

Appendix A

- 1. Clause 6.1 Personnel** - The Service Provider has obligations to many people that are 'employed or otherwise supported from the Funds' or 'engaged in relation to the Agreement'. These obligations are wide reaching and potentially burdensome.
- 2. Clause 6.3 Subcontracting** - The Government has absolute discretion to approve or not approve a subcontracting relationship. Further, the definition of 'subcontract' is very broad and includes 'joint venture, partnership or agency relationship.' This is a wide definition and may be difficult for many Service Providers to comply with.
- 3. Clause 7.1 and 7.2 Conflict of Interest** – The Service Provider makes an absolute warranty that no Conflict of Interest exists or is likely to arise in relation to the Agreement. Given the wide definition of Conflict of Interest and that clause 7.2 contemplates that a Conflict of Interest may arise, this is an onerous warranty for a Service Provider to comply with.
- 4. Clause 9.8 Payment, use and management of Funds – Additional contribution-** The Service Provider must declare additional monetary or in-kind contributions to the Government within 10 business days. The Government has absolute discretion to withhold or reduce the amount of Funds payable to the Service Provider under the Agreement. This will have a significant impact on Service Providers viability, and is counter-intuitive to government messaging to diversify funding streams.
- 5. Clause 12.1 Suspension of Funds and Services** - The Government can suspend payment of the funds if it suspects that the Service Provider 'is not financially stable'. This is a phrase that is not defined under the HSA and is open to wide interpretation, with potentially significant consequences to a Service Provider.
- 6. Clause 13.2 Termination without Fault** – The Government can terminate the Agreement with a minimum of 45 days' notice where funding ceases because of changes to the State budget or to State/Commonwealth policies or guidelines. This timeframe is insufficient for service users who may be vulnerable and/or have complex needs and for whom transitioning to other services will require a longer timeframe. The Agreement for Funding of Services provides for a notice period of at least 90 days at Clause 9(a) which is a more appropriate timeframe.
- 7. Clause 16. Intellectual Property Rights** - Whilst it is usual for a service agreement (especially one involving services provided to Government) to provide broad rights to use the intellectual property that is created pursuant to the service agreement, this clause grants a very broad licence to the NSW Government to use the Agreement Material. Further, the Schedule to the HSA is drafted in such a way as to make it quite complicated for a Service Provider to understand who owns the rights to the Intellectual Property and how the licence over the Intellectual

Property may be limited. This clause also contains onerous obligations in relation to Moral Rights.

- 8. Clause 17.1 Confidential, sensitive and cultural information** – Under clause 17.1(b)(iv) the Government is able to disclose the Confidential Information of the Service Provider with ‘another government agency, body or Minister for their legitimate interests’. It is wide reaching for a Government department to be able to disclose a Service Provider’s Confidential Information for their ‘own legitimate interests’.
- 9. Clause 19.5 Documents, records and reports** – This clause enables the Government to share and take in to account any information about the Service Provider for current and future opportunities for work with the NSW Government. Given the potential impact of this clause, ideally the Service Provider should have the right to know about the information that leads to any adverse decision and an opportunity to respond to it.
- 10. Clause 21.2 No restriction on advocacy services** – The Service Provider is able to undertake advocacy activities, so long as they comply with their obligations relating to ‘confidentiality, privacy and Conflict of Interest’. Neither ‘confidentiality’ nor ‘privacy’ are defined terms in the HSA and given the definition of ‘Conflict of Interest’ we query whether a Service Provider would be able to effectively undertake advocacy activities without infringing their Conflict of Interest obligations.