Organisation acknowledges that it is solely responsible for, and assumes the risk of, any loss it suffers or incurs arising out of or in connection with the failure of any Issued Equipment.

(e) Your Organisation acknowledges that there are no Security Interests created in favour of Your Organisation in connection with any thing made available to Your Organisation by the Agency, including the Issued Equipment, which Your Organisation holds as bailee.

6. Liability

If the Agency becomes liable or there are circumstances which suggest the Agency may become liable in respect of any claim, fine or other amount whatsoever which under the Agreement is the responsibility of Your Organisation, the Agency may give Your Organisation written notice of any such amount whereupon Your Organisation must pay the amount or satisfy the Agency that the amount need not be paid. If Your Organisation fails to pay or satisfy the Agency in accordance with this Supplementary Condition 6 within seven (7) days after receipt of the written notice, the Agency may pay any such amount and set off the amount so paid against any amount payable to Your Organisation under the Agreement.

7. Set off

(a) Despite any other provision of the Agreement and without limiting any other right or remedy the Agency may have under the Agreement or at Law, the Agency may at any time, and from time to time, withhold, set-off or deduct from amounts which may be payable or which may become payable by the Agency to Your Organisation any amount due or claimed to be due from Your Organisation to the Agency under or in connection with the Agreement, including:

(i) any amount which Your Organisation owes to the Agency (whether or not the amount is expressed to be a debt due from Your Organisation to the Agency or is an amount in respect of which Your Organisation indemnifies the Agency); and

(ii) any claim to money which the Agency may have against Your Organisation whether for damages or otherwise, under or arising out of or in connection with the Activities or the Agreement (including in respect of any indemnity).

(b) This Supplementary Condition 7 will survive termination or expiry of the Agreement.

Signing page

Executed by the parties as an agreement

Date of the Agreement: is the date on which it is signed by the last party.

In signing this page the Agency and Your Organisation acknowledge and agree to be bound by and comply with the Agreement.

Signatures

Signed for and on behalf of **Health Administration Corporation** as represented by NSW Ambulance ABN 69 291 930 156 by its authorised officer:

Printed name of signatory

Position of signatory

in the presence of:

print name of witness

Date

The common seal of **Royal Flying Doctor Service of Australia (South Eastern Section)** ABN 86 000 032 422 is duly affixed in accordance with its constitution in the presence of:

.....	.....
Signature of authorised person	Signature of authorised person
.....	.....
Name of authorised person	Name of authorised person
.....	.....
Date	Date

Signing page

Executed by the parties as an agreement

Date of the Agreement: is the date on which it is signed by the last party.

In signing this page the Agency and Your Organisation acknowledge and agree to be bound by and comply with the Agreement.

Signatures

Signed for and on behalf of **Health Administration Corporation** as represented by NSW Ambulance ABN 69 291 930 156 by its authorised officer:

.....
Printed name of signatory

.....
Position of signatory

.....
Signature

.....
Date

in the presence of:

.....
Witness signature

.....
print name of witness

.....
Date

The common seal of **Royal Flying Doctor Service of Australia (South Eastern Section)** ABN 86 000

Schedule 1 – Standard Conditions

The Standard Conditions form part of the Agreement between the Agency and Your Organisation. The Standard Conditions (version June 2018) are set out in the following pages.

NSW GOVERNMENT | Health

NSW Health Grant Agreement

STANDARD CONDITIONS

June 2018

Contents

1. Introduction 4
   - 1.1 Status of these Standard Conditions 4
   - 1.2 Definitions and interpretation 4
   - 1.3 Term of the Agreement 4
2. Agency general conduct 4
3. Activity 4
   - 3.1 Planning the Activity 4
   - 3.2 Undertaking the Activity 5
   - 3.3 Compliance with Supplementary Conditions 5
   - 3.4 Compliance with Laws, standards and policies 5
   - 3.5 Your Organisation's responsibility 5
   - 3.6 Supporting transition of Activity 5
4. Organisation's general obligations 5
   - 4.1 Personnel 5
   - 4.2 Probity relating to Personnel 6
   - 4.3 Notifiable incidents 6
   - 4.4 Notifications relating to Your Organisation 6
   - 4.5 Notification of other financial assistance 7
   - 4.6 Subcontracting 7
   - 4.7 Auspice Body 7
   - 4.8 Complaints process 7
   - 4.9 Review meetings 8
5. Records and Reports 8
   - 5.1 Accounts and records 8
   - 5.2 Record keeping 8
   - 5.3 Reporting 8
6. Financial arrangements 9
   - 6.1 Use of the Grant by Your Organisation 9
   - 6.2 What the Grant will not be used for 9
   - 6.3 Payment of Grant 9
   - 6.4 Indexation 9
   - 6.5 Other funding 9
   - 6.6 Bank Account 10
   - 6.7 Interest and earnings 10
   - 6.8 Co-contribution 10
   - 6.9 Budgeted and Unspent Grant within the Activity Period 10
   - 6.10 Residual Grant at end of Activity Period 10
7. GST 11
   - 7.1 Definitions 11
   - 7.2 GST payable 11
   - 7.3 Tax invoice 11
   - 7.4 Adjustment event 11
   - 7.5 Pay or reimburse 11
   - 7.6 Issuing recipient created tax invoices and adjustment notes 11
   - 7.7 Acknowledgments 12
8. Assets and Capital Works 12
   - 8.1 Acquiring of Assets 12
   - 8.2 Ownership of Assets 12
   - 8.3 Use of Assets 12

8.4 Obligations in relation to Assets 12
8.5 Depreciation of Assets 12
8.6 Capital Works 13
8.7 Registering of interest 13

9. Reviews and audits 13
9.1 Access to premises and records 13
9.2 Cooperation and access 13
9.3 Application of this clause 13

10. Intellectual Property Rights and information 14
10.1 Ownership of Intellectual Property Rights 14
10.2 Licences of Intellectual Property 14
10.3 Protection of Personal Information 14
10.4 Confidential Information 15
10.5 Information of a sensitive or cultural nature 15

11. Acknowledgement and publicity 15
11.1 Acknowledgment and publicity 15
11.2 No restriction on advocacy activities 16

12. Dealing with risk 16
12.1 Insurance 16
12.2 Indemnity 16
12.3 Conflict of Interest 16

13. Suspension and termination 16
13.1 Suspension or withholding the Grant 16
13.2 Termination without fault 17
13.3 Termination for cause 17
13.4 Consequences of termination 18

14. Repayment of Grant 18
14.1 Notice concerning Grant 18
14.2 Organisation's rights and obligations 19
14.3 Agency rights 19

15. Relationship between the parties 19
15.1 Status of Organisation 19
15.2 Trust warranties 19

16. Dispute resolution 19

17. General 20
17.1 Variations 20
17.2 Notice requirements 20
17.3 Assignment 20
17.4 Non-Waiver 21
17.5 Severability 21
17.6 Clauses that continue to apply after the Term 21
17.7 Governing law and jurisdiction 21

18. Dictionary and interpretation 21
18.1 Dictionary 21
18.2 Interpretation 25

1. Introduction

1.1 Status of these Standard Conditions

These Standard Conditions form part of and are incorporated into the Agreement.

1.2 Definitions and interpretation

(a) In the Agreement, key terms or expressions are capitalised and defined in the dictionary in clause 18.1 (Dictionary). Certain words or phrases which are used in one clause only of these Standard Conditions are usually defined in that clause.

(b) Provisions regarding the interpretation of the Agreement are set out in clause 18.2 (Interpretation).

1.3 Term of the Agreement

The Agreement commences on the Date of the Agreement and ends on the earlier of:

(a) 30 Business Days after the date on which Your Organisation has provided the Agency with all reports, Material and anything else that Your Organisation is required to provide to the Agency under the Agreement; and

(b) the date on which the Agreement is terminated.

2. Agency general conduct

(a) The Agency agrees to:

(i) provide Your Organisation with current information relevant to the Activity, including standards, policies and guidelines;

(ii) work with Your Organisation to monitor, review and evaluate the Activity and improve the Agreement;

(iii) work with Your Organisation to reduce red tape, including, where practicable, linking Your Organisation's reporting obligations under the Agreement with Your Organisation's governance framework;

(iv) consider and respond to any request by Your Organisation for a review of the Agreement; and

(v) process the Grant in a timely, efficient, accountable and responsible manner.

(b) Nothing in clause 2(a) limits or affects Your Organisation's obligations under the Agreement or the Agency's exercise of its statutory authorities or powers.

3. Activity

3.1 Planning the Activity

(a) This clause 3.1 applies where it is stated in the Grant Schedule that Your Organisation is required to develop or complete an Action Plan or a detailed Budget to be included in the Grant Schedule after execution of the Agreement.

(b) Your Organisation will:

(i) ensure that the proposed Action Plan or Budget has been prepared diligently, effectively and to a high professional standard and consistent with any aims and objectives for the Activity set out in the Grant Schedule; and

(ii) provide the proposed Action Plan or a Budget to the Agency for approval by the Agency on or before the date stated in the Grant Schedule for that Activity.

(c) The Agency may, in determining whether to approve the proposed Action Plan or Budget, request changes to, and the resubmission of, the proposed Action Plan or Budget.

(d) Without limiting any other remedy, the Agency may approve, or not approve, the proposed Action Plan or a Budget in its discretion and on such terms and conditions as the Agency considers appropriate.

(e) An Action Plan or a Budget approved under clause 3.1(d) forms part of the Agreement from the date of approval and is not a variation to the Agreement.

3.2 Undertaking the Activity

Your Organisation agrees to undertake the Activity in accordance with the Agreement and:

(a) consistent with, and in furtherance of, the aims and objectives and so as to assist in meeting the outcomes for that Activity as stated in the Grant Schedule;

(b) within the Activity Period and so as to meet each Milestone and other timeframes stated in the Grant Schedule for that Activity;

(c) in accordance with any Action Plan, performance requirements and Budget for that Activity; and

(d) in a proper, timely and efficient manner and to a high standard.

3.3 Compliance with Supplementary Conditions

Your Organisation agrees, in its undertaking of the Activity, to comply with any Supplementary Conditions for that Activity.

3.4 Compliance with Laws, standards and policies

Your Organisation agrees, in undertaking the Activity, to:

(a) comply with all applicable Laws, including Laws relating to child protection, work, health and safety, employment screening (including mandatory criminal record and working with children checks), privacy, workplace relations and taxation;

(b) comply with any standards and codes relevant to the Activity;

(c) comply with any NSW Health policies or guidelines stated in the Grant Schedule or that the Agency reasonably notifies Your Organisation in writing;

(d) undertake the Activity on a non-discriminatory basis; and

(e) obtain and maintain all qualifications, licences, accreditation, registration and consents required to undertake the Activity or reasonably requested by the Agency in writing.

3.5 Your Organisation's responsibility

Your Organisation remains fully responsible for undertaking the Activity and for otherwise complying with its obligations under the Agreement and will not be relieved of that responsibility because of:

(a) the Agency involvement in the undertaking or undertaking of that Activity;

(b) any payment of the Grant to Your Organisation for the Activity;

(c) any subcontracting of any Activity; or

(d) Your Organisation's obligations, and the performance of those obligations, under clause 3.6 (Supporting transition of Activity).

3.6 Supporting transition of Activity

On expiry or termination of the Agreement, Your Organisation agrees, if requested by the Agency, to provide all reasonable assistance in good faith to transition all or part of the Activity, Assets and New Material under the Agreement to the Agency or a third party. Such reasonable assistance includes:

(a) providing reasonable cooperation with a third party nominated by Agency; and

(b) providing the records, data, information and materials that may be required to enable transacting with a new provider as reasonably requested by Agency.

4. Organisation's general obligations

4.1 Personnel

(a) Your Organisation is solely responsible for all Personnel employed or otherwise engaged in connection with, or supported by, the Grant.

(b) Your Organisation is solely responsible for the payment of all wages, entitlements, superannuation, payroll and any other tax and associated costs to its Personnel.

4.2 Probity relating to Personnel

(a) Your Organisation agrees to comply, and ensure that Your Organisation's Personnel comply, with:

(i) any obligations under any Laws relating to working or contact with vulnerable persons or police checks, including under the *Child Protection (Working With Children) Act 2012* (NSW); and

(ii) any other requirements stated in the Grant Details regarding working or contact with vulnerable persons or police checks.

(b) Before Personnel undertake any function or role in relation to the Activity, Your Organisation agrees to:

(i) ensure that Personnel are not prohibited or disqualified under any Law from being employed or engaged to undertake such a role or function, or are not otherwise undesirable to work with children or vulnerable persons where the Personnel may have contact with children or vulnerable persons;

(ii) have regard to whether any criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform the function or role in relation to the Activity; and

(iii) if requested by the Agency, provide the Agency with evidence satisfactory to the Agency that Your Organisation has complied with this clause 4.2.

(c) The Agency may require the immediate removal of Personnel from undertaking any function or role in relation to the Activity where, in the reasonable opinion of the Agency, the Personnel are considered to represent an unacceptable risk to an individual or individuals receiving that Activity.

4.3 Notifiable incidents

Your Organisation agrees to notify the Agency immediately of any of the following:

(a) when it becomes aware of Alleged Misconduct or a Serious Incident in relation to the undertaking of the Activity;

(b) serious complaints received in relation to the undertaking of the Activity;

(c) the occurrence of any event which may cause adverse publicity in relation to the Activity or relating to a user of the Services;

(d) another NSW Government body or agency terminates an arrangement with Your Organisation under which it receives funding; or

(e) any current, pending or threatened Reputational Proceedings.

4.4 Notifications relating to Your Organisation

(a) Your Organisation agrees to notify the Agency as soon as practicable of any of the following:

(i) changes to Your Organisation's name, address and contact details from those stated in the Grant Details;

(ii) any material change or proposed material change in Your Organisation's constitution or rules or memorandum and articles of association (however described); or

(iii) a Change in Control.

(b) Your Organisation agrees to notify the Agency immediately of any of the following:

(i) any issue that may delay, stop or adversely affect the Activity;

(ii) any action or proposed action relating to an Insolvency Event; or

(iii) any notice or show cause notice as to why Your Organisation is not or should not come under external administration.

4.5 Notification of other financial assistance

(a) Unless stated in the Grant Schedule or the Agency notifies Your Organisation otherwise, Your Organisation agrees to notify the Agency when it receives financial assistance from a Commonwealth, State, Territory or local government body for any activities in connection with the Activity that are not specified as a Co-contribution in accordance with clause 6.8 (Co-contribution).

(b) The notification under clause 4.5(a) is required to be given within ten (10) Business Days of Your Organisation obtaining the assistance and include details of assistance, including the amount and proposed use of the funds.

4.6 Subcontracting

(a) Your Organisation agrees not to subcontract any of its obligations under the Agreement without the prior written approval of the Agency, except to the extent that is stated in the Grant Schedule.

(b) Where the engagement of a subcontractor is approved by the Agency, Your Organisation agrees to ensure:

(i) the suitability of any subcontractor and any part of the Activity performed by the subcontractor meet the requirements of the Agreement;

(ii) that the subcontract is in writing; and

(iii) any subcontract entered into between Your Organisation and the subcontractor in relation to the Activity gives effect to, and is not inconsistent with, the obligations of Your Organisation and the rights of the Agency under the Agreement.

(c) Your Organisation agrees that:

(i) the subcontracting of any part of the Activity, or the Agency's approval for a subcontractor, does not relieve Your Organisation from its responsibility for the undertaking of the Activity; and

(ii) it is liable for the acts and omissions of each subcontractor as if they were the acts and omissions of Your Organisation.

(d) The Agency may approve or not approve the engagement of any subcontractor in its discretion and may impose any terms and conditions on its approval it considers appropriate.

(e) The Agency may at any time require Your Organisation to cease using any subcontractor on reasonable grounds by notice in writing to Your Organisation.

(f) For the purposes of this clause 4.6, "subcontract" includes entering into a joint venture, partnership or agency relationship.

4.7 Auspice Body

(a) If Your Organisation is an Auspice Body, Your Organisation agrees to ensure that the End Recipient complies with the terms of the Agreement and is liable for the acts and omissions of the End Recipient.

(b) The terms of clause 4.6 (Subcontracting) apply to any auspicing arrangement with the appropriate changes as if reference to "subcontractor" is a reference to End Recipient.

4.8 Complaints process

Where the Activity is provided to members of the public, Your Organisation agrees to:

(a) have in place a complaints process to deal with any complaints about that Activity and maintain a complaints register;

(b) ensure the complaints process includes advising a person who makes a complaint that if they are unsatisfied with the outcome of the complaint they may also complain to the Agency; and

(c) provide the Agency or any person nominated by the Agency with access to Your Organisation's complaints register and any other material relevant to any complaint, where requested to do so.

4.9 Review meetings

Your Organisation:

(a) acknowledges that the Agency may require the convening of meetings with Your Organisation to review any aspect of the Activity or Your Organisation's capacity and capability to undertake the Activity, as stated in the Grant Schedule and as otherwise reasonably required by the Agency from time to time; and

(b) agrees to cooperate and comply with the Agency's reasonable requests, directions and requirements in any such review.

5. Records and Reports

5.1 Accounts and records

Your Organisation agrees to keep full and accurate accounts and records regarding the Activity, including those set out in the Grant Details, so that:

(a) proper operational records are able to verify Your Organisation's undertaking of its obligations under the Agreement;

(b) all accounting and financial transactions, including all receipts and payments, relating to the Grant are clearly separate and identified from Your Organisation's other financial and operational accounts and records, except with the Agency's prior written agreement;

(c) if required by Law or the Agency, financial statements can be prepared in accordance with Australian Accounting Standards;

(d) if required by Law or the Agency, the accounts and records can be audited in accordance with Australian Auditing Standards; and

(e) any Asset Register is maintained in accordance with clause 8.4 (Obligations in relation to Assets).

5.2 Record keeping

Your Organisation agrees to keep its accounts and records referred to in clause 5.1 (Accounts and records):

(a) in accordance with applicable Law and usual record keeping practices;

(b) for a period of 7 years after the earlier of the Activity End Date or the end of the Term; and

(c) in such a way to allow the records to be easily accessed, retrieved and used by the Agency or its representative.

5.3 Reporting

(a) Your Organisation agrees to provide to the Agency the information and reports at the times and in the format stated in the Grant Schedule.

(b) Your Organisation agrees to prepare its reports in accordance with:

(i) if required by the Agency, applicable NSW Health policy or guidelines; and

(ii) if required by Law or the Agency, Australian Accounting Standards.

(c) In addition to any requirements to provide information or reports to the Agency, Your Organisation agrees to provide the Agency with any information, records or reports in relation to the Activity, the expenditure of the Grant or the obligations under the Agreement when requested to do so by the Agency.

(d) All reports provided by Your Organisation to the Agency will be of a standard and provided in a way reasonably acceptable to the Agency or as otherwise notified by the Agency from time to time.

6. Financial arrangements

6.1 Use of the Grant by Your Organisation

(a) Subject to clause 6.1(b), Your Organisation agrees to use the Grant provided for the Activity:

(i) only for the purpose of undertaking that Activity and in accordance with the Agreement;

(ii) within the Activity Period and in accordance with any time periods stated in the Grant Schedule for expenditure of the Grant; and

(iii) if applicable, by paying the Grant to the End Recipient in accordance with the Agreement.

(b) Your Organisation may use the Grant:

(i) to pay an amount of the Grant to a third party after the Activity End Date provided that the amount was Committed for that Activity before the Activity End Date in accordance with the Budget (if any) and the Agreement;

(ii) if there is no Budget for the Activity, for the preparation of the Activity's reports that are due after the Activity End Date; and

(iii) in accordance with any approval under clause 6.10 (Residual Grant at end of Activity Period).

6.2 What the Grant will not be used for

(a) Without limiting clause 6.1 (Use of Grant by Your Organisation), Your Organisation agrees not to, without the prior written approval of the Agency, use the Grant to:

(i) make a loan, advance, donation, commission, gift of similar benefit for any purpose;

(ii) make repayments of existing loans, investments or debts;

(iii) provide security for any purpose;

(iv) pay fees or expenses, including sitting fees, to any board member, non-executive director or non-executive committee members of Your Organisation (other than reasonable travel expenses for the purposes of attending the business of the board);

(v) pay legal fees or settle any Claim, order or judgment against Your Organisation, staff or board members; or

(vi) make termination of employment or redundancy payments unless the payment is due to termination in accordance with clause 13.2 (Termination without fault).

(b) The Agency may approve or not approve use of the Grant under clause 6.2(a) in its discretion and on any terms or conditions it considers appropriate and Your Organisation agrees to comply those terms and conditions.

6.3 Payment of Grant

(a) The Agency agrees to pay the Grant for the Activity to Your Organisation at the times, and in the amounts, stated in the Grant Schedule.

(b) Your Organisation agrees that payment of all or part of the Grant is not an admission by the Agency that Your Organisation has met its obligations under the Agreement to the reasonable satisfaction of the Agency.

6.4 Indexation

(a) If the Agreement sets out that the Grant are to be increased on a yearly basis, the Agency agrees to increase the Grant payable each year for the Term by the rate of indexation as stated in the Grant Schedule and as otherwise advised by the Agency from time to time.

(b) An increase in Grant under this clause 6.4 is not a variation to the Agreement.

6.5 Other funding

The Agency is under no obligation to provide Your Organisation with other funding or other financial assistance in excess of the total amount stated in the Grant Schedule or provide funding beyond the expiration or termination of the Agreement.

6.6 Bank Account

Your Organisation agrees to hold the Grant in a Bank Account, except to the extent the Grant is used or paid in accordance with the Agreement.

6.7 Interest and earnings

Your Organisation agrees to:

(a) pay the Grant into an interest earning account and ensure that all interest earned on the Grant, or a reasonable and genuine pre-estimate of the interest earned, will be used in accordance with the Agreement; and

(b) use and deal with any money earned by Your Organisation from the Activities (such as fees, benefits or charges) as if the money earned was part of the Grant.

6.8 Co-contribution

(a) Your Organisation agrees to:

(i) make or procure any Co-contribution for the Activity as stated in the Grant Schedule and use it to provide that Activity;

(ii) provide written confirmation to the Agency that the Co-contribution is available or has been received from any third party for that Activity as reasonably required by the Agency from time to time; and

(iii) notify the Agency immediately if it cannot, or may not be able to, comply with this clause 6.8.

(b) The Agency may terminate the Agreement in accordance with clause 13.3 (Termination for cause) if Your Organisation does not or cannot comply with this clause 6.8.

6.9 Budgeted and Unspent Grant within the Activity Period

(a) Subject to clause 6.9(b), where there is a Budget for the Activity, Your Organisation must only spend the Grant specified in that Budget on that Activity and in accordance with that Budget.

(b) Where there is a Budget for the Activity, Your Organisation agrees not to:

(i) transfer or reallocate the Grant for the Activity between expenditure items of any Activity's Budget; or

(ii) carry-over any Unspent Grant in one Financial Year to the next Financial Year during the Activity Period for the Activity,

except to the extent that it is stated in the Grant Schedule and in accordance with the Agreement or the Agency has given its prior written approval.

(c) Where Your Organisation uses the Grant in accordance with clause 6.9(b), Your Organisation agrees to advise the Agency as part of its next reports as to the reasons for the transfer or reallocation of the Grant or why the Grant was not spent in accordance with the Agreement and how the Grant will be utilised.

(d) Any transfer, reallocation or carry-over of the Grant within the Activity Period other than in accordance with this clause 6.9, including the transfer, reallocation or carry-over of Budgets of or between two or more Activities, requires the Agency's prior written approval.

(e) The Agency may, in determining whether to approve the transfer, reallocation or carry-over of the Grant:

(i) approve or not approve a request in its discretion;

(ii) request Your Organisation to submit a revised Budget for approval; and

(iii) impose terms and conditions as it considers appropriate.

6.10 Residual Grant at end of Activity Period

(a) Your Organisation agrees to repay to the Agency any Residual Grant remaining at the Activity End Date or on earlier termination of the Agreement within 20 Business Days of the Activity End

Date or on the earlier termination, unless the Agency has given prior written approval for Your Organisation to retain the Residual Grant.

(b) Where the Agency approves the retention of Residual Grant, Your Organisation will use those Residual Grant in accordance with the approval, including any terms and conditions specified by the Agency.

7. GST

7.1 Definitions

In this clause 7:

(a) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

(b) **GST Law** has the same meaning as given in the GST Act;

(c) **Ruling** means a published GST ruling, GST determination or similar document issued by the Commissioner of Taxation; and

(d) all other words and expressions which are not defined in the Agreement but which have a defined meaning in GST Law or Ruling have the same meaning as in the GST Law or Ruling.

7.2 GST payable

(a) If a party ("supplier") makes a supply under or in connection with the Agreement in respect of which GST is payable, the recipient of the supply ("recipient") will pay to the supplier an amount equal to the GST payable on the supply.

(b) If any amount on account of GST has been included in the consideration for a supply under the Agreement, the GST amount is as stated as GST in the Grant Schedule.

7.3 Tax invoice

Except where clause 7.6 applies:

(a) the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 7.2(a); and

(b) the recipient can withhold payment of the amount payable under clause 7.2(a) until the supplier provides a tax invoice or an adjustment note as appropriate.

7.4 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount payable by the recipient under clause 7.2(a) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

7.5 Pay or reimburse

Where a party is required under the Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

(a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

(b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

7.6 Issuing recipient created tax invoices and adjustment notes

Where Your Organisation makes a taxable supply under or in connection with the Agreement, the parties agree that:

(a) the Agency, where permitted by the GST Law and Rulings, may issue a recipient created tax invoice for the supply by Your Organisation in accordance with the GST Law and Rulings, and the Agency will retain the original or the copy;

(b) Your Organisation will not issue tax invoices in relation to the supply; and

(c) the Agency, and not Your Organisation, will issue an adjustment note to the Agency for any adjustment event that arises in relation to the supply, and the Agency will retain the original or the copy.

7.7 Acknowledgments

The parties acknowledge and agree that each party is registered for GST at the date of entry into the Agreement and that it will notify the other party if it ceases to be so registered, or if it otherwise ceases to be entitled to enter into a recipient created tax invoice arrangement.

8. Assets and Capital Works

8.1 Acquiring of Assets

Your Organisation agrees not to use the Grant to purchase, lease or otherwise acquire any Assets for the Activity unless:

(a) it is stated in the Grant Schedule and it is in accordance with any allocation of the Grant set out in the Grant Schedule or in any Budget for that purpose; or

(b) the Agency has given its prior written approval and Your Organisation complies with any conditions placed on that approval.

8.2 Ownership of Assets

Unless it is otherwise stated in the Grant Schedule or with the Agency has given its prior written approval, Your Organisation agrees that it must own or lease any Assets.

8.3 Use of Assets

Your Organisation agrees not use Assets for any purpose other than the undertaking and performance of the Activity and any Designated Use unless it has obtained the prior written approval of the Agency, which will not be unreasonably withheld.

8.4 Obligations in relation to Assets

(a) Your Organisation agrees to:

(i) ensure that it obtains value for money in the procurement or otherwise of Assets and related Activity;

(ii) during the Activity Period and any Designated Use Period, use the Assets only for the purpose of the Activity for which the Asset has been acquired;

(iii) maintain the Assets in good working order;

(iv) be fully responsible for, and bear all risk in relation to, the use and disposal of the Assets,

(v) maintain all appropriate insurances in respect of the Assets;

(vi) if it is stated in the Grant Schedule, maintain an Assets Register of the Assets;

(vii) if it is stated in the Grant Schedule, maintain registration and licencing of the Assets; and

(viii) not dispose of, deal with or encumber the Assets other than in accordance with this clause 8, without the prior written approval of the Agency.

(b) Clause 12.3 (Conflict of Interest) applies to Your Organisation in connection with the purchase, lease or other acquisition of the Assets.

(c) Your Organisation will comply with any additional provisions relating to the Assets as stated in the Grant Schedule.

8.5 Depreciation of Assets

(a) If the Asset has not been fully depreciated in accordance with the Australian Accounting Standards:

(i) at the end of the Activity Period for which the Asset has been acquired;

(ii) at the end of any Designated Use Period; or

(iii) on early termination of the Agreement,

Your Organisation agrees to do any of the following required by the Agency:

(iv) use the Assets for a purpose and in accordance with any conditions approved in writing by the Agency; or

(v) deal with the Assets in any way which the Agency notifies Your Organisation in writing.

(b) Your Organisation agrees to comply with any request under clause 8.5(a) within 20 Business Days of the request being made.

(c) If Your Organisation fails to comply with its obligations under clause 8.5(a), some or all of the Grant used for the purchase of the Assets will be recoverable as a debt due by Your Organisation to the Agency from the date it was due.

8.6 Capital Works

(a) Your Organisation will not use the Grant for Capital Works or General Infrastructure, without the prior written approval of the Agency.

(b) Any approval under clause 8.6(a) may be subject to additional conditions or requirements under the Agreement or to a separate written agreement.

8.7 Registering of interest

Your Organisation agrees to comply with any reasonable request of the Agency to register the Agency's interest in any Assets, Capital Works or transaction relating to the Agreement, including the execution of any documents.

9. Reviews and audits

9.1 Access to premises and records

(a) Your Organisation acknowledges and agrees that the Agency, any persons nominated by the Agency and any Public Accountability Body may on notice to Your Organisation require access to:

(i) Your Organisation's premises or the premises where the Activity is being provided;

(ii) the premises at which any work associated with the Activity is undertaken;

(iii) the premises at which any Assets are located;

(iv) copies of records held or created by Your Organisation in relation to that Activity,

for purposes associated with the Agreement, including any review or audit of Your Organisation's performance of its obligations under the Agreement or ability to provide all or part of the Activity.

(b) Where possible, the Agency will give reasonable notice to Your Organisation and seek to involve Your Organisation in any performance review or audit. However, the notice under clause 9.1(a) does not need to be in in any particular form.

9.2 Cooperation and access

(a) Unless it is prohibited by Law from disclosing such information or material, Your Organisation will cooperate with and provide all assistance reasonably requested by permitted persons under clause 9.1(a).

(b) The cooperation and assistance under clause 9.2(a) includes full and free access to:

(i) the Personnel, accounts, records and other information; and

(ii) the Activity or places of business to conduct the performance review or audit,

for purposes associated with the Agreement or any review of the undertaking of the Activity by Your Organisation.

9.3 Application of this clause

(a) Your Organisation must ensure that any subcontract or auspicing arrangement entered into for the purpose of the Agreement allows those permitted persons under clause 9.1(a) (Access to premises and records) to have access as specified in this clause 9.

(b) Nothing in this clause 9 limits or restricts in any way the authority or rights of a Public Accountability Body.

10. Intellectual Property Rights and information

10.1 Ownership of Intellectual Property Rights

(a) The Existing Material of each party remains the property of the party that owns the Intellectual Property Rights at the Commencement Date.

(b) Your Organisation owns all New Material except to the extent that it is stated in the Grant Schedule or clause 10.1(c) applies.

(c) The Agency will give written notice to Your Organisation prior to the delivery of all or part of the Activity if the Agency considers that all or part of the New Material arising from the Agreement should be owned by the Agency.

(d) If the Agency gives written notice to Your Organisation under clause 10.1(c), the New Material set out in the notice is owned by the Agency.

10.2 Licences of Intellectual Property

(a) The Agency grants, and Your Organisation accepts, a licence (including a licence to copy or supply it to others) over:

(i) the Agency's Existing Material; and

(ii) New Material owned by the Agency,

to the extent needed to allow Your Organisation to provide the Activity and comply with the Agreement or for any other purpose that the Agency agrees in writing with Your Organisation.

(b) Your Organisation grants, and the Agency accepts, a permanent, irrevocable, royalty-free, worldwide, transferable, non-exclusive licence (including a right of sublicense to copy or supply it to others) to use, reproduce, communicate, adapt and exploit:

(i) the New Material not owned by the Agency; and

(ii) Your Organisation's Existing Material, but only in conjunction with the New Material.

(c) Each party warrants to the other party that it has the right, or will be entitled at the required time, to deal with the Intellectual Property in the manner provided under this clause 10.2, including obtaining any Moral Rights.

(d) At the request of the Agency, Your Organisation will provide the Agency with copies of all materials in a manner that allows the Agency to give effect to this clause 10.2.

(e) Your Organisation agrees to properly manage the New Material to allow the Agency to enjoy the full benefit of the Activity and the Agreement.

(f) Your Organisation will not accept any funding (including Co-contributions) from a third party that would jeopardise or limit any right in this clause 10.2 without the prior written approval of the Agency.

10.3 Protection of Personal Information

(a) Your Organisation acknowledges and agrees it is bound by Privacy Law in undertaking or providing the Activity and complying with the Agreement.

(b) If Your Organisation collects or has access to Personal Information for the purposes of undertaking the Activity, Your Organisation will:

(i) ensure that it will not use or disclose the Personal Information for a purpose other than the purpose for which it was collected, unless required or authorised by law;

(ii) ensure that it will establish and maintain security procedures and safeguards to prevent unauthorised loss, unauthorised access, use, modification or disclosure and against all other misuse;

(iii) ensure that Your Organisation's subcontractors and any Auspice Body that have access to Personal Information comply with obligations that are the same as are imposed on Your Organisation under this clause;

(iv) otherwise not do anything that would be a breach of the Privacy Law if it was done by the Agency;

(v) take reasonable steps to notify relevant persons that information Your Organisation obtains may be provided to the Agency for the purposes of auditing or assessing Your Organisation's compliance with the Agreement;

(vi) immediately notify the Agency if it has reasonable grounds to believe that there has been a breach of Privacy Law or its obligations under this clause;

(vii) comply with any direction of the Agency to the extent that it is consistent with Privacy Law and any other measures the Agency may reasonably require to maintain the protection of Personal Information.

10.4 Confidential Information

(a) Subject to clause 10.4(b) a party will not disclose Confidential Information without the prior written approval of the other party.

(b) The obligation not to disclose Confidential Information does not apply to the extent that the Confidential Information is:

(i) reasonably required by any persons performing their obligations under the Agreement or to a party's legal and professional advisors, provided that the Confidential Information is used solely for the purpose of the Agreement;

(ii) authorised or required by Law to be disclosed;

(iii) publicised and reported by the Agency or the NSW Government on the awarding of the Grant;

(iv) shared by the Agency with another government agency, body or Minister for its legitimate interests; or

(v) to give a public explanation of any action that the Agency takes in connection with the Agreement.

10.5 Information of a sensitive or cultural nature

Your Organisation will not publish any information that the Agency reasonably considers to be, and identifies to Your Organisation as being, of a sensitive or cultural nature, unless:

(a) Your Organisation consults the Agency;

(b) Your Organisation publishes the information for a purpose stated in the Grant Schedule; or

(c) it is in accordance with clause 10.4 (Confidential Information).

11. Acknowledgement and publicity

11.1 Acknowledgment and publicity

(a) Your Organisation will acknowledge the funding support from the Agency in any publications, advertising and promotional materials in a form and manner stated in the Grant Schedule or as reasonably requested by the Agency from time to time.

(b) Your Organisation will notify the Agency prior to making any press or other announcement or releases relating to the Agreement, unless it is for the purpose of the promotion of the Activity or required to be made by Law.

(c) Your Organisation acknowledges that the NSW Government may publicise the awarding of the Grant at any time after it is awarded, including Your Organisation's name, the amount of the Grant and the title and brief description of the Activity and any results or outcomes arising out of the Grant.

11.2 No restriction on advocacy activities

The Agency agrees that nothing in the Agreement restricts the ability of Your Organisation or its Personnel from entering into public debate or advocacy activities, subject to Your Organisation complying with its obligations in relation to Privacy (clause 10.3), Confidentiality (clause 10.4) and Conflict of Interest (clause 12.3).

12. Dealing with risk

12.1 Insurance

(a) Your Organisation warrants that it has taken out or will take out, and will maintain, adequate insurance coverage appropriate for the Activity, including the following insurances:

(i) public liability insurance for an amount stated in the Grant Schedule for any claim arising out of or in connection with the Activity; and

(ii) any other insurance stated in the Grant Schedule,

for the Term and, if the insurance is for professional indemnity insurance, for the period that is seven (7) years from the Activity End Date.

(b) Your Organisation will provide the Agency with proof of insurance cover on request.

(c) Your Organisation will immediately notify the Agency of any event which affects or may affect Your Organisation's compliance with this clause 12.1.

12.2 Indemnity

(a) In this clause 12.2, "Agency" includes its officers, employees and agents.

(b) Your Organisation indemnifies, and keeps indemnified, the Agency from and against any Claim that may be made or brought by any person against the Agency arising from or in connection with:

(i) any negligent or unlawful act or omission by Your Organisation or Personnel;

(ii) any breach by Your Organisation of the Agreement or Laws; or

(iii) use or disposal of any Asset,

relating to the Activity or the Agreement.

(c) Your Organisation's liability under clause 12.2(b) will be reduced proportionally to the extent that any negligent or unlawful act or omission of the Agency caused or contributed to the Claim.

12.3 Conflict of Interest

(a) Your Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the Date of the Agreement, no Conflict of Interest exists or is likely to arise in relation to the Agreement.

(b) Your Organisation undertakes to notify the Agency immediately upon becoming aware of a Conflict of Interest and agrees to comply with any reasonable written directions of the Agency to manage the Conflict of Interest.

(c) Your Organisation agrees to keep and implement a policy about Conflicts of Interest for its executive officers and other Personnel. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.

(d) The Agency may terminate the Agreement under clause 13.3 (Termination for cause) if Your Organisation fails comply with the requirements under this clause or is unable or unwilling to resolve the Conflict of Interest to the reasonable satisfaction of the Agency.

13. Suspension and termination

13.1 Suspension or withholding the Grant

(a) If the Agency, acting reasonably, considers it appropriate, it may by written notice to Your Organisation, immediately suspend or withhold (either temporarily or permanently) the use and/or payment of all or any part of the Grant if:

(i) Your Organisation has failed, or in the Agency's reasonable opinion, is likely to fail to undertake the Activity in accordance with the Agreement;

(ii) Your Organisation has received the Grant for the Activity and that Grant has not been spent or Committed for the Activity in accordance with the Agreement, including as a result of Your Organisation having a surplus or underspend;

(iii) Your Organisation has breached a provision of the Agreement or another arrangement or agreement with a NSW Health organisation;

(iv) Your Organisation has misused, or in the Agency's opinion, is suspected to have misused, the Grant or has shown an inability to properly manage the Grant or the Assets;

(v) Your Organisation has breached the Agreement and the Agency has given notice to Your Organisation under clause 13.2 (Termination for cause) or clause 13.4 (Consequences of termination);

(vi) the Agency has concerns on reasonable grounds that Your Organisation is not financially stable; or

(vii) Your Organisation or any of its Personnel has breached or is suspected to have breached any Laws material to the Activity.

(b) The Agency may, by giving written notice to Your Organisation, reduce the Activity to be provided under the Agreement to reflect any suspension or withholding of all or part of the Grant under clause 13.1(a) and Your Organisation agrees to suspend the undertaking of the Activity at the request of the Agency in accordance with this clause 13.1.

(c) A notice under clause 13.1(a) or clause 13.1(b) will contain the reasons for any payment being withheld or reduction of the Activity and the steps Your Organisation can take to address those reasons.

(d) The Agency will pay the withheld amount, subject to any suspension of the Activity under clause 13.1(a) or clause 13.1(b), once Your Organisation has addressed the reasons contained in the notice to the reasonable satisfaction of the Agency.

(e) Nothing in this clause 13.1 prevents a party from exercising its rights at any time under clauses 13.2 (Termination without fault) or 13.3 (Termination for cause).

13.2 Termination without fault

(a) Either the Agency or Your Organisation may terminate the Agreement at any time by giving the non-terminating party at least three (3) months' written notice. A notice to terminate under this clause 13.2 does not have to include reasons.

(b) Subject to clause 13.4 (Consequences of termination), the party electing to terminate the Agreement under this clause 13.2 will pay the non-terminating party for any reasonable costs directly and necessarily incurred as a result of termination and properly substantiated by the non-terminating party.

13.3 Termination for cause

(a) The Agency may terminate the Agreement with immediate effect by giving notice to Your Organisation if:

(i) Your Organisation breaches any provision of the Agreement and:

(A) the breach is not capable of being remedied; or

(B) the breach is capable of being remedied and Your Organisation fails to remedy the breach within 20 Business Days following receipt of a notice requiring it to do so;

(ii) Your Organisation regularly or habitually commits breaches of the Agreement which collectively constitute material or serious breach, whether or not they are remedied;

(iii) the Agency is reasonably satisfied that any statement provided by Your Organisation and relied on by the Agency to approve the Grant is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Grant;

(iv) there is a Change in Control or a change in ownership of Your Organisation which the Agency reasonably considers has an adverse impact on the decision to pay the Grant or the ability of Your Organisation to comply with its obligations under the Agreement;

(v) Your Organisation no longer has the requisite authorisations, licences, accreditation, registration or consents to perform its obligations under the Agreement;

(vi) Your Organisation suffers an Insolvency Event;

(vii) Your Organisation has breached any other agreement with a NSW Health or NSW Government agency or body, and that breach entitled or entitles the NSW Health or NSW Government agency or body to terminate that agreement; or

(viii) there has been or there is any current, pending or threatened Reputational Proceedings.

(b) The Agency may terminate the Agreement by giving written notice to Your Organisation as soon as possible if the Agency does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to finance the Activity or part of the Activity.

13.4 Consequences of termination

(a) If the Agency terminates the Agreement:

(i) Your Organisation will:

(A) comply with any notice requirements;

(B) provide the Agency with any reports and records that the Agency reasonably requires; and

(C) cooperate in good faith and provide all assistance reasonably required by the Agency in relation to Confidential Information, the disposal of Assets and any transition arrangements in relation to the Agreement; and

(ii) the Agency will consider in its discretion the payment of the costs of the reasonable transition arrangements of Your Organisation.

(b) The Agency is not liable to Your Organisation if the Agency exercises its rights under clause 13.3 (Termination for cause).

(c) The liability of the Agency to Your Organisation on termination of the Agreement, including under clause 13.2 (Termination without fault), is limited to the amount of unpaid Grant remaining at the date of termination under the Agreement.

(d) This clause 13.4 does not limit any other rights or remedies that may be available to a party.

14. Repayment of Grant

14.1 Notice concerning Grant

If at any time the Agency forms the reasonable opinion that Your Organisation:

(a) has not used, spent or Committed the Grant in accordance with the Agreement;

(b) has failed to perform any of Your Organisation's obligations under the Agreement or has otherwise not complied with the Agreement; or

(c) there is an overpayment or incorrect payment of the Grant,

the Agency may by giving notice in writing to Your Organisation:

(d) require Your Organisation to repay that part of the Grant within 20 Business Days on receipt of a request by the Agency;

(e) recover that part of the Grant through set-off of the amount of the Grant against any Grant payable to Your Organisation under the Agreement; or

(f) require Your Organisation to use all or part of the Grant, or an amount equivalent to the Grant, as the Agency sees fit.

14.2 Organisation's rights and obligations

(a) Your Organisation will comply with a notice that the Agency gives under clause 14.1 (Notice concerning Grant).

(b) Your Organisation may make a written request to the Agency to reallocate or retain the Grant specified in a notice under clause 14.1 (Notice concerning Grant). If the Agency agrees to such a request, Your Organisation agrees to use the Grant in accordance with any terms and conditions specified by the Agency.

14.3 Agency rights

If Your Organisation fails to make payment required by a notice under clause 14.1 (Notice concerning Grant), Your Organisation will pay the Agency interest on any unpaid amount and the unpaid amount and the interest may be recovered by the Agency as a debt.

15. Relationship between the parties

15.1 Status of Organisation

(a) The parties agree and acknowledge that:

(i) nothing in the Agreement creates any employment, partnership, agency or joint venture relationship between the parties; and

(ii) neither party has authority to incur any liability or make any representation on behalf of the other party.

(b) Your Organisation warrants that:

(i) it is a legal entity capable of entering into the Agreement;

(ii) the execution of the Agreement and the provision and performance of the Activity complies with all Laws under which it is incorporated; and

(iii) all licences, accreditation, registration and consents required to be obtained by Your Organisation to provide and perform the Activity have been obtained and are valid and continuing and it is not aware of any breach of those authorisations.

(c) If Your Organisation is a partnership, joint venture or consortium of two (2) or more persons, Your Organisation agrees that:

(i) all such persons are liable both individually and as a group to the Agency for the full performance of the Agreement; and

(ii) Your Organisation's Representative has authority to bind the partnership, joint venture or consortium and each of its members.

15.2 Trust warranties

(a) Where Your Organisation provides or carries out any or all of the Activity in its capacity as a trustee, Your Organisation warrants that:

(i) it is the sole trustee of the Trust and it has been validly appointed;

(ii) it has full and valid power, authority, consents and approvals under the Trust to sign the Agreement and to undertake the transactions contemplated by the Agreement; and

(iii) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Agreement.

(b) Your Organisation acknowledges and agrees that Your Organisation is liable in its own capacity and in its capacity as trustee of the Trust in respect of any liability of Your Organisation to the Agency arising out of the Agreement.

16. Dispute resolution

(a) The parties agree that they will enter into discussions to resolve any dispute arising under the Agreement.

(b) If a dispute cannot be resolved under clause 16(a), it will be resolved as follows:

(i) the party claiming that a dispute has arisen will give written notice to the other party, describing in full the details of the dispute (the "First Notice");

(ii) within 15 Business Days of receipt of the First Notice, the parties will meet to discuss and try and resolve the dispute;

(iii) if the dispute remains unresolved 20 Business Days after receipt of the First Notice, either party may give written notice (the "Second Notice") to the other party, requesting that the dispute be referred to the Dispute Resolution Officer for resolution;

(iv) within 15 Business Days of receipt of the Second Notice, the parties will either (i) meet with the Dispute Resolution Officer to discuss the dispute or (ii) provide written submissions regarding the dispute; and

(v) within 30 Business Days of receipt of the Second Notice the Dispute Resolution Officer will provide their decision to the parties in writing.

(c) The parties agree that any decision of the Dispute Resolution Officer will be final and binding on the parties.

(d) The parties will continue to perform their obligations under the Agreement despite the existence of any dispute.

(e) Nothing in clause affects a party's ability to:

(i) seek urgent interlocutory relief from a court; or

(ii) exercise their rights under clause 13 (Suspension and Termination).

17. General

17.1 Variations

(a) The parties agree that the Agreement may only be varied if:

(i) both parties agree in writing; or

(ii) the Agency notifies Your Organisation of a proposed change in writing which is a minor variation and Your Organisation does not, with 10 Business Days of receipt of the notice, advise the Agency of an objection to the proposed change.

(b) This clause does not apply to any change to the Agreement resulting from a party exercising its rights under the Agreement.

17.2 Notice requirements

(a) Any notice, approval or consent under the Agreement must in be in writing and directed and sent to the other party's Representative at the address stated in the Grant Schedule or any other address which the other party has most recently notified the sending party in writing.

(b) Any notice served in accordance with this clause 17.2 will be deemed to be received:

(i) if delivered by hand, on delivery;

(ii) if posted, on the earlier date of the receipt and three (3) Business Days after the date of posting;

(iii) if an email, on the day of receipt of the confirmation report or any other written evidence that the email has reached the recipient's mail box OR, if on a non-Business Day or after 5.00pm on a Business Day, on the next Business Day.

17.3 Assignment

(a) Your Organisation may not assign the Agreement, or any of its benefits or obligations under it, without the prior written approval of the Agency.

(b) The Agency may by notice to Your Organisation assign the Agreement, or any of its benefits or obligations under it, to any other NSW Government entity that replaces or assumes the Agency's responsibilities. If requested, Your Organisation agrees to execute such documents the Agency may reasonably require to formalise such arrangements.

17.4 Non-Waiver

(a) No waiver by a party in exercising any right under the Agreement will be, or deemed to be, effective unless it is in writing and signed by the party.

(b) Any waiver or partial waiver of a right under the Agreement will not be construed as a waiver of any further breach of the same or any other provision.

17.5 Severability

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

17.6 Clauses that continue to apply after the Term

The following clauses survive and continue to apply after the Term:

(a) clause 5 – Records and Reports (all clauses);

(b) clause 6 – Financial Arrangements: clauses 6.9 (Budgeted and Unspent Grant during the Term), 6.10 (Residual Grant at end of Term);

(c) clause 8 – Assets and Capital Works: clauses 8.1 (Assets) and 8.5 (Depreciation of Assets);

(d) clause 9 – Reviews and Audits: all clauses;

(e) clause 10 – Intellectual Property Rights and Information: all clauses;

(f) clause 11 – Acknowledgement and Publicity: all clauses;

(g) clause 12 – Dealing with Risk: clauses 12.1 (Insurance) and 12.2 (Indemnity);

(h) clause 13 – Suspension and Termination: clause 13.4 (Consequences of termination);

(i) clause 14 – Repayment of Grant: all clauses;

(j) clause 16 – Dispute resolution: all clauses,

and any other clauses which by their nature should survive.

17.7 Governing law and jurisdiction

The Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

18. Dictionary and interpretation

18.1 Dictionary

In these Standard Conditions and the Agreement, unless the context is otherwise expressed:

Action Plan means a document for the Activity that is approved by the Agency under clause 3.1;

Activity means the Activity described in the Grant Schedule and, if more than one Activity is described in the Grant Schedule, a reference to the Activity is a separate reference to each Activity, and includes:

(a) to any Target Group to whom that Activity must be provided;

(b) at any premises or location at which the Activity will be provided; and

(c) all related activities, responsibilities and roles not specifically described but which are incidental to or connected or are required for the proper performance and provision of the specified Activity;

Activity Commencement Date means the date for commencement of the Activity that is stated in the Grant Schedule;

Activity End Date means the date by which the Activity is to be completed that is stated in the Grant Schedule (and excludes reports and Material to be provided to the Agency after the Activity End Date);

Activity Period means the period during which the Activity must be completed from the Activity Commencement Date to the Activity End Date as stated in the Grant Schedule;

Agency means the NSW Health legal entity named in the Grant Details that enters into and is a party to the Agreement and, where relevant, includes its officers, employees, contractors and agents;

Agreement means the agreement between the parties and comprises the Grant Details, the Grant Schedule including any Supplementary Conditions, any documents incorporated by reference into the Grant Schedule and these Standard Conditions;

Alleged Misconduct means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the provision or performance of the Activity, including but not limited to serious or persistent harassment or bullying, or a criminal offence such as theft, fraud or assault;

Approved Auditor means a person who is:

(a) registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the National Institute of Accountants, Institute of Chartered Accountants or CPA Australia;

(b) acting in a professional capacity as an auditor; and

(c) not Personnel or a member or shareholder of Your Organisation or of a related body corporate of Your Organisation;

Assets means any non-consumable item of tangible property (including equipment, furniture, vehicles and buildings) that has a service life of more than one (1) year purchased, leased, hired, financed, created (except in the case of Intellectual Property rights) or otherwise brought into existence either wholly or in part with use of the Grant, which has a value over $10,000 inclusive of GST;

Assets Register means a written register kept in accordance with Australian Accounting Standards and audited annually which contains details of Assets purchased or leased wholly or in part using the Grant, including but not limited to:

(a) the date of purchase or lease of each Asset;

(b) a description of each Asset;

(c) the address at which each Asset is located;

(d) the purchase or lease price of the Asset, exclusive of GST;

(e) the amount of the Grant used to purchase or lease the Asset; and

(f) where relevant, the details of Asset disposals including sale price.

Audited Financial Reports means a financial report audited by an Approved Auditor in accordance with applicable Australian Accounting Standards and any statutory requirements that govern Your Organisation's accounting and financial records;

Auspice Body means an incorporated applicant who will use an unincorporated End Recipient to conduct or perform the Activity;

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board as in force for the time being;

Australian Auditing Standards means the auditing standards made by the Auditing and Assurances Standards Board in accordance with applicable legislation and as in force from time to time;

Bank Account means an account that is maintained with an established bank, building society or credit union authorised under Law to carry on banking business in Australia and that is operated solely by Your Organisation;

Budget means the budget (if any) detailing the Grant for the Activity, including sources of income that constitute any Co-contribution, for the expenditure of the Grant as stated in the Grant Schedule or approved by the Agency under clause 3.1 (Planning the Activity).

Business Day means a day that is not a Saturday, Sunday or public holiday in NSW;

Capital Works means that part of the Activity which relates to the design, construction and fit-out (construction and fit out may include site preparation, modification, expansion, refurbishment, furnishing and equipping as applicable), and related activities;

Change in Control means, if Your Organisation is a corporation, there is any change in the direct or indirect beneficial ownership or control of Your Organisation;

Claim includes any claim, rights, demand, action, proceeding, costs (including legal costs), losses, damages and expenses.

Co-contribution means the contribution from Your Organisation's own funds or a third party's funds, upon which the Grant is contingent, to be contributed to the costs of the Activity as stated in the Grant Schedule and used by Your Organisation to provide the Activity;

Committed means contractually obliged to pay a third party in respect of any part of the Activity and that can be identified in written contractual arrangement with that third party;

Confidential Information means information that:

(a) is by its nature confidential;

(b) is designated by a party as being confidential; or

(c) a party knows or ought to know is confidential;

(d) but does not include information that:

  (i) is or becomes public knowledge, other than by breach of the Agreement or by any unlawful means;

  (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or

  (iii) has been independently developed or acquired by a party;

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with Your Organisation's ability to fairly and independently perform its obligations under the Agreement;

Date of the Agreement means the date specified in the signing page of the Grant Details;

Designated Use Period means the period stated in the Grant Schedule, if any;

Dispute Resolution Officer means the person for the time being holding, occupying or performing the duties of the Dispute Resolution Officer stated in the Grant Schedule or as otherwise advised by the Agency from time to time;

End Recipient where Your Organisation is an Auspice Body, means the unincorporated organisation who will conduct or provide the Activity as identified Schedule;

Existing Material means any Material that is developed prior to the Commencement Date or independently of the Agreement and that is incorporated into the New Material;

Financial Year means each 12 month period beginning on 1 July during the Term or, if Your Organisation has a financial year that begins on some other date, that date;

General Infrastructure means the basic physical systems of Your Organisation, including communication, sewerage, water and electric systems;

Grant means the money, or any part of it, payable by the Agency to Your Organisation to undertake the Activity as stated in the Grant Schedule;

Grant Details means the part of the Agreement titled "Grant Details";

Grant Schedule means the part of the Agreement titled "Grant Schedule";

Insolvency Event means the occurrence of any one or more of the following events in relation to Your Organisation:

(a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (other than for the purposes of solvent reconstruction or amalgamation) of Your Organisation and the order or resolution remains in effect for a period of five (5) Business Days;

(b) a receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or substantial part of the undertaking and property of Your Organisation and the appointment remains in effect for a period of five (5) Business Days;

(c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of Your Organisation;

(d) Your Organisation is unable to pay its debts as they fall due;

(e) Your Organisation becomes insolvent or is deemed to become insolvent under any applicable Laws; or

(f) Your Organisation ceases to carry on business or threatens to do so;

Intellectual Property Rights means all intellectual property rights including:

(a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and

(b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep Confidential Information confidential, Moral Rights, business names, company names or domain names.

Law means common law, principles of equity, and laws made by the Commonwealth, State(s) and Territory(ies) in which the Activity will be provided (and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and any lawful directions by any person exercising statutory powers regarding the Activity;

Material includes any document, information, goods, data, equipment and software (including source code and object code versions) stored by any means including copies and extracts of them.

Milestones means a milestone or stage for the Activity as stated in the Grant Schedule;

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed as defined in the *Copyright Act 1968* (Cth);

New Material means any Material, other than Reporting Material, created by or on Your Organisation's behalf for the purpose of the conducting or performing the Activity (other than from the Agency), including documents, software and data stored by any means;

Personal Information means any information which is:

(a) "personal information" or "health information" within the meaning of the Privacy Law; and

(b) received (from any source) or generated by Your Organisation or Organisation Personnel;

Personnel means Your Organisation's employees, officers, agents and subcontractors, the employees, officers, agents and subcontractors of Your Organisation's subcontractors and any volunteers engaged by Your Organisation or Your Organisation's subcontractors;

Privacy Law means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any code of practice and principles under these Acts;

Public Accountability Body includes the NSW Auditor-General, the NSW Ombudsman and the NSW Privacy Commissioner;

Representative means the relevant party's person stated in the Grant Details or as notified in writing from time to time;

Reputational Proceedings means any inquiry, investigation, conciliation, mediation, arbitration or such similar proceedings against Your Organisation or any director, officer, employee, subcontractor or agent of Your Organisation that could or has the potential to, in the reasonable opinion of the Agency, have an adverse effect on reputation of the Activity, Agency or the NSW Government;

Residual Grant means that part of the Grant paid to Your Organisation that has not been spent or Committed for the Activity;

Serious Incident means an incident that:

(a) is likely to impact on Your Organisation's ability to conduct or provide the Activity or otherwise fulfil its obligations under the Agreement;

(b) may affect or has affected Your Organisation's obligations, or its performance of those obligations, under the Agreement and requires an emergency response, death or serious injury or any criminal activity; and

(c) has or may attract significant public interest and attention.

Standard Conditions means this document;

Supplementary Conditions means additional terms and conditions stated in the Grant Schedule and which form part of the Agreement;

Target Group means those persons or groups of persons (if any) stated in the Grant Schedule;

Term means the term of the Agreement set out in clause 1.3 (Term of the Agreement);

Trust means the trust as stated in the Grant Details;

Unforeseen Event means circumstances beyond Your Organisation's reasonable control, including but not limited to natural disasters, fire, floods, unavoidable accidents, strikes, lockouts or other industrial disputes;

Unspent Grant at a particular date means that part of the Grant that has not been spent or Committed by Your Organisation in accordance with the Agreement; and

Your Organisation means the person or body corporate named in the Grant Details that enters into and is a party to the Agreement, and, where relevant, includes its officers, employees, contractors and agents.

18.2 Interpretation

(a) The following rules of interpretation apply unless the contrary intention appears:

(i) headings are for convenience only and do not affect the interpretation of the Agreement;

(ii) the singular includes the plural and vice versa;

(iii) the words 'includes' and 'including' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

(iv) a reference to:

(A) a person includes any type of body or person whether or not it is incorporated or has a separate legal entity;

(B) a party includes its successors and permitted assigns of that party;

(C) a document, including policy or guidelines, includes all amendments or supplements to that document;

(D) a clause is to a clause in these Standard Conditions;

(E) a part, schedule, attachment or annexure is a reference to a part, clause, schedule, attachment or annexure to these Standard Conditions or Grant Schedule as the case may be;

(F) the Agreement includes all schedules, attachments and annexures to it;

(G) any legislation includes any regulations or rules made under that legislation and any amendment, modification to or replacement of that legislation which may be made from time to time;

(H) an agreement other than the Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;

(I) a monetary amount is in Australian dollars; and

(J) "discretion" means "absolute discretion".

(b) To the extent that the parties have not completed items in the Grant Schedule, unless otherwise stated in the Grant Schedule, that item will be taken to be "not applicable" for the purposes of the Agreement.

(c) The Agreement represents the entire agreement between the parties in relation to the Activity and the Grant and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

(d) The parties may undertake business by the electronic exchange of information and the Agreement may be executed in electronic format to the extent permitted by Law, and the Agreement will be interpreted to give effect to undertaking business in this manner.

Schedule 2 – Payment Schedule

The Payment Schedule forms part of the Agreement between the Agency and Your Organisation. The Payment Schedule is set out in the following pages.

Schedule 3 – Supplementary Dictionary

The Supplementary Dictionary forms part of the Agreement between the Agency and Your Organisation. The Supplementary Dictionary is set out in the following pages.

NSW Health Grant Agreement Schedule 3 – Supplementary Dictionary

The following definitions are added to clause 18.1 of the Standard Conditions:

Term	Meaning
ACC	means the Aeromedical Control Centre of the Agency, which coordinates aeroplane and helicopter transfers within New South Wales.
Agency's Personnel	means all persons whether officers, employees, contractors or agents of the Agency or its Associates engaged in connection with the Activity, including the Agency's Representative.
AHPRA	means the Australian Health Practitioner Regulation Agency.
Air Ambulance Service or **AAS**	means that part of the Agency responsible for air ambulance services.
Air Operator's Certificate	means an Air Operator's Certificate issued by CASA under section 27 of the *Civil Aviation Act* authorising the holder of the certificate to fly or operate an aircraft in Australian territory.
Aircraft	means the aircraft used or to be used in the performance of the Activity in accordance with the Agreement being, as at the Date of the Agreement, three (3) Beechcraft King Air B200C aircraft or three (3) Beechcraft King Air B350C aircraft (or a combination thereof) with aeromedical fit out by Total Aerospace Solutions Pty Ltd.
Aircraft Assigned	has the meaning given in section 12.1(g)(i) of the Statement of Work.
Aircraft Requirements	means the requirements for the Aircraft set out in this Agreement, including: (a) Part C of the Statement of Work; and (b) Part 1 of Appendix A to the Statement of Work.
Aircraft Response Time	has the meaning given in section 12.1(g)(ii) of the Statement of Work.
Aircraft Scene Time	has the meaning given in section 12.1(g)(iii) of the Statement of Work.
Aircraft Turnaround Time	has the meaning given in section 12.1(g)(iv) of the Statement of Work.
Aircraft Turnout Time	has the meaning given in section 12.1(g)(v) of the Statement of Work.
Airservices	means Airservices Australia, the body established by the *Air Services Act 1995* (Cth).
Airservices Flight Plan	means a flight plan issued by a Pilot to Airservices in response to an Operational Flight Plan as contemplated by section 12.3 of the Statement of Work.

NSW Health Grant Agreement Schedule 3 - Supplementary Dictionary

Approvals means any certificate, registration, code of conduct, consent, permit, approval, clearance, accreditation, licence, authorisation, determination, registration or requirement of any organisation or Authority having jurisdiction in connection with the performance of the Activity, and includes any renewal of, or variation to, any of them.

Area of Operations means the areas nominated in section 9 of the Statement of Work.

Assets means:

(a) the Aircraft;

(b) the Road Vehicles;

(c) the Equipment;

(d) the Spare Parts; and

(e) any other fixed or moveable assets used or to be used by Your Organisation for the purpose of performing the Activity in accordance with this Agreement,

but does not include any Issued Equipment.

Associate means:

(a) in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, subcontractor, consultant, nominee, licensee or advisor of that Related Body Corporate; and

(b) in the case of the Agency, NSW Health and any officer, employee, agent, contractor, subcontractor, consultant, nominee, licensee or advisor of or within NSW Health.

ATSB means the Australian Transport Safety Bureau.

Authority means any government or governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency or authority having jurisdiction over any part of, or in connection with, the Activity and includes an Aviation Authority.

Aviation Authority means Airservices Australia, CASA or any other Authority that has authority over aircraft in Australian territory.

Base or **Bases** means the base of operations located:

(a) at Broken Hill Airport, Broken Hill NSW 2880; and

(b) at Dubbo Airport, Dubbo NSW 2830,

as applicable and as further described in Appendix E of the Statement of Work.

CASA	means the Civil Aviation Safety Authority established by the *Civil Aviation Act*.
Certificate of Readiness for Handover	means a certificate issued by the Agency's Representative under paragraph (d)(iv) of Item 11 of the Grant Schedule.
Civil Aviation Act	means the *Civil Aviation Act 1988* (Cth).
Civil Aviation Law	means: (a) the Civil Aviation Act; (b) the Civil Aviation Regulations; and (c) the Civil Aviation Safety Regulations.
Civil Aviation Order	means an order issued by CASA under the Civil Aviation Act and/or the Civil Aviation Regulations.
Civil Aviation Regulations	means the *Civil Aviation Regulations 1988* (Cth).
Civil Aviation Safety Regulations or **CASR**	means the *Civil Aviation Safety Regulations 1988* (Cth).
Clinical Crew	means the flight and road vehicle crew supplied by Your Organisation, including medical and nursing staff, including Doctors and the Flight Nurse.
Commonwealth Funding Agreement	means the Multi-Project Funding Agreement between the Commonwealth of Australia (as represented by the Department of Health) and the Australian Council of the Royal Flying Doctor Service which includes "Project Schedule 3 — Recurrent Funding" which aims to support the sustainable and flexible delivery of "Traditional Services" and "Additional Services" as described in the Project Schedule, as amended or replaced from time to time.
Constructive Total Loss	means the relevant Aircraft is no longer fit for purpose due to damage sustained as determined by an independent expert appointed by the Agency.
Doctors	means the medically qualified and registered doctor(s) supplied by Your Organisation, as defined in the *Health Practitioner Regulation National Law (NSW) no. 86a* (NSW).
Doors Closed	has the meaning given in section 12.1(g)(vi) of the Statement of Work.
Equipment	means: (a) any discrete, separate or stand-alone equipment used or contained in the Aircraft; and (b) all other equipment required to enable Your Organisation to perform the Activity in accordance with this Agreement, but does not include the Aircraft or fitout (i.e. fixtures, fittings or other items affixed to or forming part of the Aircraft in accordance with Good Industry

	Practice, and necessary for the performance of the Activity and the use of the Aircraft as contemplated by this Agreement).
ETD	means estimated time of departure(s) as contemplated by section 12.2(a) of the Statement of Work.
Execution Date	means the date when both parties have signed this Agreement.
Flight Nurse	means the medically qualified nurse(s) supplied by Your Organisation.
Flight Route	means one or more Flight Sectors to be undertaken by the Aircraft during a flight.
Flight Sector	means a non-stop flight between two Standard Flight Destinations or such other destinations tasked by the ACC.
Flying Hour Payment	has the meaning given in section 2.3 of the Payment Schedule.
Flying Hours	has the meaning given in section 12.1(g)(vii) of the Statement of Work.
Good Industry Practice	means practices followed when services are performed or work is undertaken: (a) in a sound and workmanlike manner; (b) with due care and skill; (c) with due expedition and without unnecessary or unreasonable delays; (d) in a manner which allows this Agreement to be properly performed; (e) using materials which are of merchantable quality and fit for their intended purpose; (f) in accordance with all Laws and Approvals; and (g) to the standard expected of an experienced person of a high skill and quality with particular experience in Australia performing services of a similar size, nature and complexity to the Activity.
GST	includes amounts defined as "GST" under the GST Law and: (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).
GST Act	means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
GST Law	has the same meaning as in the GST Act.

Handover Plan	means a plan required to be developed by Your Organisation and approved by the Agency for new Aircraft or Equipment in accordance with item 11 of the Grant Schedule.
Insurance Terms	means the Insurance Terms set out in Schedule 5.
Inter-hospital Transfer Services	means: (a) fixed-wing or road vehicle emergency medical services to a patient in NSW who is in a serious or potentially life threatening condition and who cannot be safely treated at the hospital they have attended; and (b) the patient requires transport and/or medical or nursing care during transport to the nearest suitable hospital, but excludes Patient Transport Services, Pre-hospital Transfer Services, Primary Evacuations and Medical Services Clinics.
IRSMS	has the meaning given in section 3.2 of the Statement of Work.
Issued Equipment	means any equipment provided to Your Organisation by the Agency or its Associates in connection with the performance of the Activity, but does not include the Aircraft, the Equipment or the Spare Parts.
Key Performance Indicators or **KPIs**	means each of the following: (a) the availability requirements that Your Organisation must meet as specified in section 10(a)(ii) and section 10(c) of the Statement of Work; (b) each time performance standard that Your Organisation must meet as specified in section 14(b)(i) and section 14(b)(ii) of the Statement of Work; (c) the provision of all required reports in accordance with Part I of the Statement of Work; and (d) the clinical staff training requirements that Your Organisation must meet as specified in the Statement of Work.
KPI Failure	means a failure by Your Organisation to meet or exceed any one or more KPIs, as determined by the Agency.
Licensed Aircraft Maintenance Engineers or **LAMEs**	means the licensed aircraft maintenance engineers employed or engaged by Your Organisation in or in connection with the performance of the Activity.
Maintenance Work	means any maintenance and servicing of the Assets required to be carried out as part of the Activity and this Agreement (including all actions required to retain the Asset in, or restore it to, a specified condition or to restore it to serviceability, such as inspection, examination, condition assessment, servicing, adjustments, alterations, additions, repairs, reconditioning,

	replacement of component parts, installation of Spare Parts and modifications in respect of the Assets).
Major Maintenance Work	has the meaning given in section 19(a) of the Statement of Work.
Medical Services Clinic	means: (a) health clinical services to isolated areas, and wherever possible in a multi-disciplinary context ensuring coordinated management and provision of patient health care; and (b) involving the provision of medical, nursing and allied health services at regular intervals as required, and may include the provision of one or more of the following services to residents and itinerants of rural and remote areas: (c) *General Practice (GP) Services (GP Clinics)* - are medical clinics provided by a Medical Practitioner, delivered at regular intervals to isolated areas and wherever possible within a multi-disciplinary context; (d) *Nursing Services (Nursing Clinics)* - are regular primary health clinics conducted by registered nurses and delivered at regular intervals to isolated areas and wherever possible within a multi-disciplinary context; and (e) *Allied Health Services (AH Services)* - are services provided by appropriately qualified allied health professionals and other health professional services delivered on a needs basis and within a multi-disciplinary context to isolated areas.
Medical Services Clinic Communities	means each of the following: (a) Ivanhoe; (b) Menindee; (c) Tibooburra; (d) Wanaaring; (e) White Cliffs; and (f) Wilcannia.
MEL	has the meaning given in section 7(d) of the Statement of Work.
Monthly Payment	means, in respect of a Reporting Period, the payment for that Reporting Period (if any) payable by the Agency to Your Organisation, calculated in accordance with the Payment Schedule, as adjusted in accordance with this Agreement.
NETS	means The Newborn and paediatric Emergency Transport Service that NSW Health provides for sick or injured babies, infants and children.

Normal Medical Infrastructure	means a service provided by a medical practitioner or a hospital that provides continuing medical services.
NSW Health	means the Health Administration Corporation (including the Agency), the New South Wales Ministry of Health and any other body or organisation under the control and direction of the Minister for Health or the Secretary of the Ministry of Health.
NSW Health Critical Care and Specialist Care Referral Systems	has the meaning given in section 3.1 of the Statement of Work.
Operational Flight Plan	means a plan issued by the ACC to Your Organisation specifying the flight requirements to be carried out by Your Organisation in relation to the intended flight of an Aircraft, as contemplated by section 12.2 of the Statement of Work.
Operations Manual	means Your Organisation's CASA approved operations manual.
Payment Schedule	means the Payment Schedule set out in Schedule 2.
Patient Transport Service	means the patient transport service (formerly known as Non-Emergency Patient Transport or NEPT) that NSW Health provides for patients who are assessed as requiring non-emergency transport services.
Pilots	means the pilots employed or engaged by Your Organisation in or in connection with the performance of the Activity.
Policies and Procedures	means: (a) all relevant NSW Health and Agency policies, procedures and guidelines; and (b) all other relevant skills manuals and policy directives, as notified to your Organisation from time to time, including those identified in the Statement of Work or otherwise notified by the Policy Distribution System (as amended, replaced or rescinded from time to time).
Pre-hospital Transfer Services	means the provision of road vehicle emergency medical services to victims of illness or accident who: (a) are in a serious or potentially life threatening condition; and (b) require transport and/or medical and nursing care during transport to the nearest suitable hospital.
Primary Evacuations	means the provision of fixed-wing emergency medical services to victims of illness or accident who: (a) are in a serious or potentially life threatening condition; (b) are beyond the Normal Medical Infrastructure; and

(c) require transport and/or medical and nursing care during transport to the nearest suitable hospital (including all fixed-wing air transport services directly related to these emergency medical services).

For the purposes of paragraph (b) above, the parties acknowledge and agree that "*beyond the Normal Medical Infrastructure*" includes hospitals which do not provide continuing medical services.

Priority means, in respect of an Aircraft mission, the relevant mission Priority (Priority 1 to Priority 5) assigned by the ACC in an Operational Flight Plan.

Quarter means each period of three months commencing on 1 January, 1 April, 1 July or 1 October each year.

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

Relevant Proportionate Liability Legislation means:

(a) Part IV of the *Civil Liability Act 2002* (NSW);

(b) Part IVAA of the *Wrongs Act 1958* (Vic);

(c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);

(d) Part 1F of the *Civil Liability Act 2002* (WA);

(e) the *Proportionate Liability Act 2005* (NT);

(f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);

(g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);

(h) Part 9A of the *Civil Liability Act 2002* (Tas); and

(i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above;

and any other similar legislation or regulations.

Reportable Incident means an incident that is required by Law or any Authority to be reported or which is agreed by the parties to be reported.

Reporting Period means each calendar month during the Term on and from the Activity Commencement Date.

Required Rating means a credit rating (or in the case of an insurer, a financial security rating) of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service Inc (or such other credit rating as the Agency may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Road Vehicles means the road vehicles used or to be used in the performance of the Activity which meets the Road Vehicle Requirements.

Road Vehicle Requirements	means the requirements for the Road Vehicles set out in this Agreement, including: (a) Part C of the Statement of Work; and (b) Part 2 of Appendix A to the Statement of Work.
Scheduled Maintenance Work	has the meaning given in section 18(a) of the Statement of Work.
Security Interest	means (unless otherwise stated) any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" under the *Personal Property Securities Act 2009* (Cth).
Spare Parts	means: (a) all rotables, parts and components which are required to be provided and maintained by Your Organisation to properly and safely operate and maintain the Aircraft, the Road Vehicles and the Equipment in accordance with Good Industry Practice and in compliance with all relevant Laws, Approvals and the requirements of all Authorities (as such may be amended from time to time); and (b) any spare parts required to be provided and maintained by Your Organisation pursuant to the Statement of Work, but does not include the Aircraft, the Road Vehicles, the Equipment or the Issued Equipment.
Statement of Work	means the specifications and technical requirements for the Activity, the Aircraft and the Road Vehicles set out in Schedule 4.
Standard Flight Destinations	means the Standard Flight Destinations identified in Appendix B of the Statement of Work.
Tax Invoice	includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.
Total Loss	means the relevant Aircraft is deemed to be written off by the insurer.
WHS Act	means the *Work Health and Safety Act 2011* (NSW).
WHS Legislation	means: (a) the WHS Act and the WHS Regulations; and

	(b) any "corresponding WHS law" as defined in section 4 of the WHS Act.
WHS Regulations	means the *Work Health and Safety Regulation 2017* (NSW).
Your Organisation	means the Royal Flying Doctor Service of Australia (South Eastern Section) ABN 86 000 032 422.
Your Organisation's Personnel	means all persons whether officers, employees, agents or contractors (including subcontractors and their respective officers, employees or agents) employed by or engaged by or on behalf of Your Organisation or its Associates in connection with the performance of the Activity, including Your Organisation's Representative.

Schedule 4 – Statement of Work

The Statement of Work forms part of the Agreement between the Agency and Your Organisation. The Statement of Work is set out in the following pages.

NSW Health Grant Agreement Schedule 4 – Statement of Work

Contents

PART A: INTRODUCTION 3

PART B: STATEMENT OF REQUIREMENTS 6

PART C: AIRCRAFT AND ROAD VEHICLE REQUIREMENTS 9

PART D: OPERATIONAL REQUIREMENTS 11

PART E: MAINTENANCE REQUIREMENTS 23

PART F: CREW AND MEDICAL LOADS 27

PART G: FUEL REQUIREMENTS 29

PART H: BASE REQUIREMENTS 30

PART I: REPORTING REQUIREMENTS 32

PART J: TRAINING REQUIREMENTS 38

PART K: MINIMUM QUALIFICATIONS AND EXPERIENCE 41

PART L: INTERPRETATION 46

APPENDIX A AIRCRAFT AND ROAD VEHICLE REQUIREMENTS 47

APPENDIX B STANDARD FLIGHT DESTINATIONS 65

APPENDIX C OPERATIONAL FLIGHT PLAN 67

APPENDIX D CLINICAL CREW TRAINING REQUIREMENTS 68

APPENDIX E DESCRIPTION OF THE BASES 71

APPENDIX F MEDICAL SERVICES CLINICS FROM THE BROKEN HILL BASE 72

APPENDIX G MEDICAL EQUIPMENT WEIGHTS 73

APPENDIX H DAILY ROSTER 81

PART A: INTRODUCTION

1. Background to the Activity

(a) The Agency operates the Air Ambulance Service (**AAS**) to provide equity of access to health facilities for all NSW residents by providing a fast, safe and reliable method of transporting sick and injured patients over long distances.

(b) The AAS provides state-wide inter-hospital and pre-hospital transfer services including:

(i) fixed-wing emergency medical services to patients who are in a serious or potentially life threatening condition and who cannot be safely treated at the relevant hospital or health facility, including pre-hospital missions;

(ii) where required, fixed-wing transport to the nearest suitable hospital and medical or nursing care during transport; and

(iii) scene responses.

2. NSW Aeromedical Retrieval Network

(a) The AAS forms part of the NSW Aeromedical Retrieval Network which comprises:

(i) fixed-wing services;

(ii) helicopter services;

(iii) critical care ground ambulances; and

(iv) clinical crew.

(b) The NSW Aeromedical Retrieval Network has the following components:

(i) a state-wide Adult Aeromedical and Medical Retrieval Service operated by the Agency staffed by senior critical care specialists with extensive experience in pre-hospital and retrieval medicine;

(ii) a state-wide Newborn and paediatric Emergency Transport Service (**NETS**) that provides clinical co-ordination, support and advice and transport and escort services for critically ill babies and children requiring medical retrieval operating out of Sydney and Newcastle;

(iii) regional retrieval services at Lismore, Tamworth and Newcastle that provide clinical coordination, support and advice and transport and escort services for critically ill patients requiring medical retrieval in the Hunter New England, Mid North Coast and Northern NSW local health district areas;

(iv) the Capital Region Retrieval Service, operated by ACT Health out of Canberra, that provides clinical coordination, support and advice and transport and escort services for critically ill patients being transported to the ACT;

(v) the ACC that provides state-wide coordination of aeromedical transport and medical retrieval services;

(vi) helicopters operating out of Canberra, Lismore, Newcastle, Orange, Sydney, Tamworth and Wollongong, available twenty-four (24) hours a day;

(vii) fixed-wing aircraft operating out of Broken Hill and Dubbo twenty-four (24) hours per day as provided by RFDS and funded through Government funding agreements;

(viii) dedicated doctor and paramedic retrieval teams at each helicopter base;

(ix) doctor and nurse retrieval teams at Bankstown (NETS) and John Hunter Hospital (Newcastle);

(x) fixed-wing flight nurses;

(xi) two (2) dedicated road retrieval vehicles at the helicopter base in Sydney for metropolitan Sydney responses; and

(xii) one (1) road retrieval vehicle at each of the other helicopter bases to provide transport where a road response by a retrieval team is more appropriate than an aeromedical response.

3. NSW Health Systems, Policies and Procedures

3.1 NSW Health Critical Care and Specialist Care Referral Systems

The NSW Aeromedical Retrieval Network is essential to the efficient functioning of the NSW Health critical care and specialist care referral systems which are set out in the following Policies and Procedures:

(a) "Policy for Emergency Paediatric Referrals" (PD2005_157);

(b) "NSW Critical Care Tertiary Referral Networks (Paediatrics)" (PD2010_030);

(c) "Inter-facility Transfer Process for Adults Requiring Specialist Care" (PD2011_031);

(d) "NSW Critical Care Tertiary Referral Networks and Transfer of Care (Adults)" (PD2018_011); and

(e) "Children and Adolescents – Inter Facility Transfers" (PD2010_031),

the "**NSW Health Critical Care and Specialist Care Referral Systems**".

3.2 Integrated Risk and Safety Management System

The Agency uses its Integrated Risk and Safety Management System (**IRSMS**) across its aeromedical systems to provide a foundation for the safe, effective and efficient use of aviation assets and to complement national and state regulations, rules and standards. The IRSMS framework is set out in the following Policies and Procedures:

(a) "Aeromedical Integrated Risk and Safety Management Framework" (HEAS.AS.04);

(b) "Operational Risk Management Policy Statement" (HEAS.AS.05);

(c) "Operational Risk Management Guidelines" (HEAS.AS.06); and

(d) "Aeromedical Safety Culture Guide" (HEAS.AS.07).

3.3 Policies and Procedures

Without limiting clause 3.4(c) of the Standard Conditions, for the purposes of Item 3 of the Grant Schedule, and the definition of "Policies and Procedures", the following documents are included as "Policies and Procedures" under this Agreement:

(a) NSW Health Code of Conduct (PD2015_049);

(b) Occupational Assessment, Screening and Vaccination Against Specified Infectious Diseases Policy Directive (PD2020_017);

(c) Environmental Cleaning Policy (PD2012_061);

(d) Command and Control Policy Directive (PD2017-043);

(e) Command and Control Operating Procedure (PRO2018-037);

(f) Order of Dress Uniform Policy Directive (PD2019-045);

(g) Prevention and Management of Unacceptable Workplace Behaviours - Bullying, Harassment, Sexual Harassment Discrimination Policy Directive (PD29-015); and

(h) Media Guidelines for NSW Ambulance Aeromedical Operators (D20/12688).

4. Role of the ACC

(a) The ACC is based at the Sydney Ambulance Centre, Eveleigh, and coordinates the transport mode and clinical crew to ensure the clinical needs of critically ill patients are met and that access to patients and transfer to the most appropriate hospital occurs in a clinically appropriate timeframe. The choice of transport mode (road, fixed-wing or helicopter) is based on the clinical urgency, transport requirements, optimum clinical crew and transport mode utilisation.

(b) The ACC is responsible for the tasking of all fixed-wing aircraft and helicopters contracted to the Agency for missions occurring in NSW.

(c) Tasking is the formal communication and authorisation for an aircraft to undertake a mission. Decision making about the nature of a mission and the type of mode of transport (road or air) is made within the ACC.

(d) The ACC operates twenty-four (24) hours per day and is staffed by specialist personnel including aeromedical operations officers, clinical nurse specialists and critical care doctors (emergency physicians, anaesthetists and intensive care specialists).

(e) The Rapid Launch Trauma Coordinator within the ACC is responsible for identifying patients in the pre-hospital setting who would benefit from an early medical retrieval response either to the scene or to a non-trauma hospital, particularly in rural areas.

(f) The requirement for an aircraft is guided by protocols. Requests for aeromedical fixed-wing transfers arise from a number of sources. These include:

(i) an inter-hospital retrieval request where fixed-wing is deemed the most appropriate mode of transport; and

(ii) an activation by the Rapid Launch Trauma Coordinator where an early response to a patient is indicated.

(g) The ACC uses triage and transport mode selection protocols to determine the appropriate response. The ACC has critical care nurses and specialists to assist with clinical co-ordination and patient management.

PART B: STATEMENT OF REQUIREMENTS

5. Aims and objectives for the Activity

(a) The aims and objectives for the Activity are to:

(i) provide high quality, professional, responsive, safe and reliable fixed-wing Inter-hospital Transport Services and related services (on a twenty-four (24) hours a day, seven (7) days a week basis) within the Area of Operations;

(ii) provide high quality, professional, responsive, safe and reliable clinical services (including through the operation of the Medical Services Clinics);

(iii) ensure that high quality, effective, efficient and airworthy Aircraft and other Assets are used and maintained;

(iv) ensure Aircraft are available to perform the Activity;

(v) ensure Aircraft responsiveness;

(vi) maintain high safety and patient care standards; and

(vii) ensure cost savings through innovation and improving the efficiency and responsiveness of the Activity.

(b) The Activity must be available twenty-four (24) hours a day, seven days a week.

(c) The Agency requires a total package solution for the performance of the Activity, which includes the procurement, operation and maintenance of the Aircraft and provision of Pilots and Clinical Crew for the provision of twenty-four (24) hours a day fixed-wing air ambulance services from the Base.

(d) Your Organisation must fulfil the aims and objectives for the Activity and perform all tasks and activities, and provide all things, necessary for the performance of the Activity at its own cost.

6. Description of the Activity

(a) The Activity to be performed under this Agreement includes:

(i) the operation and maintenance of the Aircraft for the provision of fixed-wing Inter-hospital Transfer Services from each of the Broken Hill and Dubbo Bases, twenty-four (24) hours a day, seven (7) days a week;

(ii) the provision of fixed-wing Primary Evacuations from each of the Broken Hill and Dubbo Bases, twenty-four (24) hours a day, seven (7) days a week;

(iii) subject to section 12A, the provision of road vehicle Inter-hospital Transfer Services and road vehicle Pre-hospital Transfer Services from each of the Broken Hill and Dubbo Bases, twenty-four (24) hours a day, seven (7) days a week;

(iv) the operation of Medical Services Clinics from the Broken Hill Base to the Medical Services Clinic Communities;

(v) the provision of Your Organisation's Personnel (including Clinical Crew, type qualified Pilots, LAMEs and ground handlers);

(vi) the provision of Assets, including Equipment and Spare Parts;

(vii) the provision of Maintenance Work;

(viii) the provision of fuel and lubricants;

(ix) the provision of all necessary ground handling services;

(x) the training of Pilots and Clinical Crew; and

(xi) all other things and tasks necessary to achieve the aims and objectives for the Activity stated in section 5(a),

each in accordance with this Agreement.

(b) Your Organisation warrants to the Agency that:

(i) Your Organisation will exercise the standard of skill, care and diligence which may be expected of an expert professional provider of the Activity;

(ii) each of Your Organisation's Personnel involved in the performance of the Activity:

A. will exercise the standard of skill, care and diligence which may be expected of an expert professional provider of the services and other activities being provided or performed by Your Organisation's Personnel; and

B. will at all times be suitably qualified, licenced and experienced;

(iii) Your Organisation will perform the Activity:

A. in accordance with the provisions of the Agreement;

B. in a professional, timely, safe, courteous, reliable and environmentally responsible manner;

C. with the degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in services the same or of a similar type to the Activity;

D. in a way that is designed to prevent injury to or death of persons and damage to property;

E. having primary regard to the needs and interests of the persons being transported as part of the Activity;

F. in a manner that complies with all applicable Approvals and Laws;

G. using Assets that comply with the Agreement and any applicable environmental and safety Laws and standards; and

H. so that the Assets are and remain fit for their intended purposes throughout the Activity Period;

(iv) Your Organisation will, during the Activity Period, provide the Aircraft and ensure that the Assets are available and fully operational at the times

required under the Agreement, subject to unavailability as permitted under the Agreement including any periods of Scheduled Maintenance Work in accordance with the Statement of Work, for the exclusive use of the Agency and any person nominated by the Agency; and

(v) Your Organisation will use all reasonable endeavours to seek to reduce the amount of the Grant required for the Activity and to improve the Agency's processes affected by the Activity.

(c) Without limiting any other provision of this Agreement, Your Organisation must in performing the Activity have regard to, and comply with:

(i) the NSW Health Critical Care and Specialist Care Referral Systems;

(ii) the IRSMS; and

(iii) all other Policies and Procedures specified in this Agreement.

(d) Without limiting section 6(a), Your Organisation must provide Aircraft and Your Organisation's Personnel to:

(i) transport Clinical Crew to patients in hospital; and

(ii) transport patients and Clinical Crew to regional referral trauma services or tertiary hospitals and major trauma services.

(e) Detailed requirements for the Activity are set out in the Statement of Work.

(f) Detailed requirements for the Aircraft are set out in the Aircraft Requirements.

(g) Without limiting any other provision of this Agreement, Your Organisation acknowledges that it may be tasked under section 12 to perform the Activity for any purpose, including in respect of the Patient Transport Service and major incidents.

Schedule 5 – Insurance Terms

The Insurance Terms form part of the Agreement between the Agency and Your Organisation. The Insurance Terms are set out in the following pages.

NSW Health Grant Agreement Schedule 5 – Insurance Terms

1 Insurance

(a) Without limiting any responsibility of Your Organisation for the Activity, Your Organisation must, at its cost, effect before commencing the work and maintain or cause to be effected and maintained for the Activity Period the following insurance upon the following conditions:

(i) **Workers compensation**

Unless Your Organisation is a self-insurer under the applicable workers compensation legislation, insurance, whether under statute or common law, and in compliance with all applicable statutes relating to workers compensation, against any and all liability to its officers, employees, servants and agents in all States and Territories in which the Activity is being performed.

(ii) **Public and products liability (including medical indemnity coverage)**

Comprehensive public and products liability insurance to cover the liability of Your Organisation (including in relation to liability arising from or caused by the acts or omissions including negligence of Your Organisation's Personnel and medical indemnity coverage with a limit of liability of for each and every occurrence and in aggregate for Clinical Crew), whether owed under the Agreement or otherwise in respect of:

A. death or disease of, or bodily injury or illness to, any person; and

B. damage to, loss or destruction of, or loss of use of, real or personal property,

arising out of, or in connection with Your Organisation's performance of the Activity, or arising out of a breach of the Agreement by Your Organisation or out of any act or omission including negligence, or wilful or malicious act, of Your Organisation or of any servant or agent or subcontractor of Your Organisation (and extending to cover the vicarious liability of the Agency or the Agency's Representative for the acts or omissions of Your Organisation including negligence), with a limit of liability (except as stated above for medical indemnity coverage) of not less than for each and every occurrence.

(iii) **Motor vehicles**

Insurance under motor vehicle comprehensive policy covering any registered or unregistered vehicle used by it or any other person in connection with the Activity (whether owned, hired or leased by Your Organisation or Your Organisation's Personnel) for:

A. loss or damage to each vehicle;

B. third party property loss or damage; and

C. third party bodily injury, illness or death caused by the use of any registered or unregistered vehicles or mobile plant not required to be insured under compulsory third party insurance.

The limit of liability under the third party property section of the policy shall be not less than for each and every occurrence. Compulsory third party insurance howsoever named must be maintained by Your Organisation at all times with respect to any vehicles operating in connection with the performance of the Activity.

(iv) **Aircraft hull, ground and flight aircraft insurance and hull war insurance**

Aircraft "All Risk" hull, ground and flight aircraft insurance and hull war insurance (including foreign object damage coverage with respect to any engines) in respect of damage to or loss

of any Aircraft up to the full replacement value thereof. This amount is to be recorded on the policy document.

(v) **Property**

All risks property insurance covering:

A. the Base (including hangars) and the Assets (other than the Aircraft) owned by Your Organisation or leased where Your Organisation is required to effect insurance under the lease;

B. any property of the Agency, in the care, custody or control of Your Organisation unless and to the extent that the liability of Your Organisation for the loss or damage of that property is insured under the insurance referred to in paragraph (a)(ii); and

C. all other property, plant and equipment in the care, custody or control of Your Organisation or Your Organisation's Personnel, material to Your Organisation's ability to perform its obligations under the Agreement,

for the full replacement or reinstatement value of such insured property and including cover for consultant's fees, extra costs of reinstatement, and removal of debris. The insurance shall cover Your Organisation and the Agency, each for their respective interests in the property insured.

(vi) **Aircraft liability and other liabilities**

Aviation and aviation products liability insurance written on an occurrence basis with a limit of indemnity of not less than:

A. for each and every occurrence for aviation liability claims; and

B. for each occurrence and in the aggregate for all occurrences in any 12 month policy period for aviation products liability claims,

which covers:

C. Your Organisation and Your Organisation's Personnel; and

D. the Agency and the Agency's Personnel,

for their respective liabilities (including to each other) for any:

E. loss of, damage to, loss of use of, any tangible property (including any property of the Agency in the care, custody or control of Your Organisation) to the replacement value of such property, unless that property is insured against the risks of loss and damage under the insurance referred to in paragraph (a)(v); and

F. bodily injury, disease, illness (including mental illness) or death of any person,

caused by, arising out of, or in connection with, the use, operation or ownership of any Aircraft to be used in the performance of the Agreement. Such insurance must:

G. cover the use, operation and maintenance of the Aircraft in terms which are wide enough to include all aviation activities and services to be provided by Your Organisation and Your Organisation's Personnel under the Agreement;

H. not exclude claims arising from an alleged breach of duty owed in a professional capacity;

I. cover third party passenger liability;

J. cover claims by Your Organisation's Personnel including Pilots and Clinical Crew (except as covered by the insurance referred to in paragraph (a)(i)); and

K. include confirmation that the insurance complies with requirements of the *Civil Aviation (Carriers Liability) Act 1959* (Cth).

(vii) **Hangarkeeper's liability**

Hangarkeeper's liability insurance written on an occurrence basis with a limit of indemnity not less than for each and every occurrence which covers the liability (including airside liability) of:

A. Your Organisation and Your Organisation's Personnel (including for liability arising from or caused by the acts or omissions including negligence of Your Organisation's subcontractors); and

B. the Agency and the Agency's Personnel.

(viii) Where not included as part of the public and products liability insurance required under paragraph 1(a)(ii), additional medical indemnity insurance covering Your Organisation's Personnel.

(ix) Additional insurance related to the Activity as Your Organisation may require and such other insurances as may be required by any applicable Laws.

(x) Any other insurances which the Agency reasonably requires and which should be effected as a matter of Good Industry Practice, provided those insurances can be obtained on payment of a reasonable sum.

(b) Your Organisation must ensure, without cost to the Agency, either that the policies of insurance required under this Schedule 5 provide cover for its subcontractors or that its subcontractors effect and maintain similar policies of insurance which meet the requirements of this Schedule 5.

2 Insurance requirements

The policies of insurance required under paragraph 1:

(a) must, at the time they are effected and at each renewal date, be effected with financially secure insurers with the Required Rating or better, and approved by the Agency, which approval must not be unreasonably withheld;

(b) must be on terms approved by the Agency (which approval must not be unreasonably withheld);

(c) other than those under paragraphs 1(a)(i) (Workers compensation), 1(a)(iii) (Motor vehicles) and 1(a)(v) (Property), must include as a named insured the Agency and the NSW Ministry of Health to the extent of the liabilities required to be insured by Your Organisation under the Agreement;

(d) other than those under paragraphs 1(a)(i) (Workers compensation) and 1(a)(iii) (Motor vehicles), must be endorsed to waive all express and implied rights of subrogation by the insurers against any named insured to the extent of the liabilities required to be insured by Your Organisation under the Agreement; and

(e) other than any policies under paragraph 1(a)(i) (Workers compensation), must include a cross liability clause stipulating that the policies will apply in the same manner as though a separate policy had been issued to each named insured.

3 Compliance

Your Organisation must comply with its obligations under the insurance policies required by this Schedule 5, including to disclose information.

4 Cancellation or change

Your Organisation must ensure that the Agency is provided with at least thirty (30) Business Days' written notice before any material change to, or cancellation of any insurance policy is effected.

5 Claims

With the exception of a claim by Your Organisation against the Agency, if any event occurs which may give rise to a claim involving the Agency under any insurances effected pursuant to paragraph 1, Your Organisation shall notify the Agency within fourteen (14) days and must ensure the Agency is kept fully informed of any subsequent action and developments concerning the claim.

6 Evidence

(a) Prior to the Date of the Agreement and whenever requested by the Agency, Your Organisation must provide the Agency with a list of all policies of insurance and with a certificate of currency of insurance from the insurers stating the insured parties, sum insured, insured risks, exclusions, deductibles, relevant endorsements and expiry date for each policy.

(b) During the Activity Period, if requested by the Agency on reasonable notice, Your Organisation must provide the Agency access to review such policies at Your Organisation's offices in either Melbourne or Sydney, at a time reasonably convenient to both parties, to enable inspection and taking notes for the purpose of confirming that the requirements of the Agreement are met by those policies.

(c) Nothing in this paragraph 6 limits in any way the liability of Your Organisation to effect and maintain the insurances in accordance with this Schedule 5.

7 Deductibles

Your Organisation must bear the cost of any excesses or deductibles under the policies of insurance.

8 Indemnity

Any policies of insurance which Your Organisation fails to effect and maintain as required by this Schedule 5 may be effected by the Agency and, without prejudice to its other rights and remedies, any relevant premium costs and expenses may be deducted by the Agency from any amount due and payable to Your Organisation, or recovered as a debt due from Your Organisation to the Agency. Your Organisation must provide the Agency with all reasonable assistance and information without delay in order to allow the Agency to exercise this right.

9 Full benefit

(a) Your Organisation must, in the event of any loss, injury, damage or claim, do all things necessary to obtain the full benefit of the insurances effected pursuant to the Agreement and shall give the insurer prompt written notice of any loss or claim within the knowledge of Your Organisation. Your Organisation must not do or omit to do anything which may provide grounds for an insurer to refuse, or reduce its liability for, payment of any claim made under any policy or which may otherwise prejudice the interests of any party named as an insured therein and indemnifies the Agency against any loss the Agency may suffer as a result of doing or omitting to do any such thing.

(b) Neither failure to comply nor full compliance by Your Organisation with this Schedule 5 will limit or relieve Your Organisation of its liabilities and obligations under any other term of the Agreement.

10 Risk of loss or damage

(a) As between the Agency and Your Organisation, subject to paragraph 10(b), Your Organisation is responsible for the care of, and bears the risk of any loss of, damage to or destruction of the Assets, the Base or any other property in relation to the Activity and must indemnify the Agency against such loss, damage or destruction, including the risk of any destruction, loss or damage caused by any person. As between Your Organisation and the owner, lessor or other interested party in relation to the Assets and Base, the risk of loss, damage or destruction of the Assets and Base will be as agreed between the parties.

(b) To the extent that the loss, damage or destruction arises from any of the following events:

(i) a breach of the Agreement by the Agency; or

(ii) any fraudulent, negligent or unlawful act or omission by the Agency or its Associates,

then the Agency must pay Your Organisation the substantiated reasonable cost of carrying out the reinstatement, repair or replacement.

11 Repair or reinstatement

(a) If Your Organisation becomes entitled to claim under any insurance policy as the result of any loss of, damage to or destruction of an Asset, Base or any other property in relation to the Activity, Your Organisation must diligently pursue such claim and keep the Agency notified of its progress in pursuing that claim.

(b) Unless the Agency agrees otherwise in writing, Your Organisation must apply the proceeds of any claim referred to in paragraph 11(a):

(i) to the repair of any damage to the Asset, Base or other property in relation to the Activity where such repair is economic (as determined where appropriate by a manufacturer or engineers' opinion in order to ensure airworthiness); or

(ii) to the replacement of the Asset, Base or other property in relation to the Activity where the Asset, Base or other property in relation to the Activity is irretrievably lost or stolen or is damaged beyond economic repair.

(c) If required by the Agency, Your Organisation must provide evidence to the reasonable satisfaction of the Agency that, if Your Organisation believes that:

(i) paragraph 11(b)(i) applies, repair of any damage to an Asset, Base or other property in relation to the Activity is economic (as determined where appropriate by a manufacturer or engineers' opinion in order to ensure airworthiness); and

(ii) paragraph 11(b)(ii) applies, the Asset, Base or other property in relation to the Activity is irretrievably lost or stolen or is damaged beyond economic repair.

(d) If the Agency is not reasonably satisfied with the evidence provided under paragraph 11(c), it may direct Your Organisation to apply the insurance proceeds in another reasonable manner.

(e) Your Organisation must keep the Agency fully informed of the progress of the reinstatement, repair and replacement activities.

12 Insurance proceeds account

(a) Your Organisation must:

(i) establish an account to be known as the "Insurance Proceeds Account";

(ii) maintain that account in the name of Your Organisation with an ADI (as defined in the *Personal Property Securities Act 2009* (Cth)) of the Required Rating;

(iii) give details of that account to the Agency;

(iv) notify the ADI referred to in paragraph 12(a)(ii) (**ADI**) of the security interest over the Insurance Proceeds Account and the monies from time to time standing to the credit of that account and procure, and provide the Agency with a copy of, acknowledgement of that notice from the ADI;

(v) without limiting paragraph 12(e), if the Agreement is terminated under clause 13.3 of the Standard Conditions:

A. ensure that the Agency may, by notice to Your Organisation and the ADI referred to in paragraph 12(a)(ii), take sole control (including as to withdrawal and operation) of that account; and

B. procure and provide the Agency with a copy of an acknowledgment of such control rights from the ADI; and

(vi) procure the agreement of the ADI referred to in paragraph 12(a)(ii) not to exercise any right of set off or combination of accounts in relation to the Insurance Proceeds Account.

(b) All insurance proceeds received under the insurances referred to in paragraph 1(a)(iv) and 1(a)(v) must be deposited in the Insurance Proceeds Account.

(c) Subject to paragraph 12(e), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement in accordance with paragraph 11.

(d) Your Organisation must give the Agency records of expenditure from the Insurance Proceeds Account within thirty (30) Business Days after such expenditure.

(e) If the Agreement is terminated under clause 13.3. of the Standard Conditions, the Agency will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.