



Education

Part D – PREQUALIFICATION SCHEME AGREEMENT

NAME **Specialist Allied Health Services to
Schools – Prequalification Scheme**

NUMBER **DoE1695694444**



Education

Agreement for Provision of Services

Prequalification Scheme Agreement

Scheme	Specialist Allied Health Services to Schools – Prequalification Scheme
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Schedule

Item	Description	Details
1.	Scheme	<i>[insert name]</i>
2.	Description of Scheme	<i>[insert]</i>
3.	Start Date <i>Clause 6.1</i>	<i>[insert]</i>
4.	End Date <i>Clause 6.1</i>	<i>[insert]</i>
5.	Extension Period <i>Clause 6.2</i>	<i>[insert period of time or 'Not Applicable']</i>
6.	Additional Standards <i>Clause 1, 3.2(c)</i>	<i>[insert the relevant standards]</i>
7.	Qualifications <i>Clause 7.1(b)</i>	<i>[insert the relevant qualifications, accreditations etc.]</i>
8.	Training <i>Clause 7.1(b)</i>	<i>[insert the relevant Training requirements]</i>
9.	Notified Policies <i>Clause 3.2(b)</i>	a) NSW Procurement Board Policy Framework b) Implementation Guidelines for NSW Government Procurement. c) NSW Department of Education Statement of Business Ethics d) NSW Government Work Health & Safety Management Systems and Auditing Guidelines. e) The Department of Education Code of Conduct. <i>[update this list of Notified Policies as required from time to time]</i>
10.	Reporting	You will be required to submit details of all of Your engagements with Department schools under the Scheme to Our Contract Manager on a six

Item	Description	Details															
	<p><i>Clause 19.4(a)</i></p>	<p>monthly basis as follows:</p> <table border="1" data-bbox="488 327 1334 517"> <thead> <tr> <th data-bbox="488 327 632 389">Reporting Period</th> <th data-bbox="632 327 970 389">Reporting periods include the following dates</th> <th data-bbox="970 327 1334 389">Reports due for each reporting period</th> </tr> </thead> <tbody> <tr> <td data-bbox="488 389 632 421">1</td> <td data-bbox="632 389 970 421">1 January – 31 March</td> <td data-bbox="970 389 1334 421">30 April</td> </tr> <tr> <td data-bbox="488 421 632 452">2</td> <td data-bbox="632 421 970 452">1 April – 30 June</td> <td data-bbox="970 421 1334 452">31 July</td> </tr> <tr> <td data-bbox="488 452 632 483">3</td> <td data-bbox="632 452 970 483">1 July – 30 September</td> <td data-bbox="970 452 1334 483">31 October</td> </tr> <tr> <td data-bbox="488 483 632 517">4</td> <td data-bbox="632 483 970 517">1 October – 31 December</td> <td data-bbox="970 483 1334 517">31 January</td> </tr> </tbody> </table> <p>We may specify a format for these reports. The reports may cover a range of information on Orders including but not limited to:</p> <ul style="list-style-type: none"> (i) Service provider name (ii) School name (iii) Scheme (iv) Type of service (v) Details of services provided (vi) Duration of engagement: start date, end date, total hours (vii) Number of children per engagement and/or school staff per engagement (viii) Total value of the engagement. 	Reporting Period	Reporting periods include the following dates	Reports due for each reporting period	1	1 January – 31 March	30 April	2	1 April – 30 June	31 July	3	1 July – 30 September	31 October	4	1 October – 31 December	31 January
Reporting Period	Reporting periods include the following dates	Reports due for each reporting period															
1	1 January – 31 March	30 April															
2	1 April – 30 June	31 July															
3	1 July – 30 September	31 October															
4	1 October – 31 December	31 January															
11.	<p>Our Contract Manager</p> <p><i>Clause 2.2</i></p>	<p>As notified to You from time to time.</p>															
12.	<p>Additional Pricing Terms</p> <p><i>Clause 4.1(b)</i></p>	<p>[Insert any restrictions on pricing, as directed e.g. must not charge more than NDIS schedule]</p>															
13.	<p>Insurance</p> <p><i>Clause 20.1</i></p>	<p>Public liability insurance with a minimum cover of \$20m per claim;</p> <p>Professional indemnity insurance with a minimum cover of \$2m per claim; and</p> <p>Workers compensation insurance as required by law (or personal injury/accident insurance in the case of sole traders undertaking the work themselves).</p>															

This Prequalification Scheme Agreement sets out the terms and conditions for the provision of services by prequalified Service Providers under the Scheme to Department schools.

1 Definitions and interpretation

1.1 Definitions

In the Agreement, the following terms have the following meanings unless the context requires otherwise:

Additional Pricing Terms	any restrictions or limits on the Price which can be charged by You to Us, as specified at Item 12 in the Schedule.
Agreement	means this Agreement between Us and You under which the Department (including schools) may place Orders for Services. See clause 5 for order of priority of the different parts of this Agreement and a contract formed by an Order.
Agreement Material	Material which You or Your Personnel create in connection with the Agreement.
Business Day	a day that is not a Saturday, Sunday or a gazetted public holiday in New South Wales.
Change of Control	means there is any change in Your direct or indirect beneficial ownership or control.
Claim	any claim, right, demand, liability, action, suit, proceeding, charge, cost (including legal costs on a full indemnity basis), loss, damage and expense of any kind, including those arising out of the terms of any settlement.
Confidential Information	information disclosed by one party to the other, whether before, on or after this Agreement commences for You, that: (a) is by its nature confidential; (b) is designated by a party as being confidential; or (c) the recipient party knows or ought to know is confidential, including Our Data (defined in clause 17.3) but does not include information that: (d) is or becomes public knowledge other than by a breach of the Agreement or by any unlawful means; (e) was already in the recipient party's lawful possession without restriction in relation to disclosure before the information was received by the recipient party; or (f) has been independently developed or acquired by the recipient party.
Conflict of Interest	having an interest (whether personal, financial or otherwise) which conflicts, or which may reasonably be perceived as conflicting, with Your ability to fairly, objectively and independently perform Your obligations under the Agreement.
Contract Manager	means the Contract Manager for the Department, as described in Item 11 in the Schedule.

CPWC Act	the <i>Child Protection (Working with Children) Act 2012</i> (NSW).
CYPCP Act	the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW).
GST	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Intellectual Property Rights	all present and future rights conferred by statute, common law or equity in, or in relation to, copyright, trade marks, patents, designs, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields, whether non-registrable, registrable or patentable, but does not include Moral Rights.
Intervening Event	a circumstance beyond Your reasonable control including: <ul style="list-style-type: none"> (a) a fire, flood or natural disaster; (b) an explosion; (c) an unavoidable accident; (d) an act of terrorism; or (e) a strike, lockout or other industrial dispute that is not limited to Your workplace.
Material	documents, records, software (including source code and object code), goods, images, information and data stored by any means, including all copies and extracts of same.
Moral Rights	has the meaning given under the <i>Copyright Act 1968</i> (Cth), which includes the right to: <ul style="list-style-type: none"> (a) attribution of authorship; (b) not have authorship falsely attributed; and (c) integrity of authorship.
Notified Policies	any policies, guidelines or codes of Ours or the NSW Government, as amended or replaced, that are stated in Item 9 of the Schedule or which We notify You about from time to time during the Term.
Order	the Services ordered by a Department school under this Agreement.
Order Form	the form nominated by the Department from time to time for Department schools to place Orders with You.
Personnel	officers, employees, volunteers, agents, contractors and subcontractors.
Prequalification Scheme or Scheme	means the prequalification scheme set up through the Agreement for the services detailed at Item 1 in the Schedule.

Price	for each Order, the money for the Services to be provided to You for providing the Services in accordance with the Agreement as more particularly described in the Order Form.
Privacy Legislation	the <i>Privacy and Personal Information Protection Act 1998</i> (NSW), <i>Health Records and Information Privacy Act 2002</i> (NSW), <i>Privacy Act 1988</i> (Cth), any other privacy related law that applies to Us, and any codes of practice and principles issued under those Acts.
Qualifications	the relevant post school qualifications in a relevant discipline, or the appropriate experience, as specified at Item 7 in the Schedule.
Records	any documents or other sources of information relating to the Agreement that are compiled, recorded or stored (including in written form, on film or electronically).
Reputational Proceedings	any inquiry, investigation, conciliation, mediation, arbitration or similar proceedings against You or Your Personnel that could, or in Our reasonable opinion has the potential to, have an adverse effect on the reputation of Us, the Services or the NSW Government, including any investigation by the Independent Commission Against Corruption.
Schedule	the document forming part of this Agreement titled "Schedule".
Service Provider	means an organisation who has been appointed to the Prequalification Scheme by Us.
Services	means: <ul style="list-style-type: none"> (a) the services stated in an Order; (b) any ancillary services that are required in order to provide those services; and (c) Your other functions and responsibilities under the Agreement, as may be varied in accordance with the Agreement.
Standards	means: <ul style="list-style-type: none"> (a) applicable Australian Standards and other nationally recognised standards; (b) any additional standards stated at Item 6 the Schedule; and (c) any standards which We notify You of from time to time during the Term including in an Order.
Term	the term of the Agreement ending on the End Date and any extension period exercised in accordance with clause 6.

Training the mandatory training, which may include:

- (a) the Department's on-line Mandatory Child Protection Training; or
- (b) health-related training (ASCIA Schools and Childcare Anaphylaxis e-training),

as specified at Item 8 in the Schedule.

Us, We, Our the State of New South Wales by its Department of Education.

You, Your the party stated as the "Service Provider" that has been appointed to the Prequalification Scheme.

1.2 Interpretation

In the Agreement, unless the context requires otherwise:

- (a) a reference to legislation refers to legislation as amended, consolidated, re-enacted or replaced, and includes subordinate legislation;
- (b) the words "including", "include" and "included" are not words of limitation;
- (c) a reference to a clause is a reference to a clause in this Agreement;
- (d) reference to a document or agreement includes reference to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a person includes a natural or legal person;
- (f) a reference to money is to Australian currency;
- (g) a reference to "discretion" means "absolute discretion";
- (h) the plural includes the singular and vice versa;
- (i) where You comprise of more than one person, each of the persons comprising You will be jointly and severally liable under the Agreement;
- (j) when a time limit falls on a Saturday, Sunday or public holiday in New South Wales, that time limit will be taken to have ended by 5 pm on the next Business Day;
- (k) the background and headings are included for convenience only and do not affect the interpretation of the Agreement;
- (l) each defined term includes all grammatical forms of that term; and
- (m) to the extent that an item is not completed in the Schedule, that item will be taken as "not applicable" for the purposes of the Agreement.

2 Prequalification Scheme

- 2.1 **Scheme**
- (a) We have established the Scheme for the provision of services to Department schools.
 - (b) Department schools may place Orders to engage the services of Service Providers (You).
 - (c) Department schools may obtain service proposals from a number of providers before choosing a Service Provider.
 - (d) The objective of the Scheme is to provide a streamlined, compliant and value for money process for Department schools to obtain Scheme services.
 - (e) Your continued status as a prequalified Service Provider is subject to compliance with the Agreement and maintaining a high level of quality of services.
 - (f) We may add, change, remove or suspend suppliers, including You from the Scheme at Our discretion. This includes inviting new applications, asking current suppliers to re-apply or undertaking a refresh of the Scheme through any process determined by Us.
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- 2.2 **Information about You**
- (a) We may request You provide information on the services that You will make available to the Department schools including rates.
 - (b) The information You provide may be provided to Department schools and placed on the Department's intranet and/or internet. You acknowledge that this information will not be kept confidential on the terms of this Agreement or otherwise.
 - (c) You must immediately notify us of any changes to the information You have provided us by contacting Our Contract Manager.
 - (d) You must also immediately inform Our Contract Manager of any significant adverse change in Your financial capacity or capability.
-

- 2.3 **Prequalification no Guarantee of Work**
- (a) Your appointment to the Scheme does not guarantee Your continued appointment for the term of the Scheme.
 - (b) We may appoint other suppliers to supply products and services that are the same as or similar to the services available under the Prequalification Scheme.
 - (c) The Department's schools have no obligation to place any Orders or acquire any minimum quantity of services. This applies even if We mandate use of the Scheme by Department schools.
-

- 2.4 **Review and Development of the Scheme**
- The Scheme will be monitored by Us to assess whether the objectives and intent of the Scheme are being met. Changes may be made at Our discretion during the term of the Scheme.
-

3 Your obligations

- 3.1 **Provision of the Services**
- You agree to provide the Services:
- (a) in a proper, timely and efficient manner and to a high ethical and professional standard;
 - (b) in compliance with the description of the services in an Order including the Order Form;
 - (c) in accordance with all other requirements of the Agreement; and
 - (d) You remain fully responsible for providing the Services and for otherwise complying with Your obligations under the Agreement and will not be relieved of this responsibility because of any involvement of Us in the provision of the Services.
-

- 3.2 **Compliance with laws, standards and policies**
- You agree that in carrying out the Services You and Your Personnel will:
- (a) comply with all applicable laws (including laws relating to child protection, work health and safety, superannuation, workers compensation, employment screening, privacy, workplace relations and tax);
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- (b) comply with all Notified Policies;
 - (c) comply with all Standards;
 - (d) hold and maintain all licences, approvals, consents, accreditations or registrations that are necessary for You and Your Personnel to provide the Services, including those We reasonably request in writing; and
 - (e) to the extent reasonably practicable, ensure the health and safety of Your Personnel.

4 Orders

- 4.1 **Placing of Orders**
- (a) We will provide directions to You on how Department schools may place Orders. Individual Department schools may, however, provide more specific or different directions on how Orders are to be placed within their school. The directions may change from time to time and be different for individual schools.
 - (b) You must ensure that any Price complies with the Additional Pricing Terms.
 - (c) You must only accept Orders placed that are consistent with Our and any specific school directions.
 - (d) When an Order is signed by You and the Department school, a contract is formed for You to supply the Services as set out in the Order in accordance with this Agreement.
 - (e) An Order will be effective from the day the Order is placed, unless the Order states another date for it to become effective. The Order will expire when it has been fully performed or is ended earlier in accordance with the Agreement.
 - (f) You must not include any additional terms and conditions in any Order, or in any quote or other document, that are inconsistent with the terms of this Agreement. Any such terms and conditions will have no effect.
-
- 4.2 **Restrictions on marketing and accepting Orders**
- (a) You may only market to and accept orders from Department schools under and according to the Agreement.
 - (b) You must not market to or provide services available under the Scheme to Department schools under any other contract.
 - (c) We may, at any time, exclude Department school(s) from the scope of the Scheme. You must not accept any Order from any of these Department school(s).
 - (d) We may notify, from time to time, specific directions about marketing to Department schools. You must comply with these directions including stop or change marketing. Our approvals and directions may be given on conditions. Approvals and directions may be withdrawn or changed at any time.
-

5 Agreement

- 5.1 **Parts of the Agreement and order of precedence**
- (a) The Agreement and any Order agreed to provide Services consists of the following parts (in order of precedence):
 - (i) this Agreement;
 - (A) the main body of this Agreement;
 - (B) the Schedule of this Agreement,
 - (ii) Order Form; and
 - (iii) Order Form attachments.
 - (b) If there is any ambiguity in or inconsistency between the various parts of the Agreement, the ambiguity or inconsistency will be resolved by applying the order of precedence referred to above.

6 Term

- 6.1 **Initial Term** This Agreement commences on the Start Date (as defined in the Schedule) and continues until the End Date (as defined in the Schedule) unless earlier terminated by a party, or extended by Us.
-
- 6.2 **Extension period** We may extend the Term for the extension period (if any) stated in the Schedule by notifying You in writing no later than 90 days prior to the End Date.

7 Personnel and subcontractors

- 7.1 **Personnel**
- (a) You are solely responsible for:
 - (i) all Personnel employed or otherwise engaged in relation to the Agreement; and
 - (ii) the payment of all wages, entitlements, superannuation, payroll and any other tax and associated costs applicable to Your Personnel.
 - (b) You agree to use appropriately trained, qualified and experienced Personnel who hold all legally required authorisations, accreditations, permits and clearances necessary to carry out their roles in relation to the Services. Your Personnel must hold the Qualifications and undertake the Training – You are responsible for ensuring this.
 - (c) Before any Personnel undertake any function or role in relation to the Services, You agree to:
 - (i) ensure that such 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;

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- (ii) have regard to whether any national criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform their function or role in relation to the Services; and
 - (iii) provide Us with evidence to Our satisfaction of Your compliance with clauses 7.1(c)(i) and 7.1(c)(ii).
 - (d) Without limiting any other terms of this Agreement, if the Services involve child-related work under the CPWC Act, You agree to:
 - (i) if You are an “employer” for the purposes of section 9 of the CPWC Act, ensure that all mandatory employment screening (referred to in the CPWC Act as the “working with children check clearance”) has been undertaken on all Personnel engaged to work in “child-related work” (as defined in the CPWC Act), prior to such Personnel performing any such work; and
 - (ii) have risk assessment procedures and risk plans in place to ensure compliance with the CPWC Act.
 - (e) You agree to ensure that a person who is a Barred Person, or who is otherwise undesirable to work with children, does not undertake “child-related work” (as defined in the CPWC Act) under or in relation to the Agreement.

‘Barred Person’ means: a “disqualified person”, or a person who is subject to an “interim bar”, under the CPWC Act; or a “registrable person” referred to in the *Child Protection (Offenders Registration) Act 2000* (NSW).
 - (f) You agree to:
 - (i) identify and comply with Your statutory obligations when engaging others in “child-related work” (as defined in the CPWC Act);
 - (ii) ensure that Your Personnel are aware of and comply with their own statutory obligations in relation to such “child-related work”; and
 - (iii) ensure that You and Your Personnel do not engage in any conduct that may bring Us into disrepute or lead to Reputational Proceedings being commenced.
 - (g) You agree to give Us on request such information as We may reasonably require in order for Us to assess Your compliance with this clause 7.1.

7.2 Objections to and removal of Personnel

- (a) We may object to any Personnel allocated by You to provide the Services where such Personnel have engaged in misconduct or, We believe, cannot perform the inherent requirements of the Services. Where We make any such objection to Your Personnel:
 - (i) You agree not to allocate such Personnel to the Services; and
 - (ii) We will consult with You about the objection.
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- (b) Without limiting any other term of the Agreement, We may require the immediate removal of Personnel from undertaking any function or role in relation to the Services where, in Our reasonable opinion, the Personnel represents an unacceptable risk to any person who receives the benefit of the Services.
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- 7.3 Subcontracting**
- (a) You agree not to subcontract the whole or any part of the Services without Our prior written consent.
 - (b) We may in Our discretion:
 - (i) approve or not approve the engagement of any subcontractor; and
 - (ii) impose any conditions on Our approval of a subcontractor that We consider appropriate.
 - (c) You agree:
 - (i) that subcontracting of any part of the Services by You does not in any way reduce Your responsibility for those Services;
 - (ii) You are liable for any subcontractor's acts and omissions as if they were Your own;
 - (iii) that any subcontract You enter into with a subcontractor in relation to the Services must be consistent with the Agreement; and
 - (iv) to ensure that all subcontractors comply with the terms of the Agreement as if they were a party to it.
 - (d) We may at any time require You to immediately cease using any subcontractor on reasonable grounds by notice in writing to You and You agree to comply with any such notice.

8 Conflicts of Interest

- 8.1 Warranty**
- You warrant that:
- (a) as far as You are aware and after making diligent enquiries, at the date You are appointed to the Scheme no Conflict of Interest exists or is likely to arise in relation to the Agreement; and
 - (b) You will not (and agree to take all reasonable steps to ensure Your Personnel do not) engage in any activity or obtain any interest that gives rise to a Conflict of Interest.

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- 8.2 Dealing with Conflicts of Interest**
- If You become aware of an actual or possible Conflict of Interest, You agree to:
- (a) notify Us immediately in writing, making full disclosure of all relevant information and setting out the steps You propose to take to resolve or otherwise deal with the Conflict of Interest; and
 - (b) take such steps as We may reasonably require of You to manage, eliminate, resolve or otherwise deal with the Conflict of Interest to Our satisfaction.
-

9 Notifications

- 9.1 **Immediate notification** You agree to notify Us in writing immediately of any of the following:
- (a) any non-compliance with applicable work health and safety laws;
 - (b) any actual or proposed action relating to an insolvency event;
 - (c) any current, pending or threatened Reputational Proceedings;
 - (d) any allegation which raises a reasonable suspicion of:
 - (i) misconduct in connection with the Services, including serious or persistent harassment or bullying; or
 - (ii) a criminal offence having been committed, including theft, fraud or assault.
 - (e) any relevant matter that:
 - (i) is likely to impact on Your ability to provide the Services or otherwise fulfil Your obligations under the Agreement;
 - (ii) may affect or has affected Your obligations, or Your performance of Your obligations, under the Agreement and requires an emergency response or involves death, serious injury or any criminal activity; or
 - (f) has or may attract adverse public interest and attention.

10 Invoicing and Payment

- 10.1 **Invoicing and Payment**
- (a) You will invoice the Department school that Ordered the Services in accordance with the Order Form, for Services delivered in accordance with this Agreement.
 - (b) Payment of the Price will be made to You within 30 Business Days or otherwise in accordance with NSW Government policy.
 - (c) Unless otherwise expressly provided in the Agreement, You are responsible for all costs and expenses in relation to the Services and the performance of Your obligations under the Agreement.

11 GST

- 11.1 **Definitions** In this clause 11, words which have a defined meaning in GST Law have the same meaning as in the GST Law.
-
- 11.2 **Consideration GST exclusive** Unless otherwise stated in the Agreement, amounts payable, and consideration to be provided, under any provision of the Agreement exclude GST.
-
- 11.3 **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 at the time the recipient pays or provides any part of the consideration for 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 in the Schedule.
-

- 11.4 **Tax invoice**
- (a) The supplier agrees to deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 11.3(a); and
- (b) the recipient can withhold payment of the amount payable under clause 11.3(a) until the supplier provides a tax invoice or an adjustment note as appropriate.
-

- 11.5 **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 11.3(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.
-

- 11.6 **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.
-

- 11.7 **Acknowledgements**
- The parties acknowledge and agree that each party is registered for GST when this Agreement commences for You and that it will notify the other party if it ceases to be so registered.
-

12 Suspension

- 12.1 **Suspension**
- (a) We may immediately suspend the whole or any part of this Agreement (including Your ability to receive further Orders, payment to You or provision of Services) by giving written notice to You, if:
- (i) Your provision of the Services is affected by an Intervening Event;
- (ii) We reasonably suspect that You are not financially stable; or
- (iii) You otherwise experience an event that would allow us to terminate this Agreement.
- (b) We may, by giving written notice to You, require You to reduce the Services to be provided under the Agreement to reflect any suspension or withholding of all or part of the payment of under clause 12.1(a).
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- (c) A notice under clause 12.1(a) or (b) will contain the reasons for any payment being withheld or the requirement for any Services to be reduced and the steps You can take to address those reasons.
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12.2 Addressing issues in a suspension notice

- (a) Subject to any other right of Ours under the Agreement, We will pay any payment withheld as a result of any suspension under clauses 12.1(a) or (b) once You have addressed the reasons contained in a notice under those clauses to Our reasonable satisfaction.
- (b) If You have failed to address the reasons contained in a notice under clauses 12.1(a) or (b) to Our reasonable satisfaction within 20 Business Days of receipt of the notice, We may exercise Our rights under clause 13.

13 Termination and expiry

13.1 Termination for cause

Without limiting Our other rights under this Agreement, We may terminate this Agreement and/or any Order(s) with immediate effect by giving notice to You, if:

- (a) You have failed, or in Our reasonable opinion are likely to fail, to provide the Services in accordance with the Agreement;
- (b) We are of the opinion that your Services have been unsatisfactory;
- (c) You experience an adverse change in capacity, capability or business status;
- (d) You have breached any term of the Agreement;
- (e) You or any of Your Personnel have breached, or We reasonably suspect You have breached, any laws relating to the Services;
- (f) You stop providing the Services otherwise than as permitted by the Agreement;
- (g) We are reasonably satisfied that any statement provided by You is incorrect, incomplete, false or misleading in way which would have affected the original decision to appoint You to the Scheme or enter an Order;
- (h) You have a Change of Control that We reasonably believe will have an adverse impact on Your ability to perform Your obligations under the Agreement;
- (i) You no longer have the requisite authorisations, licenses, accreditation, registrations or consents to be legally capable of providing the Services or performing Your obligations under the Agreement; or
- (j) You have failed to notify Us of a Conflict of Interest, You are unable or unwilling to resolve the Conflict of Interest to Our reasonable satisfaction or, in Our opinion, a Conflict of Interest exists which prevents Your performance of the Agreement.
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- 13.2 Termination without fault**
- (a) We may terminate the Agreement at any time by giving You a minimum of 45 days' notice because of changes to any guidelines or policies of Ours, the State or Commonwealth Government.
 - (b) Without limiting clause 13.2(a), either party may terminate the Agreement at any time for any reason by giving the other party at least 6 months' written notice.
 - (c) We may terminate an Order at any time, for any reason, by notice to You.
 - (d) The party electing to terminate under this clause 13.2 agrees to pay any reasonable costs directly and necessarily incurred by the other party as a result of the termination under this clause 13.2 (excluding any loss of profits or income) as long as the costs are proven to the terminating party's reasonable satisfaction.

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- 13.3 Consequences of expiry or termination**
- (a) On expiry or termination of the Agreement or an Order, We may direct You to:
 - (i) promptly deliver to Us or Our nominee; or
 - (ii) destroy,all of Our Confidential Information and any Agreement Material and Records that You hold or control that are required for the provision of the Services and the performance of Your obligations under the Agreement, and You agree to comply with any such direction.
 - (b) Our liability to You on termination of the Agreement (including under clause 13.2) or an Order is limited to the amount of unpaid and due payments under the relevant Order.
 - (c) On expiry or termination of the Agreement or an Order, You agree to:
 - (i) within 20 Business Days of the expiry or termination of the Agreement, provide Us with any outstanding reports or data due to Us under the Agreement;
 - (ii) provide Us with any reports and Records that We reasonably require of You; and
 - (iii) provide Us with all reasonable assistance to ensure the orderly transition of the Services to Us or Our nominee. Where the Agreement is terminated under clause 13.1, You agree to provide this assistance to Us at Your cost.
 - (d) If this Agreement ends while an Order is in force, the Order will remain in force until the Order expires or is terminated in accordance with this Agreement.
 - (e) Any right to terminate this Agreement includes a right to terminate any or all relevant Orders current at that time.
 - (f) You must refund to Us any amounts paid by Us for terminated Orders that have not yet been provided.
 - (g) On the ending of this Agreement, You must fulfil all Orders already placed, unless the Order has or is terminated.
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14 Intervening Events

- 14.1 **Obligations relating to Intervening Events**
- (a) You agree to notify Us if You are, or reasonably believe You will be, prevented from performing Your obligations under the Agreement due to an Intervening Event.
 - (b) The notice under clause 14.1(a) must contain details of the Intervening Event including the extent the Intervening Event has affected or may affect Your obligations under the Agreement.
 - (c) You agree to take all reasonable steps to remove, overcome or minimise the effects of an Intervening Event on the performance of Your obligations under the Agreement.
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- 14.2 **Consequences of an Intervening Event**
- (a) We may terminate the Agreement if You cannot provide the Services for more than 2 calendar months due to an Intervening Event.
 - (b) We can arrange another provider for the Services while the Services are suspended due to an Intervening Event, without being liable to You.

15 Reviews and other rights

- 15.1 **Review**
- You agree to:
- (a) liaise with Us; and
 - (b) comply with all of Our reasonable requests, directions and requirements,
- in relation to any monitoring, review or evaluation of the Services that is conducted by or for Us.
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- 15.2 **Access to premises and records**
- (a) You agree that at any time during the Term and for a period of 7 years after the expiry or termination of the Agreement You will give Us, any persons nominated by Us access to:
 - (i) Your premises or the premises where the Services are or were provided; and
 - (ii) copies of any Records held or created by You in relation to the Agreement,for purposes associated with the Agreement, including to:
 - (iii) monitor or review the Services, including to assess the effectiveness of the Services or to support improvements in the provision of the Services; and
 - (iv) review, audit, evaluate or investigate Your performance. This may include collecting information from any source, Your self-assessment or interviewing Your Personnel, students and their caregivers. We may perform surveys and other Service satisfaction data.
 - (b) We will, whenever practicable, provide You with reasonable prior notice of any access referred to in clause 15.2(a).

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- (c) When accessing premises and/or Records in accordance with this clause 15.2, We will use Our best endeavours to minimise interference to Your employees and the conduct of the Services.
 - (d) You agree to ensure that any subcontract You enter into for the purposes of the Agreement allows the persons referred to in clause 15.2(a) to have the access contemplated by clause 15.2(a).
 - (e) Nothing in this clause 15.2 limits or restricts in any way the authority or rights.
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15.3 **Cooperation and assistance**

You agree to:

- (a) cooperate with and assist Us and any of the other persons referred to in clause 15.2(a) to have the information and access contemplated by clause 15.2(a);
- (b) participate in any performance reviews requested by Us from time to time, including in respect of Your compliance;
- (c) give full and free access to Your Material and Personnel necessary to conduct a review, audit or investigation of Your performance under the Agreement; and
- (d) allow Us and any of the other persons referred to in clause 15.2(a) to inspect and copy any information necessary to conduct such review, audit or investigation.

16 Intellectual Property Rights

16.1 **Ownership of Intellectual Property Rights**

- (a) You own all Intellectual Property Rights in the Agreement Material upon its creation.
- (b) Nothing in the Agreement affects ownership of Intellectual Property Rights in Material which was created by a party independently of the Agreement.
- (c) If the Services involve or impact on the cultural and intellectual property rights of Aboriginal Persons and/or Torres Strait Islander Persons, the parties recognise the need to respect those rights, and where practicable agree to take measures to protect those rights.

“Aboriginal Person” means a person of the Aboriginal race of Australia.

“Torres Strait Islander Person” means a descendant of an indigenous inhabitant of the Torres Strait Islands.

16.2 **Licensing of Intellectual Property Rights**

- (a) You grant Us a perpetual, irrevocable, royalty-free, worldwide, non-exclusive and transferrable licence (including the right to sub-license) to use, copy, modify and the Agreement Material.
 - (b) You will promptly provide Us with Agreement Materials upon request.
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16.3 **Use of Intellectual Property Rights** You will ensure that You and Your Personnel and the Agreement Materials do not infringe any person's Intellectual Property Rights or Moral Rights.

16.4 **Moral Rights** You agree to obtain all necessary consents to any act or omission that might otherwise infringe a person's Moral Rights under or in connection with the Agreement.

17 Confidential, Security and Our Data, sensitive and cultural information

17.1 **Confidential Information**

(a) Subject to clause 17.1(b), each party agrees to not disclose Confidential Information of the other party without the prior written approval of such other party.

(b) Subject to clause 17.1(d), a party may disclose Confidential Information of the other party to the extent that the Confidential Information is:

- (i) reasonably required by any persons performing obligations in relation to the Agreement or to a party's legal and professional advisors, provided that the Confidential Information is used solely for the purpose of complying with the Agreement;
- (ii) authorised or required by law to be disclosed;
- (iii) publicised and reported by Us or the NSW Government;
- (iv) shared by Us with another government agency, body or Minister for their legitimate interests; or
- (v) disclosed in order to give the public information about any action that We take in relation to the Agreement.

(c) If requested by Us, You agree to arrange for Your Personnel to sign individual confidentiality deeds (in a form suitable to Us) and promptly provide Us with signed copies.

(d) Nothing in the Agreement authorises or requires a party to disclose information that is contrary to any law.

17.2 **Security requirements** You must comply with, and must ensure that Your Personnel comply with, all relevant security policies, procedures and requirements of the Department or NSW Government as updated from time to time.

17.3 **Our Data** 'Our Data' means all data and information relating to Us and Our operations, facilities, customers, clients, students, Personnel, assets and programs, including where created and collected by You performing this Agreement and any Orders.

Our Data is and will remain Our property. You must not and must ensure that Your Personnel do not:

(a) use Our Data for any purpose other than to perform this Agreement;

- (b) sell, commercially exploit, assign rights in or otherwise dispose of any of Our Data;
- (c) allow any person within Your Personnel who does not have the appropriate level of security clearance to access Our Data;
- (d) transfer or send Our Data outside the jurisdiction of New South Wales, Australia without Our approval; or
- (e) disclose Our Data to a third party other than a subcontractor approved by Us and then only to the extent necessary to enable the approved subcontractor to perform its part of Your obligations under this Agreement or an Order.

You must establish and maintain safeguards against the destruction, loss or damage to any of Our Data in Your possession or control. These must be consistent with this clause.

- 17.4 **Information of a sensitive or cultural nature** We will not publish any information that You reasonably consider to be, and identify to Us as being, of a sensitive or cultural nature unless:
- (a) We consult with You; or
 - (b) it is in accordance with clause 17.1.

18 Privacy

- 18.1 **Compliance with Privacy Legislation**
- (a) In providing the Services under this Agreement, You agree to comply with the Privacy Legislation as if You are Us.
 - (b) In performing Your obligations under the Agreement You agree to comply with any direction of Us in respect of compliance with the Privacy Legislation.

- 18.2 **Other privacy obligations**
- (a) Without limiting Your other obligations under the Agreement, You agree to immediately notify Us if You have reasonable grounds to believe that there has been a breach of the Privacy Legislation in connection with the Services or the Agreement.
 - (b) You will take all reasonable steps to ensure that relevant persons are made aware that the information You collect in relation to the Services may be provided to Us for the purposes of auditing or assessing Your compliance with the Agreement.

19 Documents, Records and reports

- 19.1 **Submission of documents**
- (a) We may:
 - (i) review any document, or any resubmitted document, prepared and required to be submitted by You under the Agreement; and
 - (ii) within 10 Business Days of the submission by You of such document or resubmitted document (or such later time as we may advise), accept or reject the document.

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- (b) If any document is rejected, You agree to address any comments made by Us in relation to the document and resubmit the amended document to Us for review.
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19.2 Record keeping

- (a) You agree to keep full and accurate Records in relation to the Agreement:
- (i) in accordance with applicable Notified Policies, Standards, and laws;
 - (ii) for the Term and for a period of 7 years after the expiry or termination of the Agreement or such longer period as may be required by law or specified by Us in writing; and
 - (iii) in such a way so as to allow the Records to be easily accessed, retrieved and used by Us.
- (b) You agree to keep sufficient Records so that proper operational records are able to verify Your performance of Your obligations under the Agreement and calculation of any payment to You.
- (c) You agree to dispose of the Records referred to in this clause 19.2, once they are no longer required to be maintained in accordance with clause 19.2, in accordance with sound records management practice or as otherwise specified in writing by Us and in accordance with all laws. This clause 19.2(c) does not apply to the extent that You are required to retain a Record for Your internal governance and compliance purposes.
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19.3 GIPA Act

- (a) You acknowledge that We may disclose certain information in relation to the Agreement in accordance with Our obligations under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**), including making certain information about the Agreement publicly available in any register of contracts We are required to maintain under the GIPA Act.
- (b) You agree to, within 7 Business Days of receiving a written request from Us, provide Us with immediate access to the following information contained in records held by You:
- (i) information that relates directly to the performance of the Services by You;
 - (ii) information collected by You from members of the public to whom You provide, or offer to provide, the Services; and
 - (iii) information received by You from Us to enable You to provide the Services.
- (c) For the purpose of clause 19.3(b), "information" does not include:
- (i) information that discloses or would tend to disclose Your financing arrangements, financing modelling, cost structure or profit margins;
 - (ii) information that You are prohibited from disclosing to Us by provision made by or under any Act of any State or Territory, or of the Commonwealth; or
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- (iii) information that, if disclosed to Us, could reasonably be expected to place You at a substantial commercial disadvantage in relation to Us, whether at present or in the future.
 - (d) You agree to provide copies of any of the information requested by Us in accordance with clause 19.3(b) at Your own cost.
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19.4 Reports and information

- (a) You agree to provide Us with all reports and information at the times and in the format reasonably specified by Us from time to time during the Term, including in accordance with any reporting requirements:
 - (i) stated at Item 10 of the Schedule and elsewhere in the Agreement; or
 - (ii) that We may otherwise notify You of from time to time.
 - (b) We may change any reporting requirements by notice to You.
 - (c) All reports and information provided by You to Us will be of a standard, and provided in a way, reasonably acceptable to Us.
 - (d) Unless otherwise stated in the Schedule, You agree:
 - (i) to transfer to us all Intellectual Property Rights in any reports provided by You under the Agreement; and
 - (ii) that You must not publish or provide the reports to any third parties without Our prior written consent.
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19.5 Government information sharing

- Without limiting or otherwise restricting any other clause of the Agreement:
- (a) You authorise Us to make information concerning You available to other NSW Government agencies, including any information provided by You to Us and any information relating to Your performance under the Agreement;
 - (b) You acknowledge that information about You from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies considering whether to offer You future opportunities for NSW Government work;
 - (c) You agree that the communication of such information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (d) You release and indemnify Us and the State of New South Wales from and against any claim in respect of any matter arising out of such communications.
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20 Insurance and indemnity

20.1 Insurance

- (a) Subject to clause 20.1(b), You agree to take out and maintain adequate insurance policies with a reputable insurer(s):
 - (i) to comply with Your legal obligations and cover Your business and operational risks in relation to the Agreement; and
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- (ii) for the Term, except for those policies providing cover on a 'claims made' basis, which You agree to maintain for the Term and a period of at least six years thereafter.
 - (b) Without affecting Your obligations under clause 20.1(a), You agree to effect and maintain the insurance policies as specified at Item 13 in the Schedule.
 - (c) If We request, You agree to give Us satisfactory evidence of the insurance policies You are required to effect and maintain under the Agreement.
 - (d) You agree to immediately notify Us of any event which affects or may affect Your compliance with this clause 20.1.
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20.2 Indemnity

- (a) You agree to indemnify, and keep indemnified, Us and Our Personnel (each an **Indemnified Person**) against any Claim that may be made or brought by any person against Us and Our Personnel arising out of or in connection with:
 - (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of You or Your Personnel in relation to the Agreement;
 - (ii) a breach or claimed breach by You or Your Personnel of a third party's Intellectual Property Rights or Moral Rights that relates to Your performance of the Agreement; or
 - (iii) any death, personal injury or loss of or damage to property relating to You or Your Personnel's performance of the Agreement.
- (b) Your liability to indemnify under clause 20.2(a) will be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission of an Indemnified Person caused or contributed to the Claim.
- (c) You agree to notify Us immediately if You become aware of any Claim or likely Claim, against You or Your Personnel relating to the Agreement.
- (d) We hold on trust for the Indemnified Persons the benefit of the indemnity provided by You under clause 20.2(a).

21 Publicity

21.1 Publicity

- (a) You must not make any press or other announcements or releases relating to the Scheme, without our approval, unless it is required to be made by law.
 - (b) You agree to not use Our logo or trademarks without Our prior written approval.
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22 Dispute resolution

- 22.1 **Resolving disputes**
- (a) This clause 22.1 applies to any dispute which arises between the parties in relation to the Agreement.
 - (b) Subject to clause 22.1(g), each party agrees to not commence or maintain any action or proceedings in any court, tribunal or otherwise without first complying with the process set out in clauses 22.1(c) to (f).
 - (c) If a party considers that a dispute has arisen it may issue a written notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
 - (d) After the issue of a Dispute Notice the nominated representatives of the parties must promptly, and not later than 5 Business Days after receipt of the Dispute Notice, hold good faith discussions with a view to trying to resolve the dispute.
 - (e) If the dispute has not been resolved within 10 Business Days after receipt of the Dispute Notice (or such longer period as agreed by the parties), then the dispute must be referred to the senior representatives of the parties who must hold good faith discussions with a view to trying to resolve the dispute.
 - (f) If the dispute has not been resolved within 20 Business Days after receipt of the Dispute Notice (or such longer period as agreed by the parties), either party may pursue its rights and remedies under the Agreement as it sees fit.
 - (g) Nothing in this clause 22 prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief.
 - (h) If, after complying with the process set out in clauses 22.1(c) to (f), the parties agree to refer the dispute to a form of alternative dispute resolution to seek to resolve the dispute, then each party agrees to bear its own costs in relation to that form of alternative dispute resolution and bear equally the cost of any person engaged to resolve the dispute under any such process.

- 22.2 **Continue to perform** Notwithstanding the existence of a dispute, the parties agree to continue to perform their obligations under the Agreement, unless We notify You otherwise.

23 Notices and communication

- 23.1 **Notice requirements**
- (a) Any notice, request, or other communication to be given or served under the Agreement must be:
 - (i) in writing;
 - (ii) signed by a duly authorised officer of the sender; and
 - (iii) delivered to the physical address or electronic mail address of the other party's representative as stated in the Schedule or as last notified by the other party.

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- (b) A notice to be given or served pursuant to clause 12 or 13 must be delivered to the other party's physical address and electronic mail address.
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- 23.2 **Receipt of notices**
- (a) Subject to clause 23.2(b), any notice, request or other communication in relation to the Agreement will be deemed to be received:
- (i) if delivered by hand, on the date of delivery;
 - (ii) if it is sent by post within Australia, upon the expiry of 2 Business Days after the date on which it was posted; and
 - (iii) if transmitted by electronic mail, at the time when the electronic mail becomes capable of being retrieved by the other party at the electronic mail address designated by the other party.
- (b) If a notice, request or other communication is delivered or received on a non-Business Day or after 5 pm in the place it is sent to, it will be deemed to have been given at 9 am on the next Business Day there.
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24 General provisions

- 24.1 **Governing law and jurisdiction**
- The Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.
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- 24.2 **Entire agreement**
- The Agreement represents the entire agreement between You and Us in relation to the Services and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing in relation to its subject matter.
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- 24.3 **Variations**
- (a) We may change this Agreement at any time by at least 10 Business Days' notice to You (**Change Notice**).
- (b) If You do not agree with any changes we make, You may terminate your appointment to the Scheme by notice to Us within 10 Business Days of Our Change Notice. If You terminate your appointment under this clause, you must, unless otherwise agreed, continue to perform any unperformed Orders. The terms of those unperformed Orders will not be affected by any changes in the Change Notice.
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- 24.4 **Relationship of the parties and Your status**
- (a) The parties acknowledge and agree that nothing in the Agreement creates any employment, partnership, agency or joint venture relationship between the parties.
- (b) A party does not have authority to bind the other party or incur any liability or make any representation on behalf of the other party.
- (c) You warrant that:
- (i) You are a legal entity capable of entering into the Agreement;
 - (ii) the execution of the Agreement and the provision of the Services complies with all laws; and
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		<ul style="list-style-type: none"> (iii) all authorisations, accreditations, licences, registrations and consents required to be obtained to provide the Services have been obtained and are valid and continuing and that You are not aware of any breaches of these. <p>(d) If You provide any or all of the Services in the capacity of trustee, You warrant that You:</p> <ul style="list-style-type: none"> (i) are the sole trustee of the relevant trust and have been validly appointed; (ii) have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and (iii) have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by You under the Agreement.
24.5	Assignment and novation	<p>(a) We may assign Our rights, or delegate or novate Our rights and obligations, under the Agreement to any New South Wales Government department, agency or public body created or authorised by law to administer Our functions or discharge Our role without Your consent. You agree to execute any documents We require in order to give effect to such arrangements.</p> <p>(b) You cannot assign Your rights or claim to novate Your rights and obligations under the Agreement without Our prior written consent.</p>
24.6	Survival	<p>Clauses 8 (Conflicts of Interest), 9 (Notifications), 10 (Invoicing and Payment), 13 (Termination and expiry), 15 (Review and other rights), 16 (Intellectual Property Rights), 17 (Confidential, Security and Our Data, sensitive and cultural information), 18 (Privacy), 19 (Documents, Records and reports), 20 (Insurance and indemnity), 21 (Publicity), 22 (Dispute Resolution) and 24.7 (Severability) continue to apply after termination or expiry of the Agreement, along with any other clause that should by its nature survive.</p>
24.7	Severability	<p>If any part of the Agreement is prohibited, void, voidable, illegal or unenforceable, it is severed from the Agreement without affecting the remaining parts of the Agreement.</p>
24.8	Waiver	<p>(a) A right or remedy created by the Agreement cannot be waived except in writing signed by the party entitled to that right.</p> <p>(b) Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.</p>
24.9	Further assurances	<p>Each party agrees to promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements under the Agreement.</p>

24.10 **Costs and expenses**

Each party agrees that it will bear its own legal costs and disbursements relating to the negotiation, preparation, execution and carrying into effect of the Agreement.
