

SERVICES AGREEMENT

EIS Health Limited trading as Central and Eastern Sydney PHN
ABN: 68 603 815 818

CESPHN INTERNAL INFORMATION ONLY

Contract Name	
The Provider	

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Services Agreement

Parties

EIS Health Limited trading as Central and Eastern Sydney PHN ABN: 68 603 815 818	(CESPHN)
[The Provider named in Item B.1 of the schedule] ABN: 66122669318	(Provider)

Recitals

- A. CESPHN wishes to engage the Provider and the Provider agrees to provide the Services upon and subject to the terms and conditions contained in this Agreement.

Operative Provisions

Definitions and Interpretation

Definitions

In this Agreement, unless the context otherwise requires:

- (a) **Activities** means activities outlined in Item A, Item B, Item D and Item F in the Schedule;
- (b) **Children** means Persons under the age of 18 years as defined in the *Child Protection (Working With Children) Act 2012 (NSW)* and *Child Protection (Working With Children) Regulation 2013 (NSW)*;
- (c) **Child-Related Personnel** means officers, employees, contractors (including subcontractors), agents and volunteers of the Provider involved with the Services who as part of that involvement may interact with Children;
- (d) **Commencement Date** means the commencement date set out in Item A.3 of the Schedule to this Agreement;
- (e) **Commonwealth Funding Agreement** means the relevant funding agreement between CESPHN and the Commonwealth Department of Health, as varied from time to time;
- (f) **Completion Date** means the date (if any) specified in Item A.4 of the Schedule to this Agreement or another date as agreed in writing between the parties;
- (g) **Confidential Information** includes, but is not limited to, matters not generally known outside CESPHN, such as information relating to the general business operations with CESPHN including:
 - i. this Agreement;
 - ii. trade secrets, know-how and specifications in respect of CESPHN's operations;
 - iii. third party information disclosed to CESPHN in confidence;
 - iv. personal information disclosed to CESPHN or the Contractor in respect of service activities;
 - v. medical records and health information;
 - vi. any other information which by its nature could reasonably be expected to be regarded as confidential, including financial and funding information of CESPHN.

- (h) **Funding** means the funding to be provided by CESPHN to the Provider as set out in Item C.1 of the Schedule;
- (i) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- (j) **Intellectual Property Rights** means all industrial and intellectual property rights both in Australia and throughout the world, whether registered or not and whether now or devised in the future, and for the duration of the rights including any:
- i. patents, copyright, registered or unregistered marks or service marks, trade names, brand names, indications of source or appellations of origin, registered designs and commercial names and designations, circuit layouts and database rights;
 - ii. ideas, processes, inventions, discoveries, trade secrets, know-how, computer software (both source code and object code), confidential information and scientific, technical and product information; and
 - iii. right to apply for or renew the registration of any such rights;
- (k) **Invoice** means a tax invoice which complies with the GST Act and which sets out, in such detail as may be reasonably required by CESPHN, the Services performed by the Provider during the period to which the invoice relates and the amount of the Funding claimed by the Provider;
- (l) **Material** means all CESPHN and Services client data, documents, discussion papers, sketches, research reports, survey results, diagrams, and other material in existence prior to the commencement of this Agreement.
- (m) **Nominated Person** means the nominated person set out in Item B.6 of the Schedule;
- (n) **Personnel** means managers, subcontractors, consultants, suppliers, employees, agents and other persons engaged by the Provider;
- (o) **Provider** means the service provider named in Item B.1 of the Schedule;
- (p) **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. 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; or
 - iv. an attempt to commit a crime or offence described in i to iii above;
- (q) **Serious Record** means a conviction or any finding of guilt regarding a Serious Offence;
- (r) **Services** means the services set out in Items A.2 of the Schedule;
- (s) **Site or Sites** means the site or sites set out in Item B.5 of the Schedule;
- (t) **Term** means the term of this Agreement commencing on the Commencement Date and ending on the Completion Date, unless extended or terminated in accordance with the provisions of this Agreement;

- (u) **Vulnerable Person** means a child, or an individual aged 18 years or above who is or may be unable to take care of themselves or is unable to protect themselves against harm or exploitation by any reason, including age, illness, trauma or disability, pregnancy, the influence, or use, of alcohol, drugs or substance use or any other reason.
- (v) **WHS Law** means, as relevant:
 - v. the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW); and
 - vi. the Work Health and Safety Act 2011 (Cth) and the Work Health and Safety Regulation 2011 (Cth),as amended, replaced or updated from time to time;

Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing a gender include any gender and words importing the singular number include the plural and vice versa;
- (b) a reference to a person includes a reference to a corporation, firm, authority, government or government Provider;
- (c) a reference to any party to this Agreement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (d) headings are for convenience only and do not affect the construction of this Agreement;
- (e) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (f) Where the day upon which any act, matter or thing is to be done is not a business day, then such act, matter or thing must be done on the immediately preceding business day.

Order of Priority

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

- (a) The Schedule;
- (b) The terms of this Agreement;
- (c) The Annexures to the Schedule; and
- (d) Any documents incorporated by reference into the above documents.

1. Purpose

- 1.1. CESPHN agrees to provide the Funding to the Provider to provide the Services for the Term in accordance with this Agreement.

2. Commonwealth Funding Agreement

- 2.1. The Provider agrees to comply with all reasonable directions of CESP HN and to provide all reasonable assistance to CESP HN as may be required for CESP HN to ensure that in respect of the Commonwealth Funding Agreement:
- (a) CESP HN complies with its obligations; and
 - (b) there is no conflict with any of the Commonwealth's rights.
- 2.2. The Provider acknowledges and agrees that:
- (a) CESP HN may be required to obtain prior written approval of the Commonwealth to engage the Provider to provide the Services; and
 - (b) the Commonwealth may impose conditions on its approval.
- 2.3. The Provider agrees that if CESP HN provides it with notice of any conditions imposed by the Commonwealth in relation to the Services, it will make all reasonable efforts to comply with those conditions.

3. Commencement and term

- 3.1 This Agreement commences on the Commencement Date and continues for the Term or until terminated in accordance with the provisions of this Agreement.
- 3.2 The parties may by mutual agreement in writing vary or extend the term of this Agreement.
- 3.3 In the event that the Provider wishes to vary or extend:
- the Activity End Date;
 - the Schedule End Date; and/or
 - the timing of milestone payments;
- the Provider may submit an Extension of Time Form to CESP HN, which CESP HN may accept or reject by notice in writing to the Provider in CESP HN's absolute discretion.
- 3.4 In the event that the request set out in the Extension of Time Form is accepted by CESP HN by notice in writing, this Agreement is taken to be varied by the parties pursuant to the Extension of Time Form from the date of acceptance.
- 3.5 The Extension of Time Form must not vary or seek to vary the value of the Funding or deal with any matters other than those set out in Clause 3.3 above. Where a variation to the total value of the Funding is required the parties must execute a formal Deed of Variation.

4. Services

- 4.1 Commencing from the Commencement Date, the Provider shall provide the Services at the Site or such other place or places which CESP HN may from time to time approve.
- 4.2 The Provider must ensure that the Nominated Person:
- (a) is the primary point of contact between the Provider and CESP HN;

- (b) is responsible for ensuring the Personnel perform the Services in accordance with the Provider's obligations and warranties provided in this Agreement; and
- (c) consults directly with the person specified in Item 1.3 of the Schedule in relation to the Services and the operation and management of this Agreement.

5. Obligations, warranties and indemnities

5.1 The Provider must:

- (a) provide the Services in a proper professional and efficient manner, in compliance with the reasonable direction of CESP HN and in accordance with any applicable legislation, regulations, CESP HN standards (as applicable and included in this agreement or informed in writing from time to time) and requirements of the Commonwealth Funding Agreement (as applicable and included in this agreement or informed in writing from time to time);
- (b) inform CESP HN in writing as soon as it becomes aware that, for whatever reason, it is not able to perform any of the Services, in whole or in part;
- (c) be responsible for the provision of employing Personnel, all items of equipment which are necessary for the performance of the Services;
- (d) immediately report to CESP HN any damage to any person or property occurring in connection with the Services.

5.2 The Provider warrants that:

- (a) the Provider and each of its Personnel has the experience, expertise, skill and competence and will have at all times the capacity and other resources necessary to provide the Services and to properly discharge the Provider's obligations under this Agreement;
- (b) it provides the Services in compliance with the Australian Charter of Healthcare Rights ensuring client's rights of access, safety, respect, communication, participation, privacy and comment, to ensure quality service is provided;
- (c) it will promptly notify CESP HN if it becomes subject in any way to any bankruptcy or insolvency proceedings;
- (d) it will immediately notify CESP HN of any incident or allegation of child abuse, sexual assault or sexual harassment relating to its Personnel;
- (e) the Provider and each of its personnel hold all licences, permits, consents and authorisations required by law in relation to the provision of the Services and will continue to do so at all times during the term of this Agreement;
- (f) it will seek to minimise waste, use of energy and water and reduce the environmental impact of the provision of the Services in general by adopting suitable business practices such as recycling, reusing, avoiding or minimising use of products harmful to the environment and considering sustainability practices;
- (g) it has not been named by the Director of Workplace Gender Equality Agency as an employer not currently complying with the *Workplace Gender Equality Act 2012* (Cth);

- (h) no literary or other works employed or created by the Provider or the Personnel in the provision of the Services shall infringe any copyright, obligation of confidentiality, patent or other right of property belonging to or benefiting any third party.

5.3 The Provider acknowledges that it may be considered a 'Commonwealth service provider' for the purpose of the Ombudsman Act 1976 (Cth) and subject to investigation by the Ombudsman under that Act.

5.4 If there is a breach by the Provider of clauses 5.1 or 5.2, then the Provider shall upon request being made by CESP HN re-supply the Services to remedy such breach at no charge to CESP HN. The re-supply of the Services to CESP HN shall be without prejudice to any other right or remedy to which CESP HN may be entitled, whether at law, in equity or otherwise. If the Provider fails to make good any damage or loss to any person or property caused by or contributed to by the Provider or the Personnel, CESP HN may itself or engage others to make good the damage or loss, and the cost of so doing shall be a debt due and payable from the Provider to CESP HN.

5.5 The Provider indemnifies CESP HN and its officers, employees and agents from and against any loss, damage or costs (including legal costs and expenses) or liability incurred or suffered directly or indirectly arising out of or in connection with any of the following:

- (a) any act or omission by the Provider or its Personnel or staff in connection with this Agreement;
- (b) a breach of this Agreement by the Provider;
- (c) any incident or allegation of child abuse, sexual assault or sexual harassment relating to or perpetrated by its Personnel;
- (d) any Personnel being charged with or convicted of a Serious Offence;
- (e) the performance of the Services; and
- (f) a third party claim against CESP HN for death or personal injury arising from the Provider's performance of the Services.

6. Vulnerable Persons

6.1 This clause 6 outlines the requirements relating to the Provider's Personnel who, in providing the Services, have contact with any Vulnerable Persons.

6.2 Before the Provider or any of their Personnel commence performing any of the Services, and thereafter every three years that the relevant Personnel is deployed or redeployed in relation to any part of the Services that involves working or contact with a Vulnerable Person, the Provider must:

- (a) conduct a National Police Check for all Personnel and, if the services provided are relevant under Part 2, section 6 of the [*Child Protection \(Working With Children\) Act 2012*](#), verify that Personnel are, at all times, cleared to work with children through a Working With Children Check;
- (b) confirm that the Personnel is not prohibited under a law from being employed or engaged in any capacity where the Personnel may have contact with a Vulnerable Person; and
- (c) comply with all laws relating to the employment of persons or engagement of persons in any capacity where they may have contact with a Vulnerable Person.

- 6.3 If a Police Check indicates that a relevant Personnel has a Serious Record, the Provider must not deploy or redeploy that Personnel in relation to any part of the Services that involves working or contact with a Vulnerable Person.
- 6.4 If a Police Check indicates that a relevant Personnel has a criminal or court record (other than a Serious Record), the Provider must not engage, deploy or redeploy that Personnel in respect of any part of the Services that involves working with Vulnerable Persons unless the Provider has conducted and documented a risk assessment for that Relevant Person taking into account the following factors:
- (a) whether the Personnel's criminal or court record is directly relevant to the role that he or she will or is likely to perform in relation to the Services;
 - (b) the length of time that has passed since the Personnel's charge or conviction and his or her record since that time;
 - (c) the nature of the offence pertaining to the Personnel's charge or conviction and the circumstances in which it occurred;
 - (d) whether the Personnel's charge or conviction involved Vulnerable Persons;
 - (e) the nature of the Services for which the Personnel is employed or engaged and the circumstances in which the Personnel will or is likely to have contact with Vulnerable Persons;
 - (f) the particular role the Personnel is proposed to undertake or is currently undertaking in relation to the Services and whether the fact the Personnel has a criminal or court record is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;
 - (g) the Personnel'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 Services; and
 - (h) any other factors that the Provider considers relevant.
- 6.5 After taking into account the factors set out in clause 6.4 in respect of relevant Personnel, the Provider must determine whether it is reasonably necessary to:
- (a) not engage, deploy or redeploy the Personnel in relation to the Services or any part of the Services;
 - (b) remove the Personnel from working in any position or acting in any capacity in relation to any part of the Services that involves working or having contact with Vulnerable Persons;
 - (c) make particular arrangements or impose conditions in relation to the Personnel's role in relation to the Services (or any part of the Services) and, where relevant, his or her contact with Vulnerable Persons; and/or
 - (d) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Services relate.
- 6.6 Within 24 hours of becoming aware of any Personnel being charged or convicted of any offence (other than a Serious Offence), or charged with any Serious Offence, the Provider must comply with all other applicable laws of the place in which that part of the Services is being conducted in relation to engaging or deploying the Personnel in a capacity where he or she may have contact with Vulnerable Persons, and conduct and document a risk assessment in accordance

with clauses 6.4 and 6.5 to determine whether to allow that Personnel to continue performing any part of the Services that involves working with Vulnerable Persons.

6.7 On becoming aware of a Personnel being convicted of a Serious Offence, the Provider must immediately cease to deploy the relevant Personnel in relation to any part of the Services that involves working or contact with a Vulnerable Person,

6.8 The Provider is responsible for:

- (a) any decision to permit Personnel to perform the Services who has a:
 - (i) criminal record or court; or
 - (ii) been charged with, or convicted of, a criminal offence.

6.9 The Provider must:

- (a) document the outcome of, and any action the Provider takes as a result of conducting, a risk assessment of Personnel under clause 6.4 and clause 6.5; and
- (b) provide that documentation and evidence satisfactory to CESPHN that the Provider has complied with this clause 6, if CESPHN requests it.

6.10 The Provider must:

- (a) comply with all relevant legislation relating to the employment or engagement of Child-Related Personnel in relation to the Services, including all necessary Working With Children Checks however described; and
- (b) ensure that Working With Children Checks obtained in accordance with this clause 6 remain current and that all Child-Related Personnel continue to comply with all relevant legislation for the duration of their involvement in the Services;
- (c) implement, and ensure all Child-Related Personnel implement, the National Principles for Child Safe Organisations;
- (d) complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- (e) put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 6.10;
- (f) provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Provider's risk management strategy required by this clause 6.10;
 - iii. relevant legislation relating to requirements for working with Children, including Working With Children Checks;
 - iv. relevant legislation relating to mandatory reporting of suspected child abuse or neglect, however described;
- (g) provide CESPHN with an annual statement of compliance with clause 6.10, in such form as may be specified by CESPHN;
- (h) notify CESPHN of any failure to comply with this clause 6.10;

- (i) co-operate with CESP HN in any review conducted by the Commonwealth of CESP HN's implementation of the National Principles for Child Safe Organisations or compliance with this clause 6.10; and
- (j) promptly take such action as is necessary to rectify any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 6.10.

7. Funding

- 7.1 The Provider must meet its obligations under this Agreement in order to be provided with the Funding from CESP HN.
- 7.2 The Funding must only be used for the provision of the Services.
- 7.3 CESP HN will only be required to pay the relevant Funding to the Provider if the Provider provides CESP HN with a correctly rendered tax invoice.
- 7.4 CESP HN, acting reasonably, may withhold payment of the relevant Funding to the Provider if:
- (a) the Provider does not provide the Services in accordance with this Agreement (decided by CESP HN in its absolute discretion);
 - (b) the Provider has received funds for an activity that have not been spent or committed for the Services in accordance with this Agreement including as a result of the Provider having a surplus and/or underspend for the Services; or
 - (c) it disputes its obligation to pay a tax invoice and it provides the Provider with written notice giving reasons prior to the due date for payment. CESP HN may withhold payment until such time as the dispute is resolved.
- 7.5 For the avoidance of doubt, CESP HN will not be required to pay any Funding to the Provider if the relevant grant (or part thereof) from the Commonwealth is withdrawn, cancelled, reduced or otherwise not received by CESP HN, or if the Commonwealth Funding Agreement is terminated. CESP HN will immediately notify the Provider of any such occurrence and the parties will negotiate in good faith the reduction of Services or termination of this Agreement.

8. Remuneration

- 8.1 In consideration for the Provider providing the Services, CESP HN must pay the Provider's Fee to the Provider per item C in the Schedule.
- 8.2 The Provider must submit to CESP HN an Invoice in respect to the Services performed as per item D.5 in the Schedule:
- (a) as soon as practicable after the completion of the Services; or
 - (b) as otherwise agreed, to by the parties.
- 8.3 Subject to Clause 8.4, CESP HN must pay the amount of the Provider's Invoice within 30 days of receipt, into the bank account nominated by the Provider for that purpose.
- 8.4 If CESP HN disputes the Invoice issued by the Contractor, then:
- (a) CESP HN must serve notice on the Provider setting out the nature of the dispute and the amount which CESP HN asserts should be the amount of the relevant invoice;

- (b) If the Provider has not replied to CESP HN's notice within 5 business days of the date on which the notice is issued, then the Provider is deemed to have accepted the variation of the amount owed to it and must issue a further invoice to CESP HN for the varied amount;
- (c) If the Provider does not accept the amount nominated by CESP HN in the notice served by CESP HN pursuant to Clause 8.4(a), then the Provider must, within 5 business days of issue of CESP HN's notice of dispute, inform CESP HN that a meeting is to be convened between a representative of CESP HN and the Nominated Person within a further period of 7 business days to discuss and, if possible, resolve the dispute; and
- (d) If the dispute is not resolved at the meeting between CESP HN and the Nominated Person, then the dispute must be referred to an expert nominated by the President of the Institute of Arbitrators and Mediators who must determine the dispute as an expert, who must make a determination as to which party is required to pay the costs of the expert determination and whose decision will be final and binding on CESP HN and the Contractor.

9. Record keeping and reporting

9.1 The Provider must comply with item F in the Schedule and:

- (a) make and retain accurate and prudent records of the Services for a period of no less than 7 years for adults, and in the case of Children until the child reaches 25 years of age, from the date that the client was last provided with a Service; and
- (b) make records relating to the Services available to CESP HN for inspection on request; and
- (c) provide reports and information to CESP HN as per Item D and whenever reasonably requested by CESP HN.

9.2 The Provider acknowledges that CESP HN must provide certain data and reports to the Commonwealth and the Department of Health in accordance with applicable guidelines.

9.3 The Provider agrees to provide information and assistance required by CESP HN in order to comply with its reporting obligations under applicable guidelines wherever possible.

10. Termination

10.1 Rights to terminate

- (a) CESP HN may terminate this Agreement immediately by notice to the Provider if:
 - i. the Provider commits a breach of this Agreement which is capable of remedy, and fails to remedy that breach within 30 days from the date CESP HN notifies the Provider of the breach;
 - ii. the Provider commits a breach of this Agreement which is not capable of remedy;
 - iii. the Provider becomes insolvent or has an Administrator or Liquidator appointed;
 - iv. the Provider, or any of its directors or officers, are fraudulent or convicted of a serious criminal offence;
 - v. the Provider, in the reasonable opinion of CESP HN, brings or threatens to bring CESP HN into disrepute;

- vi. the Commonwealth Funding Agreement is terminated or reduced in scope by the Commonwealth or the Commonwealth otherwise withdraws or reduces the relevant grant; or
 - vii. CESP HN is satisfied on reasonable grounds that the Provider is unable or unwilling to satisfy the terms of this Agreement.
- (b) CESP HN may terminate this Agreement at any time by giving the Provider 30 days' prior written notice.
- (c) The Provider may terminate this Agreement for non-payment of the Funding by CESP HN provided that the outstanding amount is an undisputed amount and the Provider has issued written notice to CESP HN and CESP HN has not paid the outstanding Funding within 30 days of receipt of that written notice.

10.2 Repayment of funds

10.2.1 If:

- (a) On expiry or early termination of this Agreement, any funds:
- i. remain unspent;
 - ii. cannot, by reconciliation between the accounts and records maintained by the Provider (as reported to CESP HN by the Provider in any of the financial statement referred) and the budget, be shown to the reasonable satisfaction of CESP HN to have spent or committed in accordance with this Agreement;
- or
- (b) at any time, CESP HN forms the reasonable opinion that any Funds have been used, spent or Committed by the provider other than in accordance with this Agreement.

The amount payable will be considered a debt due and payable to CESP HN. CESP HN may by written notice to the Provider require the Provider to repay that part of the Funds, and the Provider must repay CESP HN the amount specified in the notice, within 30 Business Days of the date of the notice.

11. Consequences of termination

11.1 Consequences of termination

- (a) If this Agreement is terminated in part, the terms of this Agreement will continue to apply to those parts of this Agreement that remain in force following the termination in part until those parts of this Agreement expire or are terminated.
- (b) Any termination of this Agreement under clause 10 will be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law and will not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provisions of this Agreement which are expressly or by implication intended to come into or continue in force on or after such termination.

12. Work Health and Safety

12.1 The Provider must strictly comply with all WHS Law.

12.2 The Provider must identify and exercise all necessary precautions for the health and safety of all persons including the Provider's Personnel, CESP HN employees and members of the public who may be affected by their actions or inactions.

- 12.3 The Provider will comply with and ensure that all of their employees comply with any Act, legislation, regulations, local laws or by-laws, codes of practice, Australian Standards and CESP HN policy and procedures that are in any way applicable to this Agreement or the performance of the Services under this Agreement by the Provider.

13. GST

- 13.1 Unless otherwise expressly stated, all amounts, fees or other sums payable under this Agreement are inclusive of GST.
- 13.2 CESP HN agrees to pay to the Provider all applicable GST in respect of the Services supplied by the Provider to CESP HN under this Agreement.

14. Intellectual Property

Pre-existing material

- 14.1 Nothing in this clause affects the parties' ownership of any pre-existing Intellectual Property.

Ownership of Materials

- 14.2 Nothing in this Agreement grants to the Provider any Intellectual Property Rights in the Materials or other works provided to the Provider for use in performing the Services.
- 14.3 The Provider must not use the names or logos or any other Intellectual Property Rights of CESP HN including in any marketing, media, promotional or other materials without the prior written consent of CESP HN.
- 14.4 The Provider and CESP HN acknowledge that the ownership of all Intellectual Property Rights created or acquired by the Provider or any Personnel in any works created by the Provider or any Personnel in the course of performing the Services vests solely in CESP HN on its creation or acquisition.
- 14.5 CESP HN grants to The Provider a perpetual, irrevocable, royalty-free and license fee-free, worldwide, non-exclusive license (including a right of sub-license) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit any works created by the Provider or any Personnel in the course of performing the Services for any purpose.

15. Privacy, Identity and Confidentiality

- 15.1 Both CESP HN and the Provider undertake to observe all privacy requirements when engaging in activities under this Agreement in accordance with the Privacy Act 1988 (Cth) (Privacy Act), Australian Privacy Principles 2019; the Health Records and Information Privacy Act 2002 (NSW) (HRIP Act), Health Privacy Principles 2021; the Privacy and Personal Information Act 1998 (NSW) and the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth). The terms "personal information" and "health information" have the same meaning as is given to them in the Privacy Act and the HRIP Act.
- 15.2 The Provider undertakes to inform CESP HN immediately on becoming aware that any breach of privacy or security relating to information under its control has occurred.
- 15.3 Notwithstanding any other clause in this Agreement, the Provider expressly consents to the disclosure of its identity to the Commonwealth Department of Health with such consent extending to allowing the Commonwealth to publish information about the Provider, including its identity and the existence and nature of the Services under this Agreement.

The Provider must:

- (a) ensure that all Confidential Information is kept confidential and is not copied, published, disclosed or discussed with any person other than its Personnel who have a need to know and its authorised representatives;
- (b) not use any Confidential Information except as required for the purpose of this Agreement and providing the Services;
- (c) not disclose any Confidential Information except as required by law;
- (d) if required by CESP HN ensure the Provider's personnel enter into a deed of confidentiality with CESP HN in a form prescribed by CESP HN before providing the Services.

15.5 Undertakes to regularly train provider Personnel in relation to privacy legislations, the Australian Privacy Principles, Australian Health Privacy Principles and other relevant codes and standards as amended, related systems used to store confidential information, and organisation's privacy policies and procedures.

16. Relationship of parties

16.1 The Provider's relationship with CESP HN is that of an independent contractor.

16.2 Neither the Provider nor CESP HN shall have and shall not represent that it has any power, right or authority to bind the other, or to assume or create any obligation or responsibility, whether express or implied, on behalf of the other or in the other's name.

16.3 Nothing in this Agreement shall be construed as constituting the Provider and CESP HN as partners, or as creating the relationship of employer and employee, master and servant or principal and agent between the parties.

17. Subcontracting

17.1 CESP HN must approve any subcontracting arrangement of any part of the Services that will be subcontracted by the Contractor under this agreement and the approval must be in writing obtained prior to signing this agreement. The Contractor must provide particulars of the subcontractor details and components of services that will be subcontracted.

17.2 The Contractor will be responsible to arrange to enter into an agreement with the subcontractor.

17.3 The Contractor must arrange all insurances in clause 19.2 and meet the requirements outlined in Item E in the contracting arrangement with the subcontractor.

17.4 The terms of this agreement will apply in the consistent manner to the subcontracting agreement between the Contractor and the subcontractor.

17.5 The Contractor is responsible for all aspects of the Services under this agreement notwithstanding any subcontracting

18. No assignment

18.1 Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written permission of the other.

19. Delegation and Insurance

19.1 Delegation

The Provider must not delegate the performance of any obligation under this Agreement without the prior written consent of CESP HN, which CESP HN may grant or withhold in its

absolute discretion. If such consent is given by CESP HN, then the Provider is and remains solely responsible for all acts and omissions of any delegate of the Provider.

19.2 Insurance

- (a) The Provider must maintain at its own cost insurance policies with a reputable insurer to cover such risks and amounts as set out below or as nominated by CESP HN from time to time and any and all liability of the Provider to CESP HN pursuant to this Agreement:
 - (i) General Public and Products Liability insurance covering legal liability to pay for personal injury and property damage arising out of or in connection with the performance of the Services by the Provider under this Agreement, with a limit of cover not less than the amount stated in Item E of the Schedule;
 - (ii) Workers Compensation insurance in accordance with the requirements of, and for an amount of not less than the maximum amount specified in, relevant laws in respect of the Provider's liability for any loss or claim by any person employed or otherwise engaged by it in or about the performance of the Services;
 - (iii) Medical Malpractice and/or Professional indemnity insurance covering liability for any act, error or omission arising out of or in connection with the professional business practice of the Provider, with a minimum of coverage of the amount stated in Item E of the Schedule;
 - (iv) Cyber liability insurance covering liability for cyber security incidents arising out of or in connection with the performance of the Services by the Provider under this Agreement, including but not limited to data loss, failure to maintain confidential information and business interruption, with a limit of cover not less than the amount stated in Item E of the Schedule; and
 - (v) Such other insurances necessary to cover the Provider's obligations and risk in relation to the Services, including adequate insurance to cover volunteers.
- (b) Entity insurances must cover all locations stated in the Agreement.
- (c) The Provider must produce the policy or policies of insurance and certificates of currency to CESP HN before commencing the Services and on request during the Term.
- (d) The Provider must maintain the insurance cover set out in Clause 19.2(a) for a period of 7 years after termination of this Agreement in relation to insurance policies which are on a "claims made" basis.
- (e) CESP HN acknowledge the NSW Government's Treasury Managed Fund arrangements as sufficient for compliance with the insurance obligations of this Agreement.

20. Performance Assessment

- 20.1 CESP HN may undertake a performance assessment from time to time of the Provider's performance and/or compliance with this Agreement and all applicable laws and industry standards.
- 20.2 The Provider must comply with all reasonable requirements of the performance assessment, including:
 - (i) providing copies of documents; and
 - (ii) giving sufficient access to the Provider's premises, the Site, Personnel, data, records, accounts and other financial material and material necessary to conduct the monitoring, review or audit, however and wherever stored, under the Provider's custody, possession or control.

21. General

21.1 Disputes

21.1.1 In the event of a dispute regarding this Agreement, in the first instance, the Provider will attempt to resolve the dispute with CESPHN.

21.1.2 A Party must not commence any legal proceedings in respect of any dispute arising under this Agreement until the following procedure has been followed:

- (a) the party claiming that there is a dispute will send the other party a notice setting out the nature of the dispute.
- (b) the parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) if:
 - i. there is no resolution of the dispute within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 21.1.2 (a) and (b);
 - ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 21.1.2; or
 - iii. the Parties agree, within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 21.1.2, to submit to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 30 days of that submission, or such extended time as the Parties may agree in writing before the expiration of the 30 days, then, either Party may commence legal proceedings.

21.2 Conflict of Interest

- (a) The Provider warrants that, at the date of entering into this Agreement, to the best of its knowledge, no conflict of interest exists or is likely to arise in the performance of its obligations or its personnel's obligations under this Agreement.
- (b) If, during the term of this Agreement, a conflict of interest arises, or appears likely to arise, the Provider must advise CESPHN in writing immediately of that conflict or risk and take immediate steps to resolve that conflict or deal with the risk.
- (c) The Provider agrees that it will use its best endeavors to ensure that its Personnel do not engage in any activity or gain any interest during the course of this Agreement that is likely to conflict with or restrict the Provider in performing its obligations under this Agreement fairly and independently.

21.3 Entire Agreement

This Agreement and the documents referred to in it supersedes all previous Agreements and embodies the entire Agreement between the parties in relation to their subject matter. Accordingly, anything (such as correspondence, negotiations or representations before this Agreement is signed or an arrangement or understanding) not reflected in this Agreement (or a document referred to in it) does not bind the parties and may not be relied on by them.

21.4 Severance

- (a) If (but for this clause) a provision of this Agreement would be illegal, void or unenforceable or contravene the law, this Agreement is to be interpreted as if the provision was omitted; and
- (b) If a clause in this Agreement is void, illegal or unenforceable, it may be varied to give effect to the intention of this Agreement or severed without affecting the enforceability of the

other provisions in this Agreement.

21.5 Variation and waiver

- (a) Unless this Agreement expressly states otherwise, this Agreement may only be amended in writing signed by all the parties.
- (b) A provision of this Agreement may only be waived in writing signed by the person who has the benefit of the provision and who is therefore to be bound by the waiver.
- (c) A waiver by one party under any clause of this Agreement does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.
- (d) A party does not waive its right under this Agreement because it grants an extension or forbearance to the other party.

21.6 Governing law and jurisdiction

- (a) This Agreement and the transactions contemplated by this Agreement are governed by the law enforced by New South Wales.
- (b) Each of the parties irrevocably submits to the jurisdiction of the Courts of New South Wales and all Courts called to hear appeals from the Courts of New South Wales in respect of this Agreement or its subject matter.

21.7 Further acts

Each party must do everything reasonably necessary (including executing or producing documents, getting documents executed or produced by others and obtaining consents) to give effect to this Agreement.

21.8 Survival of terms

The terms of this Agreement survive its termination to the extent permitted by law.

21.9 Independent legal advice

Each party acknowledges that there has been adequate opportunity to obtain independent legal advice as to the meaning and effect of this Agreement before it was signed.

21.10 Service of notice

Unless this Agreement expressly states otherwise, any legal notice, demand or notice relating to a breach of this Agreement by either party:

- (a) must be in writing, directed for the attention of the relevant person specified in this Agreement (as the case may be), or to the relevant person last notified by the recipient in writing; and
- (b) must be:
 - i. delivered;
 - ii. sent by pre-paid mail;
 - iii. emailed

to the recipient's address, email address out in this Agreement (as the case may be), or to the address, email address last notified by the recipient in writing.

21.11 Receipt of notice

A notice given in accordance with clause 20.10 is treated as having been received:

- (a) if delivered before 5:00pm (in the place it was delivered to) on a business day, on that day, otherwise on the next business day;
- (b) if sent by mail, on the third business day (in the place it was sent from) after posting;
- (c) if sent by email during any business day, on the date that the sending party's email records that the email has been successfully transmitted; and

and the notice takes effect from the time it is received (or treated as received) unless a later time is specified in it.

21.12 Counterparts

- (a) This Agreement may be made up of counterparts. Once signed, all of the counterparts, taken together, will constitute the one document.
- (b) The counterparts of this Agreement may be executed and exchanged by mail or email or other electronic signature by the parties. A party in receipt of this Agreement executed and exchanged by mail or email or other electronic signature may rely on it as if the original had been received.

Executed as an agreement.

Executed as an Agreement by **EIS Health Limited ABN 68 603 815 818** by its authorised representative pursuant to Section 126 of the *Corporations Act 2001 (Cth)*:

Signature of authorised person: _____

Name of authorised person: _____

Office Held: _____

|
...../...../.....

Date of Signature

Executed as an Agreement by (enter provider legal name) ABN: by a duly authorised officer:

Signature of authorised person: _____

Name of authorised person: _____

Office Held: _____

...../...../.....

Date of Signature

Schedule

Item A: CESP HN Program Information

A.1 Program Name: Community Vaccination Education & Engagement Program

A.2 Program Description and Services:

The Community Vaccination Education and Engagement Program aim to expand awareness and understanding of the importance of vaccination in vulnerable communities. The aim is to build the capacity of community organisations to equip their communities with the necessary knowledge to make an informed decision about vaccination

Increasing vaccination coverage rates will contribute to improved health outcomes for people while also reducing unnecessary utilisation of health services, due to less likelihood of people seeking treatment for vaccine preventable diseases (VPD).

The objectives of this initiative are to:

- empower community to develop tailored approaches that address barriers and increase awareness, confidence, and uptake of vaccines under the National Immunisation Program (NIP) among vulnerable populations in the CESP HN region.
- protect those most vulnerable from vaccine preventable diseases.
- enhance community capacity by equipping local organisations and networks with accurate and accessible information to promote informed decision-making.
- build partnerships with local agencies and community groups to optimise individual and community uptake of vaccination.

A.3 Commencement Date:

A.4 Completion Date:

Item B: Provider Activity Information

B.1 Name of the Provider:**B.2 ABN:****B.3 Provider's address:****B.4 Activity Details:****B.5 Site:****B.6 Nominated Person:****B.7 Promotion and Branding**

- I. All promotion and branding materials must be provided to CESP HN for comment and approval prior to being distributed by The Provider.
- II. The Provider is not permitted to represent themselves with the PHN identifier (logo).
- III. The Provider is to acknowledge funding received by Central and Eastern Sydney PHN using a general acknowledgement such as "Program funded by Central and Eastern Sydney PHN". The full location name of the PHN must be used, i.e. Central and Eastern Sydney PHN.
- IV. When the Provider intends to reference CESP HN other than as stated in B.7.III in any public communications materials, including print, online and broadcast, in media or journals, the Provider must seek prior approval in writing from the CESP HN's Marketing and Communications Team. The Provider must submit a written request at least five (5) days in advance. CESP HN's Marketing and Communications Team will make every effort to respond within this timeframe. If approval is not granted, the Provider must not proceed with publication.
- V. The Provider will independently promote the program subject to the constraints of approval outlined in B.7(i). It is the Provider's responsibility to promote the program to ensure uptake.
- VI. Promotion of the Provider's activities through Central and Eastern Sydney PHN's communication channels is at the sole discretion of the Central and Eastern Sydney PHN Marketing and Communications Team.

Item C: Funding:

C.1 Funding:

The total funding available under this funding agreement is set out in the table below

Financial Year	Funding Amount (Ex GST)	GST	Total Funding Amount (Inc GST)
2025-2026	\$45,000	\$4,500	\$49,500
2026-2027	\$30,000	\$3,000	\$33,000
Total Funding	\$75,000	\$7,500	\$82,500

C.2 Program Budget

Budget	FY 2024/25 (Exc GST)	FY 2025/26 (Exc GST)	FY 2026/27 (Exc GST)	Project Total
Project Costs				
Salaries & Wages	\$-	\$-	\$-	\$-
Program Delivery Costs	\$-	\$-	\$-	\$-
Establishment Costs & Assets*	\$-	\$-	\$-	\$-
Administration Expenses (max 7%)	\$-	\$-	\$-	\$-
Other Expenses (Provide details)	\$-	\$-	\$-	\$-
Total Project Costs	\$-	\$-	\$-	\$-
Non-CESPHN Project Funding				
In Kind Support (provided by the applicant)				\$-
Complimentary Investment from other sources				\$-
Funding Requested from CESPHN	\$-	\$-	\$-	\$-

The Provider is responsible for all Government statutory and non-statutory employee payments and costs namely maternity and parental leave; annual leave; long service leave; and redundancy payments according to the law. All employee payments and costs are included in the funding (Salaries and Wages-item C.2 Budgets). Any employee payments and costs above the Government statutory provision offering payments to employees within the Provider's internal human resources policies are an arbitrary decision made by the Provider alone. The Provider shall be liable for payment to their employees according to individual employment agreement.

Bank Account Details

BSB	
Financial Institution	
Account name	
Account Number	

Item D: Reporting & Payment

D.1 Performance reports: The provider is required to provide performance reports by the dates set out in D.6 Milestone table.

D.2 Activity Workplan: The Provider must submit to CESPHN an Activity Work Plan outlining the proposed plan for the program delivery by the dates set out in D.6 Milestone table.

D.3 Financial Reports:

D 3.2 Annual Financial Acquittal

Where the Provider reports an underspend greater than 10% of the Provider expenditure which has been budgeted against a funding milestone in any given reporting period, CESPHN may reduce the funding paid to the Provider in that milestone by an equal value, or CESPHN may withhold funding of an equal value from any future progress payments.

D.4 Final Report:

D.5 Milestones and Payment Schedule

The following table combines all the Provider’s reporting and other milestones for all activities under this Agreement:

**When issuing invoices for payment milestones, The Provider must include in their invoice all information related to that milestone in the table above along with the name of the Program /Project and must be addressed to the Program person at CESPHN.*

Item E: Insurance Requirements:

- Professional indemnity insurance: \$5 million
- Public Liability insurance: \$20 million
- Cyber liability insurance: to be assessed by Provider insurance company.

All of the insurances stated above must be evidenced through the provision of a valid and current certificate of currency. The values stated above are required to be the value of a single incidence. It is preferred that there is no limit to the aggregate value of claims on the policy, but if there is a reference to a capped aggregate value, it must be at least double the value of the single incidence requirement listed above.

Item F: Data Governance and Management:

Notwithstanding the obligations on the Contractor set out in substantive clauses 14 Intellectual Property and 15. Privacy, Identity and Confidentiality, the Contractor must:

- (a) Only collect and use data for the purposes of:
 - Carrying out the Activities
 - Complying with requirements under this agreement
 - Any other purpose contemplated by this agreement and agreed between the Contractor and CESPHN
- (b) Maintain the security, integrity and confidentiality of data, including ensuring that any employees, contractors, or consultants who create, access or handle data comply with [confidentiality clause] and [privacy legislation] to prevent any misuse, unauthorised access or disclosure of the data
- (c) Collect data of high quality (i.e. complete, accurate, timely, consistent)
- (d) Seek and record informed consent from clients to collect their personal information
- (e) Seek and record informed consent from clients for CESPHN to use their deidentified information for the purposes specified in the Activities.
- (f) Not release or publish data owned by CESPHN to any third party without the prior written approval of CESPHN
- (g) Train Personnel in the use, disclosure, storage of personal information, sensitive information, health information and the obligations pertaining to Confidentiality.

Item G: Notices:

G.1 CESPHN's Contact details for legal notices:

Name	Nathalie Hansen
Position	Chief Executive Officer
Phone	1300 986 991
Email	n.hansen@cesphn.com.au
Postal Address	Tower A, Level 5, 201 Coward St, Mascot NSW 2020

G.2 The Provider's contact details and address for legal notices:

Name	
Position	
Phone	
Email	
Postal Address	

G.3 CESPHN's contact details for operational, services and contract management queries:

Name	Nicole Pigott
Position	Immunisation Team Leader
Phone	1300 986 991
Email	n.pigott@cesphn.com.au

G.4 The Provider's contact details for operational, services and contract management queries (Nominated Person):

Name	
Position	
Phone	
Email	

IG.5 CESPHN's contact details for invoicing purposes:

Entity Name	EIS Health Limited
ABN	68 603 815 818
Email	"upload via Folio"

G.6 Provider contact details for Folio checklists (Nominated Person):

Name	
Position	
Phone	
Email	