

Draft Grant Agreement Terms and Conditions

NDIS Partners in the
Community Program

in [Service Area/s]

National Disability
Insurance Scheme
Launch Transition Agency
(NDIA)

ABN 25 617 475 104

and

[Name of Party]

Alt[ABN/ACN/ARBN] [number]

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[Note to applicants: This draft Grant Agreement includes alternative versions of some clauses, depending on which of the following circumstances apply to a Partner:

Option 1: Partner providing both LAC Services and ECEI Services in the relevant Service Area/s

Option 2a: Partner providing LAC Services only in the relevant Service Area/s

Option 2b: Partner providing ECEI Services only in the relevant Service Area/s

The alternative drafting for relevant clauses is indicated in Notes to applicants throughout the Grant Agreement.]

THIS AGREEMENT is made on [year]

BETWEEN:

National Disability Insurance Scheme Launch Transition Agency ABN 25 617 475 104 (the **NDIA**); and

[Name of Party] Alt[ABN/ACN/ARBN] [number] (the Partner).

RECITALS:

- (A) The *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**) vests the NDIA with the following functions:
- (1) delivering the National Disability Insurance Scheme (the **Scheme**) so as to, amongst other things, support the independence, and social and economic participation, of people with disability and enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - (2) managing, and advising and reporting on, the financial sustainability of the Scheme;
 - (3) developing and enhancing the disability sector, including encouraging contemporary best practice in the sector;
 - (4) building community awareness of disabilities and the social contributors to disabilities;
 - (5) collecting, analysing and exchanging data about disabilities and the supports for people with disability; and
 - (6) undertaking research relating to disabilities, the supports for people with disability and the social contributors to disabilities.
- (B) During the transition to the full Scheme people in existing State, Territory and Commonwealth programs transition to the Scheme in accordance with the relevant Bilateral Agreement between the Commonwealth and State and Territory Governments.
- (C) The NDIA requires NDIS Partners in the Community Services in Australia in order to assist people with disability, their families and carers to exercise choice and engage with the Scheme.
- (D) The Partner has offered to provide the NDIS Partners in the Community Services comprising **[Option 1: Local Area Coordination Services and Early Childhood Early**

Intervention Services / **Option 2a**: Local Area Coordination Services / **Option 2b**: Early Childhood Early Intervention Services] in **[relevant Service Area/s to be inserted]** on the terms and conditions contained in this Agreement.

- (E) The NDIA has agreed to accept the offer by the Partner on the terms and conditions set out in this Agreement.
- (F) Throughout the life of this Agreement, the NDIA and the Partner will work collaboratively to develop and improve the NDIS Partners in the Community Services.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters (e.g. Activity and Activity Period).
- 1.2 Where a defined word or phrase is used in one clause only, it is usually defined in that clause. Otherwise, the definitions are in clause 65 (Defined terms).

2. DURATION OF THE AGREEMENT AND ACTIVITY

- 2.1 This Agreement starts on the Commencement Date and ends on the Activity End Date, unless terminated earlier.
- 2.2 An Activity starts on the Activity Start Date and ends on the Activity End Date, both specified in the Schedule, unless terminated earlier.

3. THE PARTNER'S OBLIGATIONS IN CARRYING OUT THE ACTIVITY

- 3.1 The Partner must carry out the Activity as required by this Agreement, including meeting all objectives, timeframes and milestones.
- 3.2 In carrying out the Activity, the Partner must:
 - (a) use all proper care;
 - (b) comply with any codes of ethics, regulations or other industry standards relevant to the Activity;
 - (c) comply with all relevant laws and in particular, take all reasonable actions to ensure that no fraud occurs;
 - (d) pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement;
 - (e) comply with the Statement of Requirements (SOR) in Attachment 2, the Program Guidelines in Attachment 3, any operational guidelines, NDIA policy and Commonwealth policy notified to the Partner in writing;
 - (f) comply with:
 - (i) **[Option 1 and 2a]**: Annex D to the SOR in carrying out the LAC Services; **[Option 1]**: and]
 - (ii) **Option 1 and 2b**: Annex E to the SOR in carrying out the ECEI Services.]

- (g) work with the NDIA and, where required by the NDIA, other providers of NDIS Partners in the Community Services, to continuously improve and innovate in the delivery of the NDIS Partners in the Community Services;
- (h) keep Client records in accordance with this Agreement and any legislative requirements;
- (i) notify the NDIA immediately if a Conflict of Interest arises, or could reasonably be perceived by others to have arisen, that may restrict the Partner undertaking the Activity in a fair and independent way;
- (j) communicate with the NDIA, especially if there is an issue that may delay, stop or adversely affect the Activity; and
- (k) provide all information and documents the NDIA reasonably requires.

4. COMPLAINTS PROCESS

- 4.1 The Partner must establish and publicise the existence of a documented complaints process in accordance with the requirements in the SOR, which the Partner must use to deal with any complaints by Clients unless otherwise required by another part of this Agreement.
- 4.2 If Clients are dissatisfied with the results following the Partner's complaint process, then the Partner must refer the Clients to the NDIA's complaints service, unless otherwise required by another part of this Agreement, for further investigation of the complaint and the Partner must assist the NDIA in the investigation of the complaint. Details of the NDIA's complaints service can be found on the NDIA's website.
- 4.3 Unless provided otherwise by another part of this Grant Agreement, the Partner must maintain a complaints register which records all complaints made in respect of the Activity and the action taken in respect of that complaint. The Partner must, on the NDIA's request, give to the NDIA access to or copies of the Partner's complaints register in accordance with clause 7.6.
- 4.4 Copies of all correspondence and other materials received or created by the Partner in connection with any of the above must be kept in accordance with clause 18.2.

5. THE PARTNER'S OBLIGATION TO ACKNOWLEDGE THE NDIA'S SUPPORT

- 5.1 The Partner must acknowledge the support it has received from the NDIA in all Agreement Material it publishes and all other publications, promotional and advertising Materials in relation to the Activities, signs or plaques displayed at the location where the relevant Activity is undertaken, at any Activity event and otherwise at the times and in the manner as the NDIA directs from time to time.
- 5.2 The Partner must submit any documentation containing the required acknowledgment to the NDIA 10 Business Days prior to publication or announcement of the event.
- 5.3 If the NDIA requires amendments to a proposed form of words of a publication or announcement, the Partner must make the required amendment before allowing the words to be published or announced.
- 5.4 Notwithstanding the NDIA's review or proposal of a revised form of words in accordance with this clause, the Partner will at all times remain responsible for the content and accuracy of publications and announcements.
- 5.5 To assist with this condition, the NDIA provides prescribed text attribution that organisations must use, to acknowledge funding for services, activities and events – this is:

<Insert Organisation> is an NDIS Partner delivering **[Option 1:** Local Area Coordination Services and Early Childhood Early Intervention Services / **Option 2a:** Local Area Coordination Services / **Option 2b:** Early Childhood Early Intervention Services] in <Insert state/territory> www.ndis.gov.au

- 5.6 In some circumstances it may be appropriate to use the NDIA logo and trade marks to acknowledge funding. Use of the NDIA logo and any trade marks must be in accordance with clause 32 (Use of Scheme logo).
- 5.7 Queries about acknowledgment of funding should be directed to the NDIA Representative.

6. **ANNOUNCEMENTS**

- 6.1 The Partner must, before making a public announcement in connection with this Agreement or any transaction contemplated by it, obtain the NDIA's agreement to the announcement, except if required by law or a regulatory body (including a relevant securities exchange), in which case the Partner must, to the extent practicable, first consult with and take into account the reasonable requirements of the NDIA.

7. **THE PARTNER'S OBLIGATION TO PROVIDE REPORTS AND PLANS**

- 7.1 The Partner must prepare and give the NDIA the plans and reports required and specified in the Schedule and the SOR.
- 7.2 If the Schedule or the SOR requires the Partner to provide a plan to the NDIA for approval the Partner must:
- (a) provide the NDIA with a draft of the plan by the time specified in the Schedule. The NDIA may approve the plan (with or without conditions) or require the Partner to make changes to the plan; and
 - (b) make any changes that the NDIA requires to the draft plan and resubmit it to the NDIA for the NDIA's approval within 10 Business Days after the NDIA advises the Partner of the required changes.
- 7.3 If the NDIA is unable to approve a draft plan, the NDIA may terminate the Activity or this Agreement in accordance with clause 47.1(b).
- 7.4 Once the NDIA has approved a draft plan it will be the approved plan and will form part of this Agreement.
- 7.5 Subject to clause 7.1, if the NDIA considers that the form or content of a report is not adequate for the NDIA's purposes, the NDIA can request the Partner to submit a revised report. The Partner must submit that revised report within 30 Business Days of the NDIA's request, unless the NDIA specifies a shorter or longer time.
- 7.6 The Partner must, at all reasonable times and with reasonable prior notice, allow access to all records, accounts, documents and papers relating to this Agreement, including those relating to how the Partner is carrying out, and receiving or spending the Grant for each Activity and allow copies of these materials to be taken by the following:
- (a) the NDIA, or persons authorised by the NDIA, provided that while on the Partner's premises the NDIA and persons authorised by the NDIA comply with the Partner's policies and reasonable directions in relation to access to and conduct on its premises; or
 - (b) the Commonwealth Auditor-General (including his or her delegate); or

- (c) an information officer appointed under the *Australian Information Commissioner Act 2010* (Cth) who is performing 'privacy functions' as defined in that Act.

7.7 For the purpose of clause 7.6 the parties agree that:

- (a) 'access' includes access to the Partner's premises (which means premises occupied by the Partner or where any obligation under this Agreement is undertaken and/or wherever any Assets may be located); and
- (b) the Partner must provide such assistance as may be needed to allow access to all records, accounts, documents and papers relating to this Agreement.

7.8 However, the Partner does not have to allow access to, or copies to be made of, Secret and Sacred Material.

7.9 The Partner must include provisions in all of the Partner's Subcontracts that will enable the Partner to comply with its obligations under this clause 7.

8. **ARCHIVES ACT 1983**

8.1 The Partner must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the NDIA and the National Archives of Australia.

8.2 Where the NDIA and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the Partner, the Partner must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by National Archives of Australia.

8.3 The Partner must comply with any direction given by the NDIA for the purpose of transferring Commonwealth Records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

9. **PARTNER WARRANTIES**

9.1 The Partner represents and warrants that:

- (a) it has, and will continue to have, all rights, title, licences, interests and property necessary to lawfully perform the Activity;
- (b) it and its Subcontractors and Personnel, including its Specified Personnel:
 - (i) have, and will continue to have, the necessary experience, skill, knowledge, expertise and competence to perform the Activity;
 - (ii) (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Activity;
 - (iii) comply with clause 42 (Vulnerable Persons, Police Checks and Criminal Offences) and are otherwise fit and proper people to perform the Activity;

[Option 1 and 2a:

- (c) it is not, and it will not during the term of the Grant Agreement become, a Registered Provider of Supports;

- (d) none of its Related Bodies Corporate, Subcontractors or other persons or entities in a position to exercise control over the Partner are a Registered Provider of Supports;
- (e) no person or entity in a position to exercise control over the Partner is a shareholder or director of a Registered Provider of Supports;
- (f) the Activity will be fit for purpose;
- (g) the Activity will be complete and accurate;
- (h) any materials that the Partner incorporates in the Activity are free from defects in design, performance and workmanship;
- (i) all work performed under the Agreement will be carried out and completed in a manner that is consistent with the objectives of the Scheme as articulated in the NDIS Act and Rules, including the Scheme Objectives, and in a manner that supports achieving the requirements set out in the Bilateral Agreement;
- (j) it will not engage in any practice that dishonestly or improperly manipulates records, outcomes or the Activity with the intention of maximising payments to, or otherwise obtaining a benefit for, the Partner or any other person;
- (k) it has, and will continue to have, full corporate power and authority to enter into, perform and observe its obligations under the Agreement and that the execution, delivery and performance of the Agreement has been duly and validly authorised by all necessary corporate action;
- (l) it and any proposed Subcontractors do not have any unpaid claims in respect of judicial decisions made against them relating to employee entitlements, other than those for which the Partner or Subcontractors has lodged a formal appeal that has not yet been determined; and
- (m) it is not aware of any:
 - (i) matter relating to the commercial, financial or legal capacity or status of the Partner that has not been disclosed to the NDIA and may affect the ability of the Partner to perform the Activity;
 - (ii) litigation, proceedings, judicial or administrative enquiry, investigation, claim or allegation, current actual or threatened, and whether admitted or contested, by another person or body (including regulatory bodies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Stock Exchange or equivalent bodies), against or in any way involving the Partner or any settlement in respect of any such matter;
 - (iii) proven or alleged breach or default under any law, regulation, agreement, order or award binding on the Partner;
 - (iv) criminal or other act or any other behaviour, conduct or activity of the Partner which may:
 - (A) materially and adversely affect the Partner's credit worthiness, integrity, character or reputation; or
 - (B) attract or have attracted negative publicity or attention or generate public or media criticism either inside or outside of Australia,

which was not disclosed to the NDIA prior to execution of this Agreement.

- 9.2 The Partner acknowledges that the NDIA is entering into this Agreement in reliance on the Partner's warranties in this Agreement.

10. CO-OPERATION WITH PERSONNEL AND OTHER CONTRACTORS

- 10.1 Without limiting the Partner's obligations, the Partner must, in the performance of the Activity:
- (a) fully co-operate with the NDIA's Personnel and other contractors; and
 - (b) use its best efforts to coordinate its activities so as to support and facilitate, in the NDIA's best interests, the timely and efficient completion of all work and other activities to be performed for the NDIA by any person.

11. MONITORING PROGRESS

- 11.1 The NDIA Representative and Partner Representative are responsible for the general administration of, and communications under, this Agreement on behalf of their respective party, including attending any meetings.
- 11.2 The NDIA and the Partner will also each appoint an Executive Representative who will be responsible for addressing any significant issues arising under the Agreement where required in accordance with this Agreement.
- 11.3 The NDIA Representative may monitor and review the Partner's performance throughout the Activity Period. The Partner must cooperate in relation to all reviews, including by providing information as requested by the NDIA Representative.
- 11.4 The parties will meet at the times and in the manner set out in the SOR (or as otherwise agreed in writing between the parties) to discuss any issues in relation to this Agreement.
- 11.5 The requirement for, and participation in, reviews of the Activity under this clause 11 do not in any way reduce the Partner's responsibility to perform its obligations in accordance with the Agreement.

12. PERFORMANCE ASSESSMENT

- 12.1 The Partner must perform the Activity in accordance with the relevant Performance Indicators set out in Annex C to the SOR.
- 12.2 The Partner must immediately notify the NDIA if the Partner becomes aware of (or suspects) any non-compliance with the Performance Indicators, and must investigate any failure to perform the Activity in accordance with the Performance Indicators and report its findings to the NDIA.
- 12.3 The Partner must also ensure that the monthly Performance Report Response and the Strategic Analysis Reports that the Partner is required to submit in accordance with the SOR include:
- (a) any failure to meet any of the Performance Indicators;
 - (b) the steps taken to investigate any failures to meet the Performance Indicators; and
 - (c) the measures the Partner is implementing to address any failure to meet the Performance Indicators.

- 12.4 To the extent that the Partner is responsible for any failure to achieve a Level 1 Performance Indicator, subject to clause 12.7, the NDIA may:
- (a) appoint NDIA Personnel or contractors to assist the Partner to perform the Activity at the Partner's expense in accordance with clause 13 (Appointment of Additional Resources); or
 - (b) exercise the NDIA's step-in rights in accordance with clause 14 (Step-in).
- 12.5 Without prejudice to any other right it has under this Agreement or otherwise at law, if all or any part of the Activity does not meet the Level 1 Performance Indicators on two or more consecutive occasions or on four or more occasions in any 12 month period, the NDIA may:
- (a) require the Partner's Executive Representative to meet with the NDIA's Executive Representative to agree on measures the Partner will implement at the Partner's expense to address the failure to meet the Performance Indicators and ensure the Performance Indicators are met in future;
 - (b) reduce the scope of the Activity by giving the Partner written notice, in which case clauses 46.2 to 46.7 apply; or
 - (c) terminate the Agreement immediately in accordance with clause 47.1(f) by giving the Partner written notice.
- 12.6 Without prejudice to any other right it has under this Agreement or otherwise at law, subject to clause **Error! Reference source not found.**, if all or any part of the Activity does not meet:
- (a) the same Level 2 Performance Indicator on three or more occasions in six months; or
 - (b) any Level 2 Performance Indicator on six or more occasions in six months,
- the NDIA may:
- (c) require the Partner's Executive Representative to meet with the NDIA's Executive Representative to agree on measures the Partner will implement at the Partner's expense to address the failure to meet the Performance Indicators and ensure the Performance Indicators are met in future;
 - (d) appoint NDIA Personnel or contractors to assist the Partner to perform the Activity at the Partner's expense in accordance with clause 13 (Appointment of Additional Resources);
 - (e) exercise the NDIA's step-in rights in accordance with clause 14 (Step-in);
 - (f) reduce the scope of the Activity by giving the Partner written notice, in which case, clauses 46.2 to 46.7 apply; or
 - (g) terminate the Agreement immediately in accordance with clause 47.1(h) by giving the Partner written notice.
- 12.7 Prior to exercising the NDIA's rights referred to in clauses 12.4 or 12.6 the NDIA will allow the Partner a period of time in which to rectify the non-compliance of no more than:
- (a) two weeks, for any failure to achieve a Level 1 Performance Indicator;

- (b) four weeks, for any failure to achieve the same Level 2 Performance Indicator on three or more occasions in six months; and
- (c) four weeks, for any failure to achieve any Level 2 Performance Indicator on six or more occasions in six months,

provided that the Partner consults and otherwise cooperates with the NDIA to rectify the non-compliance during this period.

- 12.8 If the NDIA decides to exercise any of its rights referred to in clauses 12.4 or 12.6, the NDIA will give the Partner a notice including:
- (a) the reason for the exercise of the power;
 - (b) the date the NDIA intends to exercise the power; and
 - (c) the expected duration of any action taken under clause 13 (Appointment of Additional Resources) or clause 14 (Step-in).

13. **APPOINTMENT OF ADDITIONAL RESOURCES**

13.1 If:

- (a) all or any part of the Activity does not meet any Level 1 Performance Indicator on any one occasion; or
- (b) all or any part of the Activity does not meet:
 - (i) the same Level 2 Performance Indicator on three or more occasions in six months; or
 - (ii) any Level 2 Performance Indicator on six or more occasions in six months,

the NDIA may appoint additional resources (who may be NDIA Personnel or NDIA nominees) to assist the Partner to perform its obligations under the Agreement (**Additional Resources**).

13.2 The NDIA may appoint Additional Resources for any period and on any terms the NDIA considers appropriate.

13.3 The NDIA will give the Partner notice of the appointment of Additional Resources that specifies:

- (a) the proposed period of the appointment;
- (b) the roles and responsibilities of the Additional Resources; and
- (c) if the NDIA considers appropriate, a summary of the reasons why the NDIA has made the appointment.

13.4 The Additional Resources will perform the functions that the NDIA determines. These functions may include:

- (a) assisting the Partner Personnel to perform the Activity as set out in the SOR;
- (b) performing any Partner Personnel role, including Coordinator, as described in the SOR and providing the Services to any Participants assigned to the Partner; and
- (c) advising and directing the Partner on:

- (i) the Partner's performance of any aspect of the Activity;
- (ii) the management, supervision and training of the Partner's Personnel;
- (iii) any other matter that the NDIA requires; and
- (iv) with the Participant's consent, assisting the Participant with any of those matters.

13.5 The Partner must:

- (a) consider in a timely manner and in good faith, all advice given to the Partner by the Additional Resources;
- (b) co-operate actively, fully and in good faith with, and provide all assistance, Material, facilities and access to premises reasonably required by the Additional Resources; and
- (c) comply with all directions given by the Additional Resources relating to the performance of the Activity.

13.6 Subject to clause 13.7, the Partner is liable for the costs of the NDIA engaging a third party under clause 13.1 and the NDIA is entitled to deduct from the next payment due to the Partner, the cost of engaging the third party.

13.7 The Partner will not be liable for any costs of the NDIA appointing Additional Resources, arising from the Partner's failure to achieve a Performance Indicator to the extent that failure arose as a result of the NDIA's failure to fulfil its obligations under this Agreement.

13.8 Nothing in this clause 13 limits the Partner's liability to the NDIA with respect to any default or non-performance by the Partner under this Agreement.

13.9 Where the NDIA exercises its rights under this clause 13, the NDIA will only be liable to the Partner for any Losses incurred by the Partner arising directly out of an unlawful or negligent act or omission of the NDIA, NDIA Personnel or a nominee of the NDIA, and otherwise the NDIA will have no liability to the Partner arising out of or relating in any way to the NDIA appointing Additional Resources.

13.10 The NDIA's rights under this clause 13 are in addition to, and do not limit in any way, any other rights and remedies available to the NDIA under this Agreement or under general principles of law or equity.

13.11 The NDIA is not obliged in any way to remedy or cure any default or failure or to overcome or mitigate any risk or risk consequences in respect of which the NDIA appoints Additional Resources under this clause 13.

13.12 Any decision by the NDIA to exercise its rights under this clause 13 will be made by the NDIA Executive Representative.

14. **STEP-IN**

14.1 If:

- (a) all or any part of the Activity does not meet any Level 1 Performance Indicator on any one occasion; or
- (b) all or any part of the Activity does not meet:

- (i) the same Level 2 Performance Indicator on three or more occasions in six months; or
- (ii) any Level 2 Performance Indicator on six or more occasions in six months, or
- (c) any default by the Partner under this Agreement substantially prevents, hinders, degrades or delays the performance of any aspect of the Activity deemed by the NDIA in its sole opinion to be important for more than 30 days,

the NDIA may, at its option, take control of the part of the Activity affected by the default and/or failure and, in doing so, may take such other action as is reasonably necessary to restore the Activity including by engaging a third party service Partner.

- 14.2 Without limiting any other rights or obligations of the parties under this Agreement, the Partner must co-operate fully with the NDIA (and the NDIA Personnel and the NDIA's other contractors) and provide all reasonable assistance at no charge to the NDIA to restore the Activity affected by the default and/or failure as soon as possible, including giving the NDIA (and the NDIA Personnel and the NDIA's other contractors) reasonable access to the Partner Personnel, the Partner's premises, facilities, hardware, systems, software and Material.
- 14.3 Subject to clause 14.4, the Partner is liable for the costs of the NDIA engaging a third party under clause 14.1 and the NDIA is entitled to deduct from the next payment due to the Partner, the cost of engaging the third party.
- 14.4 The Partner will not be liable for any costs of the NDIA engaging a third party under clause 14.1, arising from the Partner's failure to achieve a Performance Indicator to the extent that failure arose as a result of the NDIA's failure to fulfil its obligations under this Agreement.
- 14.5 Nothing in this clause 14 limits the Partner's liability to the NDIA with respect to any default or non-performance by the Partner under this Agreement.
- 14.6 Where the NDIA exercises its step-in rights under this clause 14, the NDIA will only be liable to the Partner for any Losses incurred by the Partner arising directly out of an unlawful or negligent act or omission of the NDIA or the NDIA Personnel and otherwise the NDIA will have no liability (whether arising from negligence or otherwise) to the Partner arising out of or relating in any way to the NDIA taking control of such Activity.
- 14.7 The NDIA's step-in rights under this clause 14 are in addition to, and do not limit in any way, any other rights and remedies available to the NDIA under this Agreement or under general principles of law or equity.
- 14.8 The NDIA is not obliged in any way to remedy or cure any default or failure or to overcome or mitigate any risk or risk consequences in respect of which the NDIA exercises step-in rights under this clause 14.
- 14.9 On the NDIA ceasing to exercise any step-in rights under this clause 14, the Partner must as soon as reasonably practicable recommence performance of those of the Partner's obligations under this Agreement which were suspended pursuant to clause 14.1.
- 14.10 The NDIA will, at the cost and expense of the Partner, give reasonable assistance to the Partner to ensure that the process of the NDIA ceasing to exercise step-in rights under clause 14.1 and the Partner recommencing to perform its obligations is effected as efficiently as possible.
- 14.11 If the NDIA has exercised its step-in rights under clause 14.1, to the extent the NDIA has taken actions or failed to take actions that impede the performance of the Partner under this Agreement, the Partner will not be held responsible for that failure to perform.

15. PAYING THE GRANT

15.1 Subject to the Partner's compliance with this Agreement, the NDIA will pay the Partner the Grant in accordance with the Schedule.

16. WHEN CAN THE NDIA WITHHOLD PAYMENT?

16.1 The NDIA can withhold any or all of a Grant payment if it considers that the Partner:

- (a) has not carried out Activities in accordance with this Agreement;
- (b) has not spent the Grant in accordance with this Agreement;
- (c) has breached any other term of this Agreement; or
- (d) has breached any other agreement and in the NDIA's reasonable opinion the breach affects the Partner's ability or suitability to perform this Grant Agreement.

16.2 The NDIA will pay the withheld Grant payment under clause 16.1(a) when the Partner has carried out the Activities to which the payment relates, according to the requirements of the Agreement.

16.3 For the purposes of clause 16.1(d), being in breach of any other agreement means being in serious breach of any other agreement (being a breach which would entitle a party to terminate the other agreement).

17. SPENDING THE GRANT

17.1 The Partner must spend the Grant:

- (a) only on carrying out the Activity; and
- (b) in accordance with this Agreement (including in accordance with the Budget for the Activity and the SOR).

17.2 Without limiting clause 17.1, the Partner must not use the Grant for the following:

- (a) to make a loan or gift;
- (b) to pay sitting fees to Directors or members of the Partner's organisation;
- (c) for overseas travel without the NDIA's prior written approval;
- (d) to purchase land;
- (e) to relieve cash flow problems in other activities;
- (f) to settle or agree to consent orders in relation to, or otherwise resolve, any proceeding or application for reinstatement and/or wrongful dismissal by a current or former employee, without our prior written approval;
- (g) to pay commissions, success bonuses or similar benefits to directors, staff, members or consultants as payment for work undertaken;
- (h) to purchase any items specifically excluded in this Agreement (including the SOR);
or
- (i) to reimburse expenses incurred by the Partner prior to execution of the Grant Agreement, unless otherwise agreed by the NDIA.

- 17.3 If (and only if) the NDIA gives its prior written consent, the Partner may reimburse directors for their reasonable travel and accommodation expenses. The NDIA may refuse consent if it considers:
- (a) the travel was not reasonable and necessary for the Activity;
 - (b) the expenses were not incurred attending the Partner's board meetings;
 - (c) the cheapest mode of travel available was not used; or
 - (d) the claimed rate is higher than that in ATO ruling TR 2004/6¹.
- 17.4 Except with the NDIA's prior written approval, the Partner must not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:
- (a) the Grant;
 - (b) this Agreement or any of the NDIA's obligations under this Agreement; or
 - (c) any Assets or Intellectual Property Rights in the Agreement Material.
- 17.5 The Partner agrees to hold the Grant payments for the Activity in an account in the Partner's name and which the Partner solely controls. This account must be held with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.
18. **ACCOUNTING FOR THE GRANT**
- 18.1 The Partner must keep accurate records and accounts including receipts, proof of purchase and invoices, to show how the Partner spends the Grant and carries out the Activity.
- 18.2 The Partner must keep these records and accounts in their original form for at least 7 years after the Activity Period or for such other period as required by legislation.
- 18.3 The Partner must provide financial reports in the form and at the times set out in the Schedule or otherwise notified to the Partner in writing.
- 18.4 Where the report is a financial declaration it must:
- (a) verify that the Partner has spent the Grant on the Activity in accordance with the Agreement;
 - (b) specify the amount, if any, of the Grant provided for the Activity that remains unspent and uncommitted for that financial year; and
 - (c) be certified by:
 - (i) the Partner's board of directors;
 - (ii) the Partner's chief executive officer; or
 - (iii) an officer with authority to do so.
- 18.5 A financial report consists of an income and expenditure statement in relation to each Grant. Each financial report must:

¹ Available via www.ato.gov.au

- (a) be in accordance with the Agreement, applicable Australian Accounting Standards² and based on proper accounts and records;
- (b) verify that the Partner has spent the Grant provided on the Activity and in accordance with this Agreement;
- (c) specify the amount, if any, of the Grant provided for the Activity that remains unspent and uncommitted;
- (d) include any other matters (in addition to the matters set out in the Schedule) the NDIA requires to allow the NDIA to meet its obligations under the Commonwealth financial framework;
- (e) be independently audited; and
- (f) be certified by:
 - (i) the Partner's board of directors;
 - (ii) the Partner's chief executive officer; or
 - (iii) an officer with authority to do so.

18.6 An independently audited financial report must be audited by:

- (a) a Registered Company Auditor under the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) a member of CPA Australia;
- (c) a member of the Institute of Public Accountants in Australia; or
- (d) a member of the Institute of Chartered Accountants in Australia.

The auditor must not be a principal member, shareholder, officer or employee of the Partner or of a Related Body Corporate as defined in the Corporations Act. Reports must be audited in accordance with Australian Audit Standards³ and the income and expense statement must be accompanied by the auditor's opinion.

18.7 At any time up to 7 years after the Activity End Date, the NDIA may ask the Partner to send to the NDIA:

- (a) original receipts or other documents which account for the expenditure of the Grant; and/or
- (b) a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) accounting for the expenditure of the Grant.

19. REPAYING THE GRANT

19.1 If:

- (a) the NDIA overpays the Partner an amount;

² Refer Australian Accounting Standards Board [Australian Accounting Standards Board website](#)

³ As maintained by the Auditing and Assurance Standards Board (AASB) [AASB Website](#).

(b) the NDIA pays the Partner an amount that the Partner is unable to spend in accordance with this Agreement; or

(c) the Partner spends an amount other than in accordance with this Agreement,

the Partner must pay the NDIA that amount of the Grant (or any lesser amount of which the NDIA notifies the Partner in writing).

19.2 If the Partner must repay an amount under clause 19.1:

(a) the Partner must do so within 20 Business Days after the NDIA gives the Partner a notice in writing;

(b) the Partner must pay interest on any part of the amount that is outstanding after the end of the 20 Business Days until the date that the outstanding amount is repaid in full; and

(c) the NDIA may recover the amount and any Interest as a debt due to the Commonwealth.

19.3 The NDIA can recover all or any of the amount and Interest by deducting it from subsequent amounts the NDIA pays the Partner under this Agreement or any other agreement the NDIA has with the Partner.

20. **GST**

[Note to applicants: If a successful applicant is a 'government related entity' as defined in the GST Act, then clause 20 will be deleted and a different clause included.]

20.1 In this clause:

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

(b) words and terms defined in the GST Act have the same meaning in this clause 20 unless the context otherwise requires; and

(c) the term "RCTI" means a "recipient created tax invoice" as defined in the GST Act. For the purpose of this Agreement, an RCTI is a tax invoice belonging to a class of tax invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply.

20.2 The Partner must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this clause 20.

20.3 If GST is payable on a taxable supply made by one party (**supplier**) under this Agreement, the recipient of the supply must pay to the supplier without set-off an additional amount equal to the GST imposed on the supply at the same time as the consideration is paid or provided, subject to the issue of a tax invoice (except where clauses 20.7-20.10 require the recipient to issue an RCTI).

20.4 If an amount on account of GST has been included in the consideration for a supply under this Agreement, the amount of GST is as specified in the Schedule to this Agreement.

20.5 If an adjustment event occurs in relation to a taxable supply under this Agreement:

- (a) the supplier must provide an adjustment note to the recipient within 28 days of becoming aware of the adjustment unless the recipient has issued a recipient created adjustment note; and
 - (b) any payment necessary to give effect to the adjustment must be made by the applicable party within 7 days after the date of receipt of an adjustment note or recipient created adjustment note..
- 20.6 Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Agreement must exclude the amount of GST referable to the cost to the extent to which there is an entitlement to claim an input tax credit, and in relation to revenue must exclude any amount in respect of GST referable to the revenue.
- 20.7 The parties acknowledge and agree that each party:
- (a) is registered for GST purposes;
 - (b) has quoted its Australian Business Number as stated above; and
 - (c) must immediately notify the other of any changes to the matters covered by this clause 20.7 or if either party ceases to comply with the requirements in Goods and Services Tax Ruling GSTR 2000/10 Goods and Services Tax: recipient created tax invoices or A New Tax System (Goods and Services Tax) Act 1999 Recipient Created Tax Invoice Determination (No. 1) 2000.
- 20.8 The NDIA (as the recipient of the taxable supplies made by the Partner under this Agreement) will issue RCTIs and any recipient created adjustment notes for any taxable supplies made by the Partner to the NDIA under this Agreement within 28 days of the NDIA determining the value of the taxable supplies.
- 20.9 The Partner must not issue tax invoices or adjustment notes for taxable supplies made by the Partner to the NDIA under this Agreement.
- 20.10 The NDIA will not issue RCTIs or recipient created adjustment notes for taxable supplies made by the Partner to the NDIA under this Agreement at any time that either party fails to comply with any of the requirements in clauses 20.7 to 20.10.

21. **ASSETS**

- 21.1 Assets purchased or leased with the Grant must be used only for the purposes of the Activity, unless the NDIA has given written approval for an alternative use of the Assets.
- 21.2 If the Partner does not purchase or lease the agreed Assets the NDIA may reduce the Grant by the amount of the Grant allocated under the Agreement for the purchase or lease of the Assets the Partner has failed to purchase or lease.
- 21.3 If the NDIA considers that the Partner does not have the capacity to procure or lease the agreed Assets the NDIA may require the Partner to engage an appropriate person, approved by the NDIA, to do so.
- 21.4 The Partner must:
- (a) upon receiving a written request from the NDIA, provide the NDIA with security over any Asset, purchased wholly or partly with the Grant, in whatever form the NDIA requires, and pay all stamp duties and reasonable legal costs of, and incidental to, such security;

- (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (c) keep all Assets in good working order;
 - (d) maintain appropriate insurances for all Assets, including any insurance requirements listed in the Schedule;
 - (e) maintain appropriate registration and licensing of all Assets;
 - (f) be fully responsible for, and bear all risks relating to, the purchase or lease, use or disposal of all Assets; and
 - (g) keep a record identifying all Assets and, if the NDIA asks, give the NDIA that record.
- 21.5 Any Assets lost, damaged or destroyed are to be reinstated or replaced by the Partner.
- 21.6 All proceeds of insurance are deemed to form part of the Grant and the Partner must notify the NDIA of amounts and related Assets should the Partner receive any such payments. To avoid doubt, the Partner may apply the proceeds of insurance to replace Assets which are lost, damaged or destroyed.
- 21.7 If the NDIA provides an amount of the Grant for the purchase or lease of an Asset in the form of a motor vehicle the Partner must:
- (a) register the motor vehicle and comprehensively insure it at all times in accordance with clause 45 (Insurance) of the Agreement and do nothing to render the insurances void;
 - (b) where the motor vehicle is leased, do nothing to breach the terms of the lease;
 - (c) have the motor vehicle regularly serviced and maintained in accordance with the manufacturer's specifications or recommendations, and keep full records of the servicing and maintenance;
 - (d) ensure that the motor vehicle is driven only by people the Partner authorises to do so and who hold an appropriate driver's license;
 - (e) not use the motor vehicle for private purposes; and
 - (f) if the motor vehicle is purchased, ensure that it is unencumbered when acquired.
- 21.8 Before the Partner acquires second-hand motor vehicles, the Partner must have these vehicles certified by a qualified mechanic as to roadworthiness and mechanical capability for their intended purpose and if the NDIA asks give the NDIA evidence of this.
- 21.9 At the Activity End Date the Partner will own the Asset except where:
- (a) the NDIA has been specified in the Schedule as the owner of the Asset; or
 - (b) a direction has been given to the Partner under clause 21.14 prior to the Activity End Date.
- 21.10 At the Activity End Date the NDIA may direct the Partner to pay the NDIA an amount equal to the proportion of the value of the Asset following depreciation using the Depreciation Rate identified in clause 21.16(b).

- 21.11 The Partner must not sell, dispose of or encumber any Asset without first getting the NDIA's approval in writing.
- 21.12 If the NDIA approves the sale or disposal of an Asset during the Activity Period the NDIA may direct the Partner to treat the proceeds of the disposal as an amount of the Grant to be used for the Activity.
- 21.13 If the NDIA did not provide the entire Grant for purchase of any Assets subject to clause 21.10 or 21.12, then:
- (a) in the case of Assets subject to clause 21.10 the amount the Partner must pay the NDIA; or
 - (b) in the case of clause 21.12 the proceeds of the disposal to be used for the Activity,
- will be reduced to reflect the proportion of the purchase price of the Asset derived from the Grant.
- 21.14 If the Partner is in breach of the Agreement or if the Partner ceases to deliver the Activity, the NDIA may, at its absolute discretion, give the Partner a written direction to:
- (a) transfer the Asset to the NDIA or its nominee;
 - (b) pay the NDIA an amount equal to the proportion of the value of the Asset following depreciation using the Depreciation Rate identified in clause 21.16(b); or
 - (c) sell the Asset to a bona fide purchaser for market value, subject to any conditions the NDIA specifies in the direction.
- 21.15 For the purposes of this clause, all directions given to the Partner in writing by the NDIA must be complied with within twenty (20) Business Days of the notice being given. If the Partner does not pay the NDIA any amount required to be paid within this timeframe:
- (a) the Partner must pay that amount to the NDIA and must also pay Interest to the NDIA on the relevant amount from the date it was due, for the period it remains unpaid to the NDIA; and
 - (b) the relevant amount, and Interest owed, will be recoverable by the NDIA as a debt due to the NDIA by the Partner.
- 21.16 In this clause:
- (a) "**Undepreciated Value**" means the value of an Asset ignoring any depreciation for income tax purposes.
 - (b) "**Depreciation Rate**" means the depreciation rate specified for the relevant class of assets in the applicable Australian Accounting Standards Board standard.
 - (c) "**Interest**", for purposes of this Item, means interest calculated at an interest rate equal to the general interest charge rate as specified in section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis.

22. **FACILITIES, INFORMATION, RESOURCES AND ASSISTANCE TO BE PROVIDED BY THE NDIA**

- 22.1 The NDIA will provide the Partner with:

- (a) access to facilities at the NDIA's premises as reasonably necessary to enable the Partner to perform the Activity, as set out in the SOR or otherwise upon the Partner providing at least five Business Days' written notice;
 - (b) the documents and information set out in the SOR; and
 - (c) such other resources and assistance as set out in the SOR or provided by the NDIA from time to time.
- 22.2 The Partner is not relieved of any obligation to perform the Activity or any of its obligations under the Agreement due to any failure of the NDIA to provide the facilities, information, resources and assistance referred to above.
- 22.3 Without limiting clause 50 (Work Health and Safety) or any other obligation under the Agreement, the Partner must, and must ensure that its Personnel, comply with all reasonable directions given by the NDIA, and the NDIA's policies provided or available, when on the NDIA's premises.
- 22.4 The Partner must immediately remedy any damage caused by its Personnel to any property of the NDIA or any other person at the Partner's cost. Should the Partner fail to do so, the NDIA may effect the necessary repairs or pay the cost of such repairs to the owner of the relevant property, and such cost must be paid by the Partner to the NDIA on demand or may be set off by the NDIA from any moneys due or becoming due to the Partner under this Agreement, at the option of the NDIA.
- 22.5 To the extent that the NDIA licences, provides or otherwise makes available any information or resources to the Partner under this Agreement (collectively 'NDIA Resources') they are provided to the Partner on an 'as is' basis, and the Partner acknowledges and accepts that, to the extent permitted by Law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of the NDIA or its Personnel in respect of:
- (a) the condition, state of repair, quality, fitness for purpose or merchantability of any of NDIA Resources; and
 - (b) the accuracy, completeness, currency, suitability or efficacy of any of the NDIA Resources.

23. **NDIA IT SYSTEM**

- 23.1 The NDIA will provide the Partner and relevant Partner Personnel and Subcontractors with access to the NDIA IT System, which the Partner must use as required in the Agreement.
- 23.2 The Partner must ensure that its Personnel and Subcontractors do not access or use the NDIA IT System until they have:
- (a) completed successfully the training required in the SOR; and
 - (b) completed to the NDIA's satisfaction all required checks and procedures for access to the NDIA IT System notified by the NDIA, including signing any deed of confidentiality.

24. **SUPPLY OF IT HARDWARE**

- 24.1 The NDIA (through the Commonwealth represented by the Department of Human Services (the Commonwealth)) will supply the Partner with the IT Hardware, associated software and components and documentation described in the SOR.

- 24.2 The Partner is responsible for supplying all other hardware, such as printers, telephones, mobile phones etc, and all telephone, facsimile and internet connectivity systems required for the performance of the Activity, including to access the NDIA IT System. The NDIA will provide the Partner with the details of the printer(s) that are compatible with the IT Hardware supplied by the NDIA.
- 24.3 The Partner's Personnel may also be able to connect to the NDIA IT System from the NDIA's premises when present at the NDIA's premises.
- 24.4 The Partner must comply with the NDIA's and the Commonwealth's instructions in relation to asset management of the IT Hardware including maintaining asset registers as required.
- 24.5 The Partner will not obtain any legal or equitable interest in the IT Hardware (other than as bailee). Ownership of and title in the IT Hardware (including any software included in it) will remain with the Commonwealth (or its licensor), including any part of the items that are replaced or modified during the course of the repair of the IT Hardware which will be deemed to become part of the IT Hardware and the property of the Commonwealth (or its licensor).
- 24.6 The Partner must not:
- (a) download or install any additional software or application onto the IT Hardware, unless authorised in writing by the NDIA;
 - (b) modify or attempt to modify, and must ensure that Partner Personnel do not modify or attempt to modify, any security settings on the IT Hardware;
 - (c) remove any software, application or other component included in the IT Hardware;
 - (d) otherwise modify any IT Hardware;
 - (e) sell, offer to sell or otherwise dispose of the IT Hardware;
 - (f) grant to any person any sub-lease, licence or sub-licence affecting the IT Hardware;
 - (g) create any security interest over the IT Hardware;
 - (h) attempt to represent or assert any ownership interest in any IT Hardware;
 - (i) allow the IT Hardware or any part of it to become an accession (as defined under the *Personal Property Securities Act 2009* (Cth)) to any property; or
 - (j) otherwise deal with the IT Hardware in a way that is inconsistent with the NDIA's and the Commonwealth's rights under this Agreement,
- and must keep the IT Hardware free from any liens, attachments and other encumbrances of any kind.
- 24.7 The NDIA and the Commonwealth will not be responsible for:
- (a) any delays, omissions, oversights, errors, or failures caused by the Partner or its Personnel, agents, or Subcontractors;
 - (b) problems caused by the Partner's software or data;
 - (c) a defect or deficiency with respect to the Partner's network, systems, or other equipment; or

- (d) modifications to IT Hardware made by a party other than the NDIA, the Commonwealth or their representatives.
- 24.8 The IT Hardware is supplied subject to the third party supplier's or manufacturer's product and service warranties, maintenance and support guidelines and policies.
- 24.9 All software provided by the NDIA or the Commonwealth or forming part of the IT Hardware is subject to the end user licence agreement embedded in the software or forming part of the software or provided with the software.
- 24.10 The Partner acknowledges and agrees that it will be fully responsible for how the IT Hardware is deployed, operated and used by the Partner, its Personnel, agents and Subcontractors (including but not limited to any acts and omissions of its Personnel, agents and Subcontractors in relation to the introduction of any virus, spamming, breach of privacy, breach of confidentiality, breach of Law).
- 24.11 The NDIA will have no liability for lost data, systems, programs or software resulting from the IT Hardware backup activities or failure to backup, any restoration of data or software.
- 24.12 The Partner accepts risk for Loss of or damage to the IT Hardware from the time the Partner takes delivery of the IT Hardware until the IT Hardware is returned to the NDIA, except to the extent that the Loss or damage is caused or contributed to by an act or omission (including negligence or breach of this Agreement) of the NDIA, the Commonwealth or their personnel.
- 24.13 If notified by the NDIA, the Partner may be required to effect and maintain appropriate insurance for the IT Hardware.
- 24.14 The Partner must notify the NDIA as soon as practical if any IT Hardware (including peripherals or components) is:
- (a) lost, stolen, destroyed, confiscated or damaged; or
 - (b) otherwise defective or not operating or able to be used by the Partner,
- during the term of the Agreement (**Affected Goods**).
- 24.15 The NDIA will replace or repair each Affected Good. The Partner will be liable for the agreed cost of repairs or replacement to Affected Goods described in clause 24.14(a).
- 24.16 Any IT Hardware replaced under clause 24.15 will be deemed to be the property of the Commonwealth (or its licensor).
- 24.17 The Partner must provide reasonable access to the IT Hardware and software to the NDIA or its nominee to enable the NDIA to revise, update, repair or remove the IT Hardware or software for the purposes of providing warranty repair (including online or remote access required for diagnostic or maintenance services).
- 24.18 The Partner must return to the NDIA (or its nominee) all IT Hardware and software as soon as practicable at the end of the term of the Agreement in accordance with the NDIA's instructions.
- 24.19 Unless otherwise notified by the NDIA in writing, it is the responsibility of the Partner to complete a full backup of any data, systems, programs, or software that it needs to retain and to remove any confidential or sensitive data (including data that may be subject to unique rules regarding disclosure, accountability, or disposal) from the IT Hardware prior to surrendering them to the NDIA.

24.20 The NDIA is not responsible for the restoration of any data, systems, programs, or software removed by the NDIA from the IT Hardware once it is surrendered to the NDIA (or its representative).

25. **ACCESS TO NDIA IT SYSTEM**

25.1 In performing the Activity, the Partner must (having due regard for the security concerns inherent in remote access and control of the NDIA IT System) take appropriate action and maintain appropriate protocols to satisfy its obligations for the protection and security of the NDIA, NDIA Material, NDIA Data and all Client Data as set out in this Agreement or as otherwise reasonably notified by the NDIA.

25.2 The Partner must ensure that:

- (a) no security requirement of the NDIA is breached by the Partner or Partner Personnel and no NDIA Material, no NDIA Data and no Client Data is taken outside Australia by the Partner or Partner Personnel through the remote access or control of any server or other hardware or software;
- (b) no unauthorised attempt whatsoever is made by the Partner or the Partner Personnel to access or use in any way the NDIA IT System;
- (c) direct or indirect access to the NDIA IT System, hardware or software by the Partner or the Partner Personnel is absolutely restricted to those Partner Personnel who have been approved by the NDIA and who have a need for such access and that access is limited to the minimum access necessary to enable the Partner to comply with its obligations under this Agreement;
- (d) no NDIA Material, NDIA Data or Client Data is changed by the Partner or Partner Personnel except where required to perform the Activity in accordance with this Agreement or with the express prior written approval of the NDIA;
- (e) any access by the Partner or Partner Personnel to the NDIA IT System is only with the clear identification and recording of the individual gaining such access; and
- (f) any access by the Partner or Partner Personnel to the NDIA IT System complies with any other requirements relating to remote access notified by the NDIA.

25.3 The Partner must comply with clause 39 (Security) and with the NDIA's policies and procedures in relation to access to and use of the NDIA IT System as notified by the NDIA from time to time.

26. **HARMFUL CODE**

26.1 The Partner must use its best endeavours not to:

- (a) introduce any Harmful Code into the NDIA IT System or IT Hardware; and
- (b) suffer or permit any third party under its direction or control to introduce any Harmful Code into the NDIA IT System or IT Hardware.

26.2 If the Partner becomes aware that any Harmful Code has been introduced into the NDIA IT System or IT Hardware the Partner must promptly report that introduction to the NDIA.

27. **IT CONTACT**

27.1 The Partner must:

- (a) nominate Personnel to receive technical advice from the NDIA on the NDIA IT System (IT Contact);
- (b) ensure that the IT Contact:
 - (i) disseminates technical advice to Partner Personnel as appropriate, in order to minimise disruption to the Activity; and
 - (ii) provides advice, as requested by the NDIA to assist in resolution of the NDIA IT System's technical issues; and
 - (iii) where that IT Contact changes, advise the NDIA accordingly.

28. ACCESS TO THIRD PARTIES

28.1 Subject to its obligations under clause 35 (Privacy Provisions in the NDIS Act), if the Partner gives access to Client Data, or any derivative thereof, to third parties, including:

- (a) third-party hosting entities; or
- (b) outsourced information technology service Partners,

the Partner must ensure that a deed of confidentiality and privacy in a form acceptable to the NDIA, is signed by each relevant third party prior to that third party being granted any such access and only grant such access in accordance with this clause 28 (Access to Third Parties).

29. BREACHES OF IT SECURITY

29.1 The Partner must report all breaches of IT security to the NDIA including where Partner Personnel suspect that a breach may have occurred or that a person may be planning to breach IT security.

29.2 Without limiting its rights under clause 29.3, the NDIA or the Commonwealth may at any time require the return of any item of IT Hardware if the NDIA or the Commonwealth considers necessary to investigate a breach or potential breach of this clause 29 (Breaches of IT Security) or clause 39 (Security) of the Agreement.

29.3 If the NDIA considers that the Partner is or has breached this clause 29 (Breaches of IT Security) or clause 39 (Security) of the Agreement, the NDIA may, at its absolute discretion immediately:

- (a) suspend access to the NDIA IT System; or
- (b) terminate access to the NDIA IT System,

for any one or more of the following:

- (c) any Partner Personnel;
- (d) any Subcontractor; or
- (e) the Partner,

by providing notice to the Partner.

29.4 If the NDIA suspends or terminates access to the NDIA IT System under clause 29.3, it may, at its sole and absolute discretion, impose conditions on any resumption of access.

29.5 If the NDIA gives notice to the Partner that access to the NDIA IT System is suspended or terminated under clause 29.3, the Partner must immediately take all actions necessary to ensure that such access is suspended or terminated for the affected Personnel or Subcontractors.

29.6 Any action taken by the NDIA under clause 29.3 does not limit any other rights the NDIA has under this Agreement or at Law.

30. **INTELLECTUAL PROPERTY RIGHTS**

30.1 The NDIA owns the Intellectual Property Rights in all Agreement Material.

30.2 This Agreement does not affect the Intellectual Property Rights in Existing Material.

30.3 The NDIA owns all NDIA Material, including Intellectual Property Rights in that Material.

30.4 The NDIA grants to the Partner a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, publish, and adapt the Intellectual Property Rights, subject to any written direction from the NDIA, in Agreement Material and the NDIA Material solely for the purpose of the Activity for the Activity Period.

30.5 The Partner must ensure that it has the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Agreement Material and any Existing Material under this clause 30.

30.6 If the NDIA requires, the Partner must bring into existence, sign or otherwise deal with any document which the NDIA considers is necessary or desirable to give effect to this clause 30.

30.7 The Partner must obtain, from each author of any Agreement Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by the NDIA or by someone claiming under or through the NDIA. If the NDIA asks, the Partner must give the NDIA the original of the consent.

31. **SAFEKEEPING AND RETURN OF NDIA MATERIAL**

31.1 The Partner must keep safe and maintain all NDIA Material. The Partner accepts all risk relating to that Material.

31.2 Subject to clause 7 (The Partner's Obligation to Provide Reports and Plans), and unless the NDIA otherwise directs, the Partner must promptly return, destroy or permanently erase (as directed by the NDIA) all NDIA Material when this Agreement ends or is terminated.

32. **USE OF SCHEME LOGO**

32.1 The Partner must clearly display the Scheme logo provided by the NDIA, together with the words, "<Insert Organisation> is an NDIS Partner delivering Local Area Coordination services in <Insert state/territory> www.ndis.gov.au" prominently in a place that is visible to the public at the premises it uses for delivery of the Activity. If the Partner, with the approval of the NDIA, is using existing facilities from which it also provides other services for the delivery of the Activity, then it must ensure that:

- (a) the Scheme logo is displayed in an equally prominent position and size as any other signs on the premises; and

- (b) any Client who visits the premises in relation to the Activity provided by the Partner is directed in the first instance to staff who are dedicated to the Activity.
- 32.2 The Partner must ensure that Partner Personnel undertaking the functions of Coordinators, are able to clearly identify themselves to members of the public and Participants as Coordinators providing the **[Option 1** LAC function or ECEI function as applicable **/ Option 2a** LAC function **/ Option 2b** ECEI function] under the Scheme.
- 32.3 The Partner must ensure that all documents, signs, banners, badges or other material that display the Scheme logo are approved in writing by the NDIA and use the Scheme logo in accordance with the directions of the NDIA.
- 32.4 The Partner must use the Scheme logo only for the purposes only of the Partner performing the Activity and not use the Scheme logo or any other name or sign that is similar to the Scheme logo, in relation to any other services or products provided by the Partner.

33. **CONFLICT OF INTEREST ACKNOWLEDGED**

- 33.1 The Partner:
- (a) warrants that in providing the Services to Participants, it will respect and facilitate optimal choice for Participants in the selection of funded supports and that no corporate or other relationship between the Partner and another organisation will influence, impact or restrict this choice due to a real, perceived or potential Conflict of Interest;
- (b) warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict of Interest, except as disclosed in writing to the NDIA, exists or is likely to arise in the performance of the Activity; and
- (c) must use its best endeavours (including making all appropriate enquiries) to ensure that:
- (i) a situation does not arise which may result in a Conflict of Interest; and
- (ii) any Personnel of the Partner does not engage in any activity or obtain any interests likely to conflict with or restrict the Partner in providing the Activity to the NDIA fairly and independently.
- 33.2 The Partner must promptly notify the NDIA if, at any time during the term of the Agreement, an actual or potential Conflict of Interest arises relating to the provision of any part of the Services by the Partner under this Contract, including any Conflict of Interest relating to a Registered Provider of Supports as referred to in clause 34.
- 33.3 If the Partner notifies the NDIA under clause **Error! Reference source not found.**, or the NDIA otherwise becomes aware of an actual or potential Conflict of Interest, the NDIA will consult with the Partner to determine an appropriate course for managing the Conflict of Interest and the Partner must implement any reasonable course of action that the NDIA determines appropriate as soon as possible.

34. **REGISTERED PROVIDER OF SUPPORTS**

[Note to applicants: The following provisions give effect to the NDIA's restrictions on Partners providing LAC and ECEI Services also being (or becoming) Registered Providers of Supports.]

In summary:

- ***a Partner providing LAC Services must not be (or become) a Registered Provider of Supports;***
- ***the NDIA will only approve a Partner providing ECEI Services to also be (or become) a Registered Provider of Supports where exceptional circumstances exist, and the Partner implements appropriate management strategies; and***
- ***the NDIA will only approve a Subcontractor which is a Registered Provider of Supports to provide LAC or ECEI Services where exceptional circumstances exist (see clause 41.4), and the Partner implements appropriate management strategies.]***

[Note to applicants: Clauses 34.1 to 34.3 apply to Option 1 and 2a only]

34.1 Acknowledgment

- (a) The Partner acknowledges that the provision of services as a Registered Provider of Supports and the provision of disability and other services to individuals that might include Participants, by:
- (i) the Partner;
 - (ii) a Related Body Corporate;
 - (iii) another entity or person in a position to exercise influence over the Partner, including where:
 - (A) a director of the Partner is also the director of a Registered Provider of Supports;
 - (B) a shareholder or member of the Partner is a Registered Provider of Supports; and
 - (C) a shareholder or member of the Partner is also the shareholder or member of a Registered Provider of Supports; or
 - (iv) a Subcontractor,
- would create an actual, potential or apparent Conflict of Interest that may affect the Provider's ability to perform the Activity in an impartial way, regardless of whether the services are only provided in a different area to the area in which the Partner provides the Activity.
- (b) The Partner has given the warranties in clause 9.1(c), (d) and (e).

34.2 Prohibition on Partner, Related Body Corporate and other persons becoming a Registered Provider of Supports

- (a) During the term of the Agreement, the Partner, a Related Body Corporate of the Partner or another entity or person in a position to exercise control over the Partner must not apply to become a Registered Provider of Supports.
- (b) If the Partner applies to become, or becomes, a Registered Provider of Supports during the term of the Grant Agreement, the NDIA reserves the right to terminate this Agreement in accordance with clause 47.
- (c) If, during the term of the Agreement,:
- (i) a Related Body Corporate of the Partner applies to become a Provider; or

- (ii) another entity or person in a position to exercise influence over the Partner applies to become a Provider or becomes a shareholder, member or director of a Provider;

then the Partner must notify the Agency in writing immediately.

- (d) Where the Agency receives a notice from the Partner under clause 34.2(c), the Agency may, in its absolute discretion, terminate this Contract in accordance with clause 47.

34.3 [Option 1 only: Management of Conflicts of Interest relating to Subcontractors providing ECEI Services

- (a) If an approved Subcontractor providing ECEI Services is a Registered Provider of Supports (see clause 41), the Partner must implement management strategies in relation to ECEI Services which include strategies to ensure families are able to make an informed choice to select a Registered Provider of Supports and appropriate documentation is maintained to demonstrate the family were able to make and did make an informed choice.
- (b) The Partner agrees to:
 - (i) provide quarterly reports to the NDIA on the management of any Conflicts of Interest;
 - (ii) cooperate and provide all necessary assistance to the NDIA for the NDIA to conduct audits, spot checks and surveys to assess the management of any actual or apparent Conflicts of Interest; and
 - (iii) on request from the NDIA, meet with the NDIA to discuss any actual or apparent Conflicts of Interest;
- (c) The Partner must ensure that the Subcontractor obtains from a Participant full and appropriate independent consent for the Subcontractor, as applicable, to use and refer to, in providing the Activity under this Agreement for the benefit of the Participant, Material that is in the Subcontractor's, as applicable, possession as a result of any other services that the Subcontractor provides.
- (d) The Partner must ensure that the Subcontractor providing ECEI Services complies with the reasonable directions of the NDIA in relation the management of any Conflict of Interest.
- (e) Subject to clause 34.3(f), if a Subcontractor providing ECEI Services is (or becomes) a Registered Provider of Supports, the Partner must ensure that the Subcontractor does not provide any disability services to a Participant (age 0 – 6 years) in the Service Area(s) in which the Partner provides the Activity under this Agreement.
- (f) Where a Subcontractor providing ECEI Services is (or becomes) a Registered Provider of Supports and wishes to provide disability services to a Participant (age 0 – 6 years) in the Service Area(s), the Partner must first:
 - (i) notify the NDIA; and
 - (ii) demonstrate to the reasonable satisfaction of the NDIA that exceptional circumstances exist.
- (g) For the purposes of clause 34.3(f)(ii)), in considering whether exceptional circumstances exist, the NDIA may consider:

- (i) whether families with additional needs would be unable, or unlikely to engage with a separate Registered Provider of Supports after significant effort has been taken by the Partner to develop rapport and trust;
- (ii) the availability of appropriate supports from other Registered Providers of Support; and
- (iii) the Partner's proposed mitigation approach to manage this actual, potential or perceived conflict of interest.

34.4 Management of Conflicts of Interest where a Subcontractor proposes to become a Registered Provider of Supports

- (a) If, during the term of the Agreement, a Subcontractor of the Partner applies to become a Provider, then the Partner must notify the Agency in writing immediately, and provide details of the measures it will implement to manage this apparent Conflict of Interest.
- (b) Where the Agency receives a notice from the Partner under clause 34.4(a) in relation to a Subcontractor of the Partner, the Agency may, in its absolute discretion:
 - (i) require the Partner to remove any Subcontractor involved in the provision of disability services as a Registered Provider of Supports from providing Services under this Agreement; and
 - (ii) replace that Subcontractor with a Subcontractor approved by the Agency in accordance with clause 41.

[Note to applicants: Clauses 34.5 to 34.7 apply to Option 2b only]

34.5 Acknowledgment

- (a) The Partner acknowledges that the provision of services as a Registered Provider of Supports and the provision of disability and other services to individuals that might include Participants, by:
 - (i) the Partner; or
 - (ii) a Subcontractor,

would create an actual, potential or apparent Conflict of Interest that may affect the Provider's ability to perform the Activity in an impartial way, regardless of whether the services are only provided in a different area to the area in which the Partner provides the Activity.

34.6 Management of Conflicts of Interest where the Partner or a Subcontractor is a Registered Provider of Supports

- (a) If the Partner or an approved Subcontractor providing ECEI Services is a Registered Provider of Supports, the Partner must implement management strategies in relation to ECEI Services which include strategies to ensure families are able to make an informed choice to select a Registered Provider of Supports and appropriate documentation is maintained to demonstrate the family were able to make and did make an informed choice.
- (b) The Partner agrees to:

- (i) provide quarterly reports to the NDIA on the management of any Conflicts of Interest;
 - (ii) cooperate and provide all necessary assistance to the NDIA for the NDIA to conduct audits, spot checks and surveys to assess the management of any actual or apparent Conflicts of Interest; and
 - (iii) on request from the NDIA, meet with the NDIA to discuss any actual or apparent Conflicts of Interest;
- (c) The Partner must ensure that the Partner or its Subcontractor, as applicable, obtains from a Participant full and appropriate independent consent for the Partner or its Subcontractor, as applicable, to use and refer to, in providing the Activity under this Agreement for the benefit of the Participant, Material that is in the Partner's or its Subcontractor's, as applicable, possession as a result of any other services that the Partner or Subcontractor provides.
- (d) The Partner must comply, and must ensure that any Subcontractor providing ECEI Services complies, with the reasonable directions of the NDIA in relation the management of any Conflict of Interest.
- (e) Subject to clause 34.6(a), if the Partner or a Subcontractor providing ECEI Services is (or becomes) a Registered Provider of Supports, the Partner must ensure that the Partner or Subcontractor (as applicable) does not provide any disability services to a Participant (age 0 – 6 years) in the Service Area(s) in which the Partner provides the Activity under this Agreement.
- (f) Where the Partner or a Subcontractor providing ECEI Services is (or becomes) a Registered Provider of Supports and wishes to provide disability services to a Participant (age 0 – 6 years) in the Service Area(s), the Partner must first:
- (i) notify the NDIA; and
 - (ii) demonstrate to the reasonable satisfaction of the NDIA that exceptional circumstances exist.
- (g) For the purposes of clause 34.6(f)(ii), in considering whether exceptional circumstances exist, the NDIA may consider:
- (i) whether families with additional needs would be unable, or unlikely to engage with a separate Registered Provider of Supports after significant effort has been taken by the Partner to develop rapport and trust;
 - (ii) the availability of appropriate supports from other Registered Providers of Support; and
 - (iii) the Partner's proposed mitigation approach to manage this actual, potential or perceived conflict of interest.

34.7 Management of Conflicts of Interest where the Partner or a Subcontractor proposes to become a Registered Provider of Supports

- (a) If, at the Commencement Date, the Partner is not a Registered Provider of Supports, it must not seek registration as a Registered Provider of Supports without first:
- (i) notifying the NDIA; and

- (ii) demonstrating to the reasonable satisfaction of the NDIA that exceptional circumstances exist.
- (b) If a Subcontractor to the Partner applies to become a Registered Provider of Supports after the Commencement Date, then the Partner must:
 - (i) notify the NDIA in writing immediately;
 - (ii) demonstrate to the reasonable satisfaction of the NDIA that exceptional circumstances exist.
- (c) For the purposes of clause 34.7(a)(ii) and (b)(ii), in considering whether exceptional circumstances exist, the NDIA may consider:
 - (i) whether there are any alternative providers of ECEI Services who are not Registered Providers of Supports; and
 - (ii) the Partner's proposed mitigation approach to manage this actual, potential or perceived Conflict of Interest.
- (d) If, the NDIA is satisfied with the Partner's proposed measures to manage any Conflict of Interest notified by the Partner in accordance with clause 34.7(a) or (b), and the Partner or a Subcontractor becomes a Registered Provider of Supports, the Partner must comply with clause 34.6.
- (e) If the NDIA is not satisfied with the Partner's proposed measures to manage any Conflict of Interest notified by the Partner in accordance with clause 34.7(a) or (b), then the NDIA may at its absolute discretion:
 - (i) in the case of a Subcontractor – require the Partner to remove the Subcontractor and replace that Subcontractor with a Subcontractor approved by the Agency in accordance with clause 41; or
 - (ii) in the case of the Partner – terminate the Agreement in accordance with clause 47, unless the Partner provides evidence to the NDIA that the relevant Related Body Corporate, other entity or person in a position to exercise influence over the Partner or Subcontractor has taken immediate steps to de-register or withdraw its application to become a Registered Provider of Supports.
- (f) If the NDIA does not exercise its rights under clause 34.7(e), then clause 34.6 applies to the management of the relevant Conflicts of Interest arising from the Partner or Subcontractor becoming a Registered Provider of Supports.

35. PRIVACY PROVISIONS IN THE NDIS ACT

- 35.1 The Partner acknowledges that information that it has access to or collects in, or in relation to, the performance of the Agreement, including Client Data and NDIA Data, may contain Protected Information as defined in the NDIS Act.
- 35.2 The Partner must not do any act or engage in any practice in relation to Protected Information that is a breach of, or an offence under, the NDIS Act.
- 35.3 The Partner must not obtain, record, disclose, supply, use or otherwise deal with the Protected Information in any way, except:
 - (a) for the purposes of performing the Agreement; and
 - (b) where permitted by the NDIS Act.

- 35.4 The Partner must implement all reasonable measures to ensure the requirements of this clause 35 are met.
- 35.5 The Partner must immediately notify the NDIA if it becomes aware that a disclosure of Protected Information may be required by law and only disclose such information where permitted by the NDIS Act, including section 65 of the NDIS Act.
- 35.6 The Partner must, if required by the NDIA, ensure that any person who obtains access from the Partner or Partner Personnel to any Protected Information signs a deed in the form at Attachment 4 prior to the access.
- 35.7 The Partner must take all reasonable measures to ensure that Protected Information is protected against:
- (a) misuse, interference and loss; and
 - (b) unauthorised access, modification, or disclosure,
- and that only authorised Partner Personnel have access to it.
- 35.8 The Partner must immediately notify the NDIA of any loss or unauthorised use, modification or disclosure of Protected Information or when the Partner becomes aware of a breach of any obligation concerning such information.
- 35.9 The Partner must notify the NDIA of any investigation into a breach of, or an offence under, the requirements of the NDIS Act in relation to Protected Information.
- 35.10 The Partner must upon written notice from the NDIA, destroy or permanently de-identify any Protected Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.
- 35.11 The Partner must indemnify the NDIA in respect of any Loss suffered or incurred by the NDIA arising out of or in connection with:
- (a) a breach of the obligations of the Partner under this clause 35;
 - (b) any breach of the requirements of the NDIS Act in relation to Protected Information,
- except to the extent that the Loss is directly caused by a negligent or unlawful act or omission of the NDIA or any of its officers or employees.
- 35.12 The Partner must ensure that all Partner Personnel are aware of the need to comply with the NDIS Act and clauses 35.1 to 35.10 in the performance of the Activity.
- 35.13 The Partner must notify the NDIA immediately after it becomes aware of a breach of clauses 35.1 to 35.10.
- 35.14 The Partner must ensure that any Subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Partner has under this clause 35, including the requirement in relation to Subcontracts.
- 35.15 The Partner acknowledges that there are penalties applicable for breach of the requirements in the NDIS Act in relation to Protected Information, including possible imprisonment.

36. PROTECTION OF PERSONAL INFORMATION

36.1 Without limiting any obligations of the Partner under the Privacy Act or under the Agreement, the Partner acknowledges that it is a contracted service Partner under the Privacy Act and must, with respect to all Personal Information that it has access to or collects in or in relation to the performance of the Agreement (Contractual Personal Information):

- (a) not do any act, or engage in a practice, that would breach an Australian Privacy Principle if done or engaged in by the NDIA;
- (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Contractual Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement; or
 - (ii) complying with the Privacy Act;
- (c) implement all reasonable measures to meet the requirements of this clause 36.1 and clause 36.2 and assist the NDIA in meeting the NDIA's obligations under the Privacy Act;
- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the NDIA, including the investigation of any complaints;
- (e) immediately notify the NDIA if it becomes aware that a disclosure of Contractual Personal Information may be required by law;
- (f) subject to clause 36.4, if required by the NDIA, ensure that any person who obtains access from the Partner or Partner Personnel to any Contractual Personal Information signs a deed in the form at Attachment 4 prior to the access;
- (g) take all reasonable measures to ensure that Contractual Personal Information is protected against:
 - (i) misuse, interference and loss; and
 - (ii) unauthorised access, modification, or disclosure;and that only authorised Partner Personnel have access to it;
- (h) not use Contractual Personal Information for, or in any way relating to, any direct marketing purpose;
- (i) immediately notify the NDIA of any loss or unauthorised use, modification or disclosure of Contractual Personal Information or when the Partner becomes aware of a breach of any obligation concerning such information;
- (j) notify the NDIA of, and cooperate with the NDIA and/or the Office of the Australian Information Commissioner in the resolution of, any complaint alleging an interference with privacy;
- (k) upon written direction from the NDIA, destroy or permanently de-identify any Contractual Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected; and
- (l) indemnify the NDIA in respect of any Loss suffered or incurred by the NDIA arising out of or in connection with:

- (m) a breach of the obligations of the Partner under this clause 36.1 or clause 36.2;
- (n) any misuse of Contractual Personal Information or disclosure in breach of an obligation under the Privacy Act or otherwise; or
- (o) Contractual Personal Information being stored outside Australia, disclosed to Partners outside Australia or accessed from outside Australia (regardless of whether or not the NDIA has given its permission to such storage, disclosure or access),

except to the extent that the Loss:

- (p) is directly caused by a negligent or unlawful act or omission of the NDIA or any of its officers or employees; or
- (q) arises from the Partner obeying a specific direction by an authorised representative of the NDIA.

36.2 The Partner must not:

- (a) disclose Contractual Personal Information to anyone located outside Australia;
- (b) store Contractual Personal Information outside Australia; or
- (c) allow Contractual Personal Information to be accessed from outside Australia,

unless the NDIA gives its prior written approval (noting that the NDIA is not under any obligation to give approval). The Partner must comply with any directions given by the NDIA when providing any such approval.

36.3 The Partner must ensure that all Partner Personnel are aware of the need to comply with:

- (a) clauses 36.1 and 36.2 in the course of performing the Activity;
- (b) any directions given by the NDIA for the purposes of clause 36.1(d) or clause 36.2.

36.4 Without derogating from any other obligations of the Partner under statute or otherwise, the Partner must assist the NDIA, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:

- (a) whether the Partner has possession or control of any records that contain such information;
- (b) the nature of the information;
- (c) the main purposes for which the information is used by the Partner; and
- (d) the steps the person should take if the person wishes to obtain access to the information.

36.5 Without derogating from any other obligations of the Partner under statute or otherwise, the Partner must if requested by the NDIA to do so, correct or attach a note to any Contractual Personal Information held by the Partner.

36.6 The Partner's obligations in the Agreement (including this clause 36) are in addition to the Partner's obligations under the Privacy Act. Without limiting the foregoing, in performing the Activity the Partner must not by act or omission breach the Partner's obligations under the Australian Privacy Principles.

36.7 Without limiting clause 36.6, where the Partner collects Personal Information about an individual from:

- (a) the NDIA; or
- (b) a person other than the individual or the NDIA, at the specific direction of the NDIA,

for the purposes of performing the Agreement, the Partner is not required to take steps to ensure that the individual is or has been made aware of the matters listed in Australian Privacy Principle 5.2 in the Privacy Act, except as required by the Agreement or a specific direction of the NDIA.

36.8 The Partner must notify the NDIA immediately after it becomes aware of a breach of this clause 36.

36.9 The Partner must ensure that any Subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Partner has under this clause 36, including the requirement in relation to Subcontracts.

37. **CONFIDENTIAL INFORMATION**

37.1 Subject to clause 37.2, a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.

37.2 A party can disclose Confidential Information to the extent that it:

- (a) is disclosed to its internal management personnel, solely to enable effective management or auditing of Agreement-related activities; or
- (b) is disclosed by the NDIA to the responsible Minister; or
- (c) is disclosed by the NDIA, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; or
- (d) is shared by the NDIA with another agency, where this serves the Commonwealth's legitimate interests; or
- (e) is authorised or required by law to be disclosed; or
- (f) is in the public domain otherwise than due to a breach of this clause 37.

37.3 Where a party discloses Confidential Information to another person under clause 37.2 they must:

- (a) notify the receiving party that the information is confidential; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential.

37.4 If the NDIA asks, the Partner must promptly arrange for any of the Partner's Subcontractors, employees, and volunteers to promptly give the NDIA a signed confidentiality deed in the form at Attachment 4 relating to the use and non-disclosure of the NDIA's Confidential Information.

37.5 The Partner agrees to secure all of the NDIA's Confidential Information against loss and unauthorised access, use, modification or disclosure.

38. FREEDOM OF INFORMATION

- 38.1 In this clause 38, "document" and "Commonwealth contract" have the same meaning as in the Freedom of Information Act 1982 (Cth).
- 38.2 This clause 38 applies to the extent that this Agreement is a Commonwealth contract.
- 38.3 Where the NDIA has received a request for access to a document created by the Partner or a Subcontractor, or in the Partner's possession or that of the Partner's Subcontractor, which relates to the performance of this Agreement (and not to the entry into this Agreement), the NDIA may at any time by written notice require the Partner to provide the document to the NDIA and the Partner must, at no additional cost to the NDIA, promptly comply with the notice.
- 38.4 The Partner must include provisions in all of the Partner's Subcontracts that will enable the Partner to comply with the Partner's obligations under this clause 38.

39. SECURITY

- 39.1 The Partner must, and must ensure that its Personnel, comply with:
- (a) all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;
 - (b) the requirements of the NDIA's protective security policies and procedures under the PSPF;
 - (c) any other security requirements that are Notified by the NDIA to the Partner from time to time, including any changes to the requirements referred to in clauses 39.1(a) or 39.1(b). Such other security requirements must be complied with from the date specified in the notice, or if none is specified, within 5 Business Days of receipt of the notice.
- 39.2 The Partner acknowledges and agrees that:
- (a) it must not, and must not permit any of its Personnel or Subcontractors, to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know, and will prevent access by any such individual whose security clearance has lapsed or been revoked or who no longer requires such access;
 - (b) it must notify the NDIA immediately upon becoming aware of any unauthorised access to security classified information and the extent and nature of that access (whether incidental or accidental access, or by any of its Personnel or Subcontractors), and must comply with any reasonable directions of the NDIA in order to rectify the security incident; and
 - (c) it must, and must ensure that its Personnel and Subcontractors, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant security classification level.
- 39.3 The Partner acknowledges and agrees that:
- (a) if and when requested by the NDIA, the Partner, its Personnel and Subcontractors, must promptly execute a declaration of interest and deed of non-disclosure, in a

form reasonably required by the NDIA, relating to the use and non-disclosure of official information in connection with this Agreement;

- (b) it must promptly notify and disclose to the NDIA any conflict of interest affecting it, its Personnel or Subcontractors, that may impact on security in the performance of the Partner's obligations with respect to official information under this Agreement;
- (c) it must promptly inform, and keep informed, its Personnel and Subcontractors in respect of all the NDIA's security requirements, and the security obligations of the Partner under this Agreement, including that the obligation to maintain confidentiality of official information is ongoing (notwithstanding termination or expiry of this Agreement or their involvement with it);
- (d) it must, and must ensure that its Personnel and Subcontractors, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of official information;
- (e) it must, and must ensure that its Personnel and Subcontractors, notify the NDIA immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Agreement, including where it may impact upon the performance of the Activity, or official information held by or in the control of the Partner; and
- (f) on termination or expiry of this Agreement it must, and must ensure that its Personnel and Subcontractors;
 - (i) delete all official information from their respective ICT systems, and
 - (ii) return all NDIA resources and assets to the NDIA, except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements applying under this Agreement.

39.4 The Partner acknowledges and agrees that:

- (a) upon reasonable notice from the NDIA, it must ensure that each of its Personnel and Subcontractors hold and maintain a security clearance at the level and for the period as notified by the NDIA to the Partner, from time to time; and
- (b) it is responsible for all costs associated with obtaining and maintaining security clearances for its Personnel and Subcontractors.

39.5 The Partner must, and must ensure that its Subcontractors and Personnel:

- (a) comply with all security requirements applying to Client Data, NDIA Data and NDIA Material in respect of access to and use of Client Data, NDIA Data and NDIA Material, as specified in this Agreement, in addition to any obligation under Law;
- (b) notify the NDIA immediately and comply with all directions of the NDIA if any of them become aware of any contravention of the NDIA's security requirements in relation to either Client Data, NDIA Data or NDIA Material;
- (c) not remove Client Data, NDIA Data or NDIA Material or allow Client Data, NDIA Data or NDIA Material to be removed from the NDIA's premises without the prior written consent of the NDIA;

- (d) not take either Client Data, NDIA Data or NDIA Material or allow Client Data, NDIA Data or NDIA Material to be taken outside of Australia, without the prior written consent of the NDIA; and
- (e) report to CERT Australia, and the NDIA, any breaches of ICT system security that do not involve official information.

39.6 In this clause 39:

- (a) regardless of whether or not the first letter of any word is capitalised, 'asset', 'Australian Government Information Security Manual', 'confidentiality', 'conflict of interest', 'ICT system', 'information security', 'need-to-know', 'official information', 'personnel security', 'physical security', 'protective security', 'resources', 'security classified information', 'security breach', 'security clearance' and 'security incident', have the meaning given to them in the PSPF Australian Government protective security policy framework – glossary of security terms; and
- (b) an obligation of the Partner under any of clauses 39.1, 39.2, 39.3, 39.4 or 39.5 is additional to and does not affect nor derogate from the obligations of the Partner under:
 - (i) one or more of the other of those clauses; and/or
 - (ii) any other provision of this Agreement.

40. **SPECIFIED PERSONNEL**

- 40.1 The Partner must ensure that the Specified Personnel (if any) perform the Activity.
- 40.2 The Partner must notify the NDIA in writing of the name of all Subcontractors and Personnel who will perform the role of Coordinator as described in the SOR as they are engaged or appointed by the Partner from time to time.
- 40.3 The Partner must comply with clause 42 (Vulnerable Persons, Police Checks and Criminal Offences) in relation to all Specified Personnel who perform the role of Coordinator.
- 40.4 The NDIA may, in its absolute discretion, by written notice to the Partner, immediately require the replacement of any Personnel (including Specified Personnel) from work in relation to the Activity. If the NDIA requires the replacement of any Partner Personnel under this clause, the NDIA will provide the Partner with its reasons for requiring the replacement (to the extent that the NDIA is able to provide any information).
- 40.5 The Partner must notify the NDIA in writing as soon as possible if any of the Specified Personnel are no longer available to perform the Activity.
- 40.6 If any Specified Personnel becomes unavailable to perform the Activity or the NDIA requires replacement of any Specified Personnel under clause 40.4, the Partner must, within 5 Business Days, give written notice to the NDIA nominating a member of its Personnel as a replacement (**Replacement Notice**).
- 40.7 A Replacement Notice must:
 - (a) detail the name, qualifications, knowledge and experience of the nominated replacement (**Nominated Replacement**); and
 - (b) attach any documentation reasonably requested by the NDIA.
- 40.8 The NDIA may, in its absolute discretion, accept or reject a Nominated Replacement. If the NDIA accepts a Nominated Replacement, it will notify the Partner in writing and that

person will assume the status of a Specified Personnel and the terms and conditions of this Agreement will apply to that person on and from the date of the NDIA's notice.

- 40.9 If any Personnel's contract period extends beyond the period of the Grant, the Partner acknowledges that the NDIA may not approve further increases to the Grant for that position.

41. **SUBCONTRACTING**

- 41.1 The Partner must not Subcontract the performance of any obligations under this Agreement to a Subcontractor, other than those entities:

- (a) listed in the Schedule; or
- (b) for whom the NDIA has given its prior written approval.

- 41.2 In giving its approval for the engagement of a Subcontractor pursuant to clause 41.1, the NDIA may impose, at its absolute discretion, any terms and conditions it thinks fit.

- 41.3 The Partner must not enter into any Subcontract with another party unless the Partner is satisfied that:

- (a) the arrangement in no way conflicts with or detracts from the rights and entitlements of the NDIA under this Agreement; and
- (b) such party is financially viable and has the relevant expertise necessary for the proper performance of the activity in question.

- 41.4 The NDIA will not give approval for the Partner to Subcontract for the performance of any part of the Activity to a Registered Provider of Supports, unless the Partner provides evidence to the satisfaction of the NDIA:

- (a) that there are exceptional circumstances that mean the Partner has no option but to Subcontract the performance of the Activity to the relevant Subcontractor;
- (b) of the measures the Partner and the Subcontractor will implement in accordance with clause 34.6 to manage the Conflict of Interest between its role as a Subcontractor to the Partner under this Agreement and its role as a Registered Provider of Supports; and
- (c) where applicable, the Subcontractor obtains from a Participant full and appropriate consent for the Subcontractor, in performing the Activity under this Agreement for the benefit of the Participant, to use and refer to Material that is in the Subcontractor's possession as a result of any other disability services that the Subcontractor provides.

- 41.5 The Partner must ensure that any Subcontract for the performance of any part of the Activity is in writing and in particular, without limitation, includes in each Subcontract provisions equivalent to:

- (a) clause 3 (The Partner's obligations in carrying out the Activity);
- (b) clause 4 (Complaints process);
- (c) clause 7 (Obligation to provide reports and plans);
- (d) clause 8 (Archives Act 1983);
- (e) clause 9 (Partner Warranties);

- (f) clause 10 (Cooperation with Personnel and other contractors);
- (g) clause 17 (Spending the Grant);
- (h) clause 18 (Accounting for the Grant);
- (i) clause 30 (Intellectual Property Rights);
- (j) clause 31 (Safekeeping and return of NDIA Material);
- (k) clause 33 (Conflict of Interest);
- (l) clause 34.6 (Declaration and management of Conflicts of Interest);
- (m) clause 35 (Privacy provisions in the NDIS Act);
- (n) clause 36 (Protection of Personal Information);
- (o) clause 37.4 (Confidentiality Deeds);
- (p) clause 39 (Security);
- (q) clause 40 (Specified Personnel);
- (r) clause 41 (Subcontracting);
- (s) clause 42 (Working with Vulnerable Persons);
- (t) clause 44 (Indemnity);
- (u) clause 45 (Insurance);
- (v) clauses 46 and 47 (Termination);
- (w) clause 50 (Work Health and Safety); and
- (x) clause 51 (Compliance with other Laws),

and is responsible for ensuring that the Subcontractor complies with those terms. The Subcontract must also preserve the NDIA's rights under this Agreement (including the nominated clauses), including the right to approve any further Subcontract.

- 41.6 The Partner must, within five (5) Business Days of entering into a Subcontract approved by the NDIA in accordance with clause 41.1(b), or as otherwise requested by the NDIA, provide the NDIA with written notice of the legal name of the Subcontractor and identifying details of the Subcontract.
- 41.7 The Partner must obtain the express consent of the Subcontractor to the disclosure of the Subcontractor's identity (including their Personal Information if the Subcontractor is an individual) to the NDIA. The consent obtained must extend to allow the NDIA to use and disclose the Subcontractor's identity, the existence and nature of the Subcontract for reporting purposes.
- 41.8 The NDIA may revoke its approval of a Subcontractor, on reasonable grounds, by giving written notice to the Partner. On receipt of the notice the Partner must, at its own cost, promptly cease using that Subcontractor and arrange their replacement with Personnel or another Subcontractor acceptable to the NDIA.

- 41.9 If the NDIA revokes its approval of a Subcontractor pursuant to clause 41.8, the Partner remains liable under this Agreement for the past acts or omissions of that Subcontractor as if they were a current Subcontractor.
- 41.10 The Partner agrees to promptly provide a copy of any Subcontract to the NDIA if so requested.
- 41.11 The Partner remains fully responsible for the performance of the Activity and any acts and omissions or other failures of those Subcontractors and their Personnel, notwithstanding that the Partner has entered into any Subcontract.

42. **VULNERABLE PERSONS, POLICE CHECKS AND CRIMINAL OFFENCES**

- 42.1 Unless otherwise specified in the Schedule, this clause 42 applies if the Activity or any part of the Activity involves working with, or contact with, Vulnerable Persons.
- 42.2 Before engaging or deploying any Person (whether as an officer, employee, contractor, or volunteer) in relation to any part of the Activity, the Partner must:
- (a) conduct a Police Check for that Person or where relevant, confirm a similar check by appropriate authorities has occurred;
 - (b) confirm that no Commonwealth, State or Territory law prohibits that Person from being engaged in a capacity where they may have contact with Vulnerable Persons; and
 - (c) comply with all other legal requirements of the place where the Activity, or part of the Activity, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons.
- 42.3 For the purposes of clause 42.2(a) the Partner does not have to conduct a Police Check for a Person where they have a current Working with Children (NSW) check or an equivalent check in another jurisdiction that is current.
- 42.4 The Partner agrees:
- (a) if a Police Check or other relevant check by authorities indicates that a Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Person unless the Partner has conducted and documented a risk assessment of that Person;
 - (b) within 24 hours of becoming aware of a Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 42.5 to 42.6 to determine whether to allow that Person to continue performing the Activity or any part of the Activity; and
 - (c) to document the actions the Partner will take as a result of conducting the risk assessment.
- 42.5 The Partner will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Person with a Serious Record, Criminal or Court Record, to work on any Activity, or any part of an Activity.
- 42.6 In undertaking the Partner's risk assessment under clauses 42.4 and 42.5 the Partner agrees to take into account the following factors:
- (a) whether the Person's Serious Record, Criminal or Court Record is directly relevant to the role the Person will or is likely to perform in relation to the Activity or any part of the Activity;

- (b) the length of time that has passed since the Person's conviction and the Person's record since that time;
- (c) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
- (d) whether the offence involved Vulnerable Persons;
- (e) the nature of the Activity and the circumstances in which the Person will or is likely to have contact with Vulnerable Persons;
- (f) the particular role the Person is proposed to undertake or is currently undertaking in relation to the Activity and whether the fact the Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Person's ability to perform or continue to perform the inherent requirements of that role; and
- (g) the Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Activity or any part of the Activity.

42.7 After taking into account the factors set out in clause 42.6, the Partner agrees to then determine whether it is reasonably necessary to:

- (a) not engage, deploy or redeploy the Person in relation to the Activity or any part of the Activity; or
- (b) remove the Person from working in any position or acting in any capacity in relation to the Activity or any part of the Activity which involves working or having contact with Vulnerable Persons; or
- (c) make particular arrangements or impose conditions under which the Person's role in relation to the Activity or any part of the Activity and, where relevant, contact with Vulnerable Persons is to occur; or
- (d) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.

42.8 If requested by the NDIA, the Partner must promptly provide evidence, in a form the NDIA requires, that the Partner has complied with the requirements of this clause 42.

42.9 The Partner agrees to reflect the Partner's obligations under this clause 42 in all Subcontracts the Partner enters into in relation to the Activity or part of the Activity.

42.10 In this clause 42:

- (a) "**Child**" means an individual under the age of 18;
- (b) "**Criminal or Court Record**" means any record of any Other Offence;
- (c) "**Other Offence**" means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - (i) an apprehended violence or protection order made against the Person; or
 - (ii) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property; or

- (iii) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or
 - (iv) a crime or offence involving violence against or the injury, but excluding the death of a person; or
 - (v) a minor crime or offence involving dishonesty, other than those crimes or offences referred to in paragraph (c) of this clause.
- (d) **"Person"** means each of the Partner's officers, employees, contractors and volunteers;
- (e) **"Police Check"** means a formal inquiry made to the relevant police authority in each Australian State or Territory where the Partner knows the Person has resided, designed to obtain details of the Person's criminal conviction or a finding of guilt in all places (within and outside Australia);
- (f) **"Serious Record"** means a conviction or any finding of guilt for a Serious Offence;
- (g) **"Serious Offence"** means:
- (i) a crime or offence involving the death of a person;
 - (ii) a sex-related offence or a crime, including sexual assault (whether against an adult or Child); Child pornography, or an indecent act involving a Child;
 - (iii) a crime or offence involving dishonesty that is not minor;
 - (iv) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.
- (h) **"Vulnerable Person"** means:
- (i) a Child; or
 - (ii) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

43. **DISABILITY INCLUSION**

43.1 The NDIA is committed to ensuring the principles in the UNCRPD are implemented and that the NDIA is acting in compliance with provisions in the Relevant Disability Laws. The NDIA has an obligation under section 4 of the NDIS Act to support people with disabilities in all their dealings and communications with the NDIA so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.

43.2 To assist the NDIA to comply with its obligations, the Partner must:

- (a) to the extent they apply to the Partner, comply with all Relevant Disability Laws;
- (b) provide all Material under this Agreement in a format that is compliant with WCAG; and

- (c) within five Business Days of the Commencement Date, provide a Disability Employment Strategy that includes details about how the Partner actively supports disability employment including how the Partner:
 - (i) creates a welcoming workplace and fosters an inclusive culture, where people with a disability feel valued and encouraged to participate;
 - (ii) attracts, appoints, retains and develops employees with a disability;
 - (iii) ensures an ongoing commitment to the success of the strategy through the development and use of accountability measures; and
 - (iv) will achieve a target of at least 15% of personnel employed to perform the Activity identifying as a person with disability by 30 June 2018;
- (d) provide regular reports to the NDIA in accordance with the Schedule to the Grant Agreement of its progress in meeting the targets for employment of people with disability set out in its Disability Employment Strategy.

43.3 The Partner must ensure that people with disability are actively involved in the design of the Partner's approach to delivering the Activity and the Partner's governance processes in relation to the Activity.

43.4 For the purposes of this clause 43, in particular the reports required under clause 43.2(d), the following descriptors should be used by Partner Personnel in identifying whether they have a disability:

- (a) breathing difficulties;
- (b) chronic or recurrent pain;
- (c) difficulty gripping or holding objects;
- (d) disfigurement or disformity;
- (e) incomplete use of arms or fingers;
- (f) incomplete use of legs or feet;
- (g) learning or comprehension difficulties;
- (h) long term effects of head injury;
- (i) long term effects of other brain damage;
- (j) long term effects of stroke;
- (k) long term medical condition;
- (l) loss of hearing;
- (m) loss of sight;
- (n) mental illness or condition;
- (o) nervous or emotional condition;
- (p) neurological impairments, e.g. seizures;
- (q) other long term condition;

- (r) restriction in physical activities; or
- (s) speech difficulties.

44. **INDEMNITY**

44.1 The Partner indemnifies the NDIA against the following:

- (a) all liability; and
- (b) all losses, costs, and expenses

(including those set out in clause 44.2 if caused by the circumstances set out in clause 44.3).

44.2 The losses, costs, and expenses against which the Partner indemnifies the NDIA include:

- (a) loss of or damage to the NDIA's property; and
- (b) loss or expense in dealing with any claim against the NDIA (including legal costs on a solicitor/own client basis, the cost of time spent, resources used and disbursements paid).

44.3 For the purposes of clause 44.1, the Partner indemnifies the NDIA in circumstances where the NDIA's liability, loss, cost or expense was caused by:

- (a) the Partner's act or omission in carrying out this Agreement, but only where the Partner was at fault; or
- (b) the Partner's breach of this Agreement; or
- (c) the NDIA's use of the Agreement Material or Existing Material (including where third parties make claims against the NDIA over the ownership of or right to use Intellectual Property Rights or Moral Rights in the Agreement Material or Existing Material).

44.4 The Partner's liability to indemnify the NDIA under this clause 44 is reduced proportionately to the extent that the NDIA's own fault caused the NDIA's loss.

44.5 The NDIA's right to be indemnified under this clause 44 is in addition to any other remedy the NDIA has at law or under this Agreement. However, the NDIA is not entitled to be compensated for more than the NDIA's actual loss.

45. **INSURANCE**

45.1 The Partner agrees to have current and adequate insurance appropriate to the Activity. Any additional requirements are specified in the Schedule.

45.2 If the NDIA asks, the Partner must provide certificates of currency for the insurance and/or a warranty from the Partner's insurer that the policy extends to and will cover potential liability arising under this Agreement.

45.3 This clause 45 continues to operate for as long as any obligations remain in connection with this Agreement.

46. **THE NDIA'S RIGHT TO TERMINATE, OR REDUCE THE SCOPE OF, THE AGREEMENT**

46.1 The NDIA can terminate this Agreement, or reduce its scope, without cause at any time by giving the Partner written notice.

- 46.2 If, under clause 46.1, the NDIA terminates this Agreement or reduces its scope, the NDIA is only liable to the Partner for:
- (a) payments that were due to the Partner before the date of termination or reduction;
 - (b) reasonable costs the Partner incurs as a direct result of the termination or reduction (but subject to clauses 46.4, 46.5 and 46.6); and
 - (c) providing the facilities and assistance required under this Agreement before the effective date of termination or reduction.
- 46.3 If the NDIA terminates or reduces the scope of this Agreement under clause 46.1, the Partner must:
- (a) immediately stop carrying out the Partner's obligations under this Agreement (or, in the case of a reduction in scope, the obligations removed by the reduction);
 - (b) immediately do everything the Partner can to lessen all losses, costs and expenses that the Partner may suffer from the termination or reduction;
 - (c) satisfy its obligations in relation to transition out as specified in this Agreement; and
 - (d) repay the Grant or the relevant part of it as if the NDIA had given the Partner a notice to repay under clause 19.2.
- 46.4 The NDIA is only required to pay the Partner the reasonable costs in clause 46.2(b) if the Partner:
- (a) complies strictly with this clause 46; and
 - (b) provides written evidence to satisfy the NDIA of the amounts claimed.
- 46.5 The NDIA is not liable to pay the Partner compensation for any loss of profits or benefits that the Partner would have received had the termination or reduction not occurred.
- 46.6 The NDIA will not be liable to pay any amount under clause 46.2(a) or 46.2(b) in respect of an Activity which would, when added to any Grant amount already paid to the Partner under this Agreement for that Activity, together exceed the Grant amount set out in the Schedule for that Activity.
- 46.7 If the NDIA reduces the scope of this Agreement under this clause 46, the NDIA's liability to pay the Grant or provide NDIA Material or facilities and assistance, in the absence of agreement to the contrary, abates proportionately to the reduction in scope of the Activity.

47. **THE NDIA'S RIGHT TO TERMINATE FOR THE PARTNER'S DEFAULT OR FINANCIAL CIRCUMSTANCES**

- 47.1 The NDIA can terminate this Agreement immediately by notice to the Partner if any of the following occur:
- (a) the Partner breaches any of the Partner's obligations under this Agreement and the NDIA considers that the breach cannot be rectified;
 - (b) the Partner breaches any of the Partner's obligations under this Agreement and the Partner does not rectify the breach within 10 Business Days after the NDIA gives the Partner a notice to rectify it;

- (c) the NDIA is satisfied on reasonable grounds that the Partner is unable or unwilling to satisfy the terms of this Agreement;
- (d) the Partner breaches any warranty given under this Agreement;
- (e) the Partner engages in any conduct that the NDIA determines, in its absolute discretion, causes or may cause imminent and serious risk to the health or safety of a person, or to the reputation, viability or financial sustainability of the Scheme;
- (f) the Partner does not, by the Activity Start Date, obtain or at any time during the Activity Period, fails to maintain or has withdrawn, registration in accordance with **[clause 3.2.3 of the SOR *Note to Applicants: This will be updated to refer to the relevant clause of the SOR with the registration requirements for the Service Areas covered by this Grant Agreement.*]**;
- (g) the Partner fails to meet any of the Level 1 Performance Indicators on two or more consecutive occasions or on four or more occasions in any 12 month period;
- (h) the Partner fails to meet:
 - (i) the same Level 2 Performance Indicator on three or more occasions in six months; or
 - (ii) any Level 2 Performance Indicator on six occasions in six months; or
- (i) **[Option 1 and 2a: the Partner breaches clause 34.1(b);]**
- (j) a Conflict of Interest cannot be resolved to the NDIA's reasonable satisfaction;
- (k) in relation to this Agreement or Activity, the Partner breaches a law of the Commonwealth, or of a State or Territory;
- (l) the NDIA considers that the NDIA's decision to approve the Grant was affected by a statement in the Partner's application for Grant that was incorrect, incomplete, false or misleading;
- (m) the Partner is unable to pay all of its debts as and when they fall due;
- (n) the Partner has come under external administration, or has applied to come under external administration, or has received a notice requiring the Partner to show cause why the Partner should not come under external administration. This includes any external administration referred to in:
 - (i) Chapter 5 of the *Corporations Act 2001* (Cth), or equivalent provisions in State or Territory legislation concerning incorporated associations;
 - (ii) Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
- (o) the Partner has become bankrupt or has entered into a scheme of arrangement with creditors.

47.2 If the NDIA terminates this Agreement under this clause 47, the NDIA can recover from the Partner as a debt due to the Commonwealth any part of the Grant that:

- (a) the NDIA considers the Partner has not spent in accordance with the Agreement; or
- (b) the Partner has not legally committed for spending under the Agreement and that is not payable by the Partner as a current liability by the time the notice is given.

47.3 If the NDIA purports to terminate the Agreement under this clause 47 (The NDIA's Right to Terminate for the Partner's Default or Financial Circumstances) and that termination is determined by a competent authority not to be properly a termination under this clause 47, then that termination by the NDIA will be deemed to be a termination under clause 46 (The NDIA's Right to Terminate, or Reduce the Scope of the Agreement) effective from the date of the notice of termination referred to in clause 47.1.

47.4 This clause 47 does not affect the NDIA's other rights under this Agreement, or otherwise at law.

48. **TRANSITION OUT**

48.1 In addition to its obligations to provide the Transition Out Services in accordance with the SOR, at any time during the Activity Period or the Transition Out Period, the Partner must, at its own cost, provide the NDIA with any assistance and information reasonably requested by the NDIA to:

- (a) allow the Activity to continue without interruption or adverse effect in the course of being transferred to a new Partner;
- (b) allow the NDIA to appoint a new Partner of the Activity (including providing the NDIA with information or materials to form part of a request for tender or request for quotation being prepared for or on behalf of the NDIA); and
- (c) facilitate the orderly transfer of responsibility for and conduct of the Activity to the NDIA or a new Partner appointed by the NDIA.

49. **DISPUTE RESOLUTION**

49.1 Unless otherwise specified in the Schedule, if a dispute or difference (called collectively a "dispute" in this clause 49, and in clauses 49.5 and 49.7) arises between the Partner and the NDIA, both parties agree to deal with the dispute in the following way:

- (a) the party who claims that a dispute exists will give the other party a notice setting out the nature of the dispute;
- (b) the NDIA Representative and the Partner Representative will then try to resolve the dispute by negotiation, within 20 Business Days from when the notice is given, and for that purpose may authorise persons to act for them.

49.2 If the dispute is not resolved by the NDIA Representative and the Partner Representative within 20 Business Days from when the notice is given, the dispute must be referred to the NDIA Executive Representative and the Partner Executive Representative.

49.3 If the dispute is not resolved within 10 Business Days from when it is referred to the NDIA Executive Representative and the Partner Executive Representative, a party may submit the dispute to a form of alternative dispute resolution (including mediation).

49.4 A party cannot start legal proceedings in relation to the dispute unless:

- (a) the negotiations fail to resolve the dispute within 30 Business Days of when the notice is given; or
- (b) where a party submits the dispute to alternative dispute resolution under clause 49.2 — the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed in writing before the expiry of the 20 Business Days).

- 49.5 A party does not need to follow the dispute resolution procedures set out in clauses 49.1 to 49.4 if they are seeking urgent interlocutory relief from a court.
- 49.6 The NDIA need not follow the procedures set out in clauses 49.1 to 49.4 in relation to actions the NDIA takes under clauses 15 to 19 (which deal with the Grant), 46 (Termination, or reduction in scope, where the Partner is not in default) or 47 (Termination for the Partner's default or for the Partner's financial circumstances).
- 49.7 Whether or not a dispute exists, each party must continue to perform its obligations under this Agreement.

50. **WORK HEALTH AND SAFETY**

50.1 **Work Health and safety obligations**

The Partner, in connection with the performance of the Activity, must:

- (a) comply, and ensure that all Personnel employed or engaged by it or on its behalf comply, with all obligations under the WHS Law;
- (b) comply, and ensure that all Personnel employed or engaged by it or on its behalf, comply, with the Partner's Work Health and Safety Plan (**WHS Plan**) required by clause 3.3 of the SOR;
- (c) provide appropriate information, training, instruction and supervision to all Personnel employed or engaged by it or on behalf of it, as is necessary to carry out the Activity safely and in accordance with obligations under the WHS Law;
- (d) have systems in place to identify, assess and eliminate risks and hazards at the premises locations at which it undertakes the Activity, which meet obligations under the WHS Law;
- (e) have systems in place to identify, assess and eliminate risks and hazards which may arise in the delivery of the Activity outside of the premises locations, which meet obligations under the WHS Law;
- (f) ensure that, where work health and safety risks and hazards cannot be eliminated, the risks and hazards are adequately controlled in a way which complies with obligations under the WHS Law;
- (g) ensure that the health and safety of other persons is not put at risk in connection with the performance of the Activity;
- (h) immediately notify the NDIA, in any form required by the NDIA, of any notifiable incidents or accidents (being an incident which is notifiable under WHS Law), injuries or damage to property of a serious nature that occurs in connection with the Agreement; and
- (i) provide additional information, reports or assistance to the NDIA relating to any accident, notifiable incident, injury or damage to property, as required by the NDIA or the WHS Law.

50.2 **Assistance to the NDIA**

The Partner, in connection with the Agreement, must:

- (a) assist the NDIA (including by way of provision of information and documents), to comply with the WHS Law applicable to the NDIA in relation to the Activity; and

- (b) promptly comply with any directions given by the NDIA that the NDIA considers are necessary for the NDIA:
 - (i) to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons; and/or
 - (ii) to comply with any obligations under the WHS Law applicable to it in relation to the Activity.

51. **COMPLIANCE WITH OTHER LAWS**

51.1 The Partner agrees, in carrying out this Agreement, to comply with any laws and warrants that it will not cause the NDIA to breach any laws, in particular:

- (a) the NDIS Act;
- (b) *the Crimes Act 1914*;
- (c) *the Racial Discrimination Act 1975*;
- (d) *the Sex Discrimination Act 1984*;
- (e) *the Disability Discrimination Act 1992*;
- (f) *the Workplace Gender Equality Act 2012*;
- (g) *the Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;
- (h) *the Privacy Act*;
- (i) *the Freedom of Information Act 1982*;
- (j) *the Age Discrimination Act 2004*;
- (k) *the Competition and Consumer Act 2010*;
- (l) *the Fair Work Act 2009*;
- (m) *the Criminal Code Act 1995*;
- (n) *WHS Law applicable to the Partner*; and
- (o) *the Auditor-General Act 1997*.

51.2 The Partner acknowledges that unauthorised disclosure of information held by the Commonwealth is subject to the sanction of criminal law under sections 70 and 79 of the *Crimes Act 1914* and section 91.1 of the Schedule to the *Criminal Code Act 1995*.

51.3 The Partner acknowledges that giving false or misleading information to the NDIA is a serious offence under section 137.1 of the Schedule to the *Criminal Code Act 1995* (Cth).

52. **RELATIONSHIP BETWEEN THE PARTIES**

52.1 This Agreement does not make the Partner the NDIA's partner, agent or employee.

52.2 The Partner must not misrepresent the Partner's relationship with the NDIA.

52.3 Neither party is authorised to legally commit or represent the other party in any way.

52.4 Neither party may attempt to bind or represent the other in any way.

53. IF PARTNER ACTS AS TRUSTEE OF A TRUST

53.1 If the Partner acts as trustee of a trust, in relation to this Agreement:

- (a) it is liable both personally, and in its capacity as trustee of that trust;
- (b) it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise the assets of that trust, or its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Agreement;
- (c) it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust;
- (d) it represents and warrants that:
 - (i) such trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of that trust;
 - (iii) it has entered into this Agreement as such trustee, and it has the power to enter into and perform its obligations under this Agreement;
 - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (v) Conflict of Interest and duty affecting it as such trustee (and its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and
 - (vi) no breach of the relevant trust deed exists or would arise as a result of entering into this Agreement;
- (e) it must promptly notify the NDIA in the event of any change which affects the representations and warranties in clause 53.1(d) and
- (f) it acknowledges and agrees that the NDIA has entered into the Agreement in reliance on the representations and warranties in clause 53.1(d).

54. ENTIRE AGREEMENT

54.1 This Agreement comprises the entire agreement between the parties about the subject matter of this Agreement. It supersedes all prior communications, negotiations and agreements, whether oral or written, about the subject matter of this Agreement.

55. GOVERNING LAW AND JURISDICTION

55.1 This Agreement is governed by the law of the Australian Capital Territory.

55.2 Each party submits to the jurisdiction of the courts of the Australian Capital Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

56. EXECUTION OF DOCUMENT

56.1 This Agreement may be executed in counterparts. All executed counterparts constitute one document.

57. **VARIATION OF THIS AGREEMENT**

57.1 This Agreement may only be varied in writing, signed by both parties.

58. **ENFORCEMENT OF PART DOES NOT PREVENT ENFORCEMENT OF ANOTHER PART**

58.1 The NDIA is not prevented from enforcing any part of this Agreement merely because:

- (a) the NDIA did not enforce that part on an earlier occasion; or
- (b) the NDIA does not enforce another part.

59. **THE PARTNER MUST NOT ASSIGN THE PARTNER'S RIGHTS**

59.1 The Partner must not assign the Partner's rights under this Agreement without first getting the NDIA's written consent.

59.2 In this clause 59, "assign" includes novate or transfer, in whole or in part.

60. **EFFECT OF INVALIDITY OF PART**

60.1 If part of this Agreement is found to be invalid, the rest of the Agreement continues in effect as if the invalid part were excluded.

61. **CERTAIN CLAUSES CONTINUE AFTER THIS AGREEMENT ENDS**

61.1 The termination or expiry of this Agreement, for any reason, does not affect:

- (a) the continued operation of the following clauses:
 - (i) clause 3.2(k) (The Partner's obligation to provide information and documents);
 - (ii) clause 5 (The Partner's obligation to acknowledge the NDIA's support);
 - (iii) clause 7 (The Partner's obligation to keep records and provide reports);
 - (iv) clause 17 (Spending the Grant);
 - (v) clause 18 (Accounting for the Grant);
 - (vi) clause 19 (Repaying the Grant);
 - (vii) clause 20 (Organisation is registered or required to be registered for GST);
 - (viii) clause 21 (Assets);
 - (ix) clause 30 (Intellectual Property Rights);
 - (x) clause 31 (Safekeeping and return of NDIA Material);
 - (xi) clause 35 (Privacy provisions in the NDIS Act);
 - (xii) clause 36 (Protection of personal information);
 - (xiii) clauses 37 and 38 (Disclosure of Information);
 - (xiv) clause 39 (Security);
 - (xv) clauses 23 to 29 (NDIA IT Systems);

- (xvi) clause 42 (Vulnerable Persons, Police Checks and Criminal Offences);
 - (xvii) clause 44 (Indemnity);
 - (xviii) clause 45 (Insurance);
 - (xix) clauses 46 and 47 (Termination);
 - (xx) clause 48 (Transition Out);
 - (xxi) clause 53 (If Partner acts as trustee of a trust); or
- (b) the continued operation of any other clauses that by their nature, survive termination or expiry.

62. PRIORITY OF DOCUMENTS

62.1 If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- (a) the Terms and Conditions;
- (b) the Schedule;
- (c) the SOR;
- (d) any other attachment to the Agreement.

63. NOTICES

63.1 A notice under this Agreement is ineffective unless it is in writing.

63.2 Also, a notice under this Agreement is ineffective unless it meets the following requirements:

- (a) where the Partner gives it to the NDIA—the Partner addresses it, and forwards it, to the address specified in Item 1 of the Schedule, or as the NDIA otherwise direct;
- (b) where the NDIA gives it to the Partner—the NDIA addresses it, and forwards it, as specified in Item 1 of the Schedule, or as the Partner otherwise directs; and
- (c) in either case, it is signed by, or on behalf of, the person giving it.

63.3 A notice may be given:

- (a) by hand delivery; or
- (b) by prepaid post; or
- (c) by electronic transmission, including by email or by facsimile.

63.4 A notice is treated as having been given if:

- (a) delivered by hand—on delivery to the relevant address;
- (b) sent by post—on delivery to the relevant address, or 5 Business Days after it was posted, whichever is earlier;
- (c) transmitted electronically—when received by the addressee.

64. **INTERPRETATION: GENERAL**

64.1 In this Agreement:

- (a) headings are for convenience only and have no effect on interpretation; and
- (b) footnotes are for information only and are not part of the Agreement; and
- (c) a provision is not to be interpreted against a party merely because that party proposed it.

64.2 Also in this Agreement, unless the contrary appears:

- (a) where a word or phrase has a defined meaning, any grammatical form of that word has a corresponding meaning; and
- (b) a reference to legislation or a legislative provision includes a reference to any amendment, substitution or re-enactment of that legislation or provision; and
- (c) 'includes' in any of its forms is not a word of limitation; and
- (d) a reference to \$ or dollars is a reference to Australian currency; and
- (e) the singular includes the plural and vice versa.

65. **DEFINED TERMS**

65.1 In this Agreement, unless the contrary appears:

- (a) **the NDIA** means the legal entity set out in the Schedule and includes the NDIA's officers, delegates, employees, other contractors and agents; and
- (b) **the Partner** means the legal entity set out in the Schedule, and includes the Partner's officers, employees, agents, volunteers, Subcontractors, and successors.

65.2 Also in this Agreement, unless the contrary appears:

AAT means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975* (Cth).

Access Request has the meaning given in section 18 of the NDIS Act.

Activity or Activities means any tasks, activities, services or other purposes for which this Grant is provided. The Activity is described in the SOR.

Activity End Date means the date specified in the Schedule by which the Activities must be completed.

Activity Period means the period specified in the Schedule during which the Activities must be completed.

Activity Start Date means the date specified in the Schedule by which the Activities must start.

Administrative Staff has the meaning given in the SOR.

Agreement comprises these Terms and Conditions, including the Schedule, and any documents incorporated by reference into these Terms and Conditions or the Schedule.

Agreement Material means all Material:

- (a) which the Partner brings into existence in performing this Agreement; and
- (b) copied or derived from Material referred to in paragraph (a).

Asset means any item of personal, real or intangible⁴ property, with a price or value of \$10,000 or more, inclusive of GST, and which has been created, acquired or leased wholly or in part with the Grant, except Intellectual Property Rights and licences provided for in clause 30.

Australian Privacy Principle has the meaning given to it in the Privacy Act.

Bilateral Agreement means **[Note to Applicants: A reference to the Bilateral Agreement for relevant jurisdiction will be inserted. The Bilateral Agreements are available at:**

Victoria: <http://www.coag.gov.au/node/526>

South Australia: <https://www.coag.gov.au/node/530>

ACT: <http://www.ndis.gov.au/document/schedule-e-bilateral-agreement-ndi>

Queensland: <https://www.coag.gov.au/node/532>].

Budget means the Budget approved by the NDIA following submission of a draft Budget by the Partner in accordance with the Schedule.

Business Continuity Plan means the plan to be submitted by the Partner in accordance with the SOR and the Schedule.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in the place where the relevant act is to be done.

Carer has the meaning given in section 9 of the NDIS Act.

CERT Australia means the National Computer Emergency Response Team established by the Commonwealth Attorney-General's Department, details of which are available at <https://www.cert.gov.au/about>.

Claim includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law (including negligence) or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Client means an individual or organisation to whom the Partner provides the Services, including Participants.

Client Data means all relevant data and information relating to a Client, in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment, including the NDIA IT System, by or on behalf of the NDIA or the Partner and includes any data and information created as a result of the Activity (excluding any Agreement Material in which intellectual property is owned by the Partner or which the Partner is licensed to continue to use after the end of the Activity Period). Client Data that the Partner has access to or

⁴ Intangible assets are those assets that lack a physical presence, but are constituted by a right enforceable in a court of law or equity. Intellectual property is an example of intangible property

collects in, or in relation to, the performance of the Agreement may contain Protected Information as defined in the NDIS Act.

COAG means Council of Australian Governments.

Commonwealth Auditor-General means the holder of the position including members of staff of the Auditor General's office.

Commonwealth Record has the meaning in the *Archives Act 1983* (Cth), which at the Commencement Date is:

Commonwealth record means:

- (a) a record that is the property of the Commonwealth or of a Commonwealth institution; or
- (b) a record that is to be deemed to be a Commonwealth record by virtue of a regulation under subsection (6) or by virtue of section 22;

but does not include a record that is exempt material or is a register or guide maintained in accordance with Part VIII.

For the purposes of this Agreement, Commonwealth Records include all information recorded by the Partner in the NDIA IT System and all Client Data.

Commencement Date means the date on which the Agreement was signed by the last party to do so.

Community Capacity Building Plan means the plan to be submitted by the Partner in accordance with the SOR and the Schedule.

Confidential Information means information that:

- (a) is by its nature is confidential and the parties know, or ought to know is confidential;
- (b) is described in the Schedule;
- (c) the parties agree in writing after the date of this Agreement is confidential information for the purposes of this Agreement; or
- (d) is Secret and Sacred Material.

Conflict of Interest includes any perceived or actual conflict between:

- (e) the duties of the Partner or any of its Personnel under this Agreement; and
- (f) any:
 - (i) duties of the Partner or any of its Personnel to any third party; or
 - (ii) any personal, business, financial or other interest that the Partner or any of its Personnel may have in relation to any of the Activity (or any part of the Activity).

A Conflict of Interest includes any situation where the Partner or one of its Related Bodies Corporate, another person or entity in a position to exercise influence over the Partner or Subcontractors becomes a Registered Provider of Supports during the Activity Period.

Coordinator means **[Option 1:** any Local Area Coordinator or ECEI Coordinator **]** **Option 2a** a Local Area Coordinator **]** **Option 2b** an ECEI Coordinator**]**

Draft Transition Out Plan means the plan to be submitted by the Partner in accordance with SOR and the Schedule.

[Note to applicants: The following definitions will be included for Options 1 and 2b:

ECIA Best Practice Guidelines means Early Childhood Intervention Australia's National Guidelines for Best Practice in Early Childhood Intervention.

ECEI means Early Childhood Early Intervention.

ECEI Coordinator means the Personnel providing the ECEI Services to children aged 0-6 years and their families.

ECEI Services means the services to be performed by the Partner, including the Activities and all other tasks or functions, in accordance with Annex E to the SOR. **]**

Entry Type has the meaning given in the SOR.

Establishment Funds means the part of the Grant attributable to the Establishment Services described in the SOR.

Existing Material means all Material in existence before the execution of this Agreement or developed independently of this Agreement that is:

- (a) incorporated in the Agreement Material; or
- (b) supplied with, or as part of, the Agreement Material; or
- (c) required to be supplied with, or as part of, the Agreement Material.

Family Service and Support Information gathering tool means the tool provided to the Provider by the NDIA for the purpose of gathering information about the family of a child who the Provider is assisting to make an Access Request.

Final Transition Out Plan means the plan to be submitted by the Partner in accordance with SOR and the Schedule.

Full Plan or Full Scheme Plan means a Plan that has been approved by the NDIA that may have been developed by a Participant working with the Partner in accordance with the requirements in the SOR, NDIA Operational Guidelines and the NDIS Act and Rules.

General in reference to a Participant has the meaning given in the SOR.

Getting Plan Ready form means the form available at <http://ndis.gov.au/participants/getting-plan-ready>.

Grant means the money, or any part of it, paid to the Partner as set out in Item 5 of the Schedule.

Harmful Code means any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of the NDIA IT System.

ILC means information, linkages and capacity building.

Initial Plan means a Plan developed for a Participant by the NDIA using the information in the Initial Plan Questionnaire submitted for that Participant.

Initial Plan Questionnaire means the questionnaire that the Partner will assist a Participant to complete and submit to the NDIA to enable the NDIA to develop an Initial Plan for the Participant. The NDIA will provide the questionnaire form to the Partner.

[Note to applicants: This definition will be included for Options 1 and 2b:]

Initial Supports means supports as described in clause 5.1.1 of Annex 2 to the SOR provided to a child by the Provider using the ECEI Best Practice Guidelines prior to the child's eligibility for access to the Scheme being determined by the NDIA.]

Intellectual Property Rights means all copyright, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields, but does not include Moral Rights.

Intensive in reference to a Participant has the meaning given in the SOR.

Interest means interest calculated at an interest rate equal to the general interest charge rate as specified in section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis.

Internal Review means a review of a decision made by the NDIA under the NDIS Act that is undertaken by the NDIA.

IT Hardware has the meaning given in the SOR.

LAC means Local Area Coordination.

LAC Services means the services to be performed by the Partner, including the Activities and all other tasks or functions, in accordance with Annex D to the SOR.

Large Residential Centre means a facility that provides accommodation for a large group of people with a disability on one site in a congregate setting.

Laws includes:

- (a) any law in force applying to the performance of the Activity or this Agreement;
- (b) the common law and equity;
- (c) any statute, act of Parliament, proclamation, order in the NDIA, regulation, rule, by-law, ordinance, subordinate legislation or other regulatory measures; and
- (d) any certificate, licence, permit, authorisation, accreditation, code of practice, code of conduct or other requirement which is issued under an instrument referred to in paragraph (c).

[Note to applicants: This definition will be included for Options 1 and 2a: Local Area Coordinator means the Personnel providing LAC Services to Participants and their families and carers.]

Loss means any loss, damage, cost or expense (including reasonable legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Mainstream Services means services that are provided or available to the population in general and not just to people with disability.

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

Monthly Funds means the part of the Grant attributable to the Activities the Partner is required to undertake under the SOR, other than Establishment Funds.

Moral Rights includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship; and
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed.

National Complaints Team means the NDIA Personnel responsible for the receipt of complaints that are not or cannot be resolved through the Partner's locally based resolution practices.

National Standards for Disability Services or NSDS means the instrument set out in the *Disability Services Act (National Standards for Disability Services) Determination 2014* (Cth).

NDIA Complaints and Feedback Policy means the NDIA's policy for responding to and addressing complaints and feedback available in the SOR.

NDIA Data means all data and information relating to the NDIA, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment, including the NDIA IT System, by or on behalf of the NDIA. NDIA Data that the Partner has access to or collects in, or in relation to, the performance of the Agreement may contain Protected Information as defined in the NDIS Act.

NDIA Delegate or Delegate means NDIA Personnel to whom powers under the NDIS Act are delegated in accordance with the NDIS Act.

NDIA Executive Representative means the person identified in the Schedule.

NDIA IT System means the information technology system to which the NDIA will provide the Partner access for the purpose of the Partner performing the Activity.

NDIA Material means any Material that the NDIA gives the Partner for the purposes of this Agreement or that is copied or derived from that Material, but does not include Agreement Material.

NDIA Operational Guidelines means the guidelines developed by the NDIA based on the NDIS Act and relevant Rules and available on the NDIA's website at <http://www.ndis.gov.au/about-us/operational-guidelines>.

NDIA Representative means the person identified in the Schedule or as notified by the NDIA to the Partner from time to time..

NDIS Act means the *National Disability Insurance Scheme Act 2013* (Cth).

Participant has the meaning given in section 9 of the NDIS Act, or where the context requires, a person who may be eligible to make an Access Request under the NDIS Act.

Performance Indicator means the standards the Partner must achieve in providing the Services as set out in the SOR.

Performance Report means reports about the Partner's performance provided by the NDIA to the Partner.

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

Personnel means in relation to a party, any natural person who is an employee, officer, agent, or professional adviser of that party, and in the case of the Partner, of any Subcontractor.

Phasing means the planned intake of Participants entering the Scheme as provided for in Bilateral Agreement.

Phasing Date means the date Participants in a Service Area are due to phase into the Scheme as set out in the Bilateral Agreement.

Plan means a Participant's Plan for the purpose of the NDIS Act and Rules.

Planning Conversation Tool means the tool provided to the Partner by the NDIA for the purpose of undertaking Planning Conversations with Participants.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Commissioner means the Australian Privacy Commissioner established under the *Australian Information Commissioner Act 2010* (Cth).

Protected Information has the meaning given in section 9 of the NDIS Act.

Protective Security Policy Framework means the Australian Government Protective Security Policy Framework, as amended or replaced from time to time.

Partner Executive Representative means the person identified in the Schedule.

Partner Representative means the person identified in the Schedule or as notified by the Partner to the NDIA from time to time.

reasonable and necessary refers to the reasonable and necessary supports to be set out in a Participant's Plan that will be funded under the Scheme in accordance with the NDIS Act and Rules.

Records Management Instructions means the instructions for management of records provided to the Partner by the NDIA from time to time.

Registered Provider of Supports has the meaning given to the term "Registered Provider of Supports" in section 9 of the NDIS Act.

Related Body Corporate has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

Relevant Disability Laws means all laws, regulations, rules, charters and standards related to the involvement or engagement of persons with disabilities in an employment context including the following:

- (a) National Disability Agreement;
- (b) *National Disability Insurance Scheme Act 2013* (Cth);
- (c) *Disability Discrimination Act 1992* (Cth) and related legislation;
- (d) *Disability Services Act 1986* (Cth) and related legislation;
- (e) Equal Employment Opportunity legislation including the *Workplace Gender Equality Act 2012* (Cth);
- (f) *Workplace Health and Safety Act 2011* (Cth);
- (g) *Fair Work Act 2009* (Cth);
- (h) other applicable State and Territory legislation including the *Charter of Human Rights and Responsibilities Act 2006* (Vic); and
- (i) *Public Service Act 1999* (Cth) and related legislation.

Rules means the rules made under section 209 of the NDIS Act.

Schedule means the Schedule in Attachment 1 to this Agreement.

Scheme means the National Disability Insurance Scheme as defined in section 9 of the NDIS Act.

Scheme Objectives has the meaning given in the SOR.

Secret and Sacred Material means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

Security Classified Information means information classified as confidential, protected, secret or with any higher classification in the Protective Security Policy Framework.

Self-Direct is an approach that gives people with disability greater control over their support and their lives. It is often described as self-directed planning, self-directed funding and self-directed support. Self-directed support allows the funding for the supports in the Participant's Plan to be managed through a service Partner, a financial intermediary or via a direct payment if the Participant requests to self-manage the funding.

Statement of Requirements or **SOR** means the document at Attachment 2.

Service Area means a service area listed in the Schedule.

Services or **NDIS Partners in the Community Services** means the Activity, including **[Option 1: LAC Services and ECEI Services / Option 2a LAC Services / Option 2b ECEI Services]**.

Specified Acts means any of the following acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, adapting or exploiting all or any part of the Agreement Material, with or without attribution or authorship;
- (b) supplementing Agreement Material with any other Material;

(c) using the Agreement Material in a different context to that originally envisaged, but does not include false attribution of authorship.

Specified Personnel means:

- (a) the Partner's Subcontractors and Personnel specified in the Schedule; and
- (b) any of the Partner's Subcontractors and Personnel who perform the role of Local Area Coordinator as notified to the NDIA from time to time.

Standard Operating Procedures means the procedures developed by the Partner in accordance with the SOR.

Strategic Analysis Report means the reports the Partner is required to submit to the NDIA in accordance with the Schedule and the SOR.

Subcontractor means any contractor, person or organisation who is engaged by the Partner to undertake the relevant Activity (and any of that contractor's, person's or organisation's employees, agents and Subcontractors). 'Subcontracts' has a corresponding meaning.

Supported in reference to a Participant has the meaning given in the SOR.

Team Leader has the meaning given in the SOR.

Terms and Conditions means all clauses of this document.

Training Materials means the materials provided by the NDIA to the Partner for the purpose of training Partner Personnel.

Transition Out Period means the period of time defined in the SOR during which the Partner must deliver the Transition Out Services.

UNCRPD means the United Nations Convention on the Rights of Persons with Disabilities.

WCAG means the Web Content Accessibility Guidelines (WCAG) version 2.0 or any successor version.

WHS Law means the *Work Health and Safety Act 2011* (Cth), any applicable state or territory work health and safety legislation and any legislative instruments registered under any of those Acts as amended from time to time.

Workplace Trainer has the meaning given in the SOR.