

Template Sub-contract Agreement

For organisations funded under the FACS Funding Deed and their sub-contractors



This is a template sub-contract that has been prepared for use by Lead Contractors and Sub-contractors in relation to the delivery of homelessness services funded by NSW Family & Community Services (FACS).

This document will not suit all arrangements. You should carefully consider your needs, and whether this document is a suitable starting point. You should also carefully consider the notes in this template, and adapt the template as necessary.

You may wish to seek advice from a lawyer about whether this template meets your needs, and you may wish to have the document reviewed by a lawyer prior to finalising it.

The template is designed to be read alongside the Sub-contract Checklist document, which can be downloaded [here](#).

When you have finished adapting the template, remember to delete notes, and check that the document numbering and cross-referencing is correct.

SUB-CONTRACTING AGREEMENT

This AGREEMENT is made on the _____ day of _____ 2017.

PARTIES

The organisation named in Item 1 of Schedule 1 (**Lead Contractor**)

and

The organisation named in Item 2 of Schedule 1 (**Sub-contractor**)

(together referred to as the **Parties**)

BACKGROUND

- A. The Lead Contractor is contracted by the NSW Department of Family and Community Services (**FACS**) to deliver services under the FACS Funding Agreements.
- B. The Lead Contractor wishes to engage the Sub-contractor to provide the Services, which are a component of the services funded under the FACS Funding Agreements.

AGREEMENT

1 Definitions

Barred Person means a “disqualified person”, or a person who is subject to an “interim bar” under the CPWC Act; or a “registrable person” referred to in the *Child Protection (Offenders Registration) Act 2000*.

Business Days means a day other than Saturday, Sunday or a gazetted public holiday in New South Wales.

Confidential Information means information of every kind that:

- (a) is by its nature confidential;
- (b) has been identified by the Lead Contractor and/or FACS as being confidential;
- (c) the Sub-contractor knows or ought to know is confidential; or
- (d) a reasonable person acting prudently would consider to be confidential,

but does not include information that:

- (e) is or becomes public knowledge, other than by breach of this agreement;
- (f) is in the possession of the Sub-contractor without restriction in relation to disclosure before the date of receipt from the Lead Contractor and/or FACS; or
- (g) has been independently developed or acquired by the Sub-contractor without restriction in relation to disclosure.

Consequential Loss means loss which does not flow directly, naturally or in the usual course of things from a breach, whether or not that loss was in the reasonable contemplation of the Parties when this agreement was entered into.

CPWC Act means the *Child Protection (Working with Children) Act 2012* (NSW).

FACS Funding Agreements means the Funding Deed, relevant Program Level Agreement, [and relevant Service Delivery Schedule] between the Lead Contractor and FACS annexed to this agreement as follows:

- Annexure 'A': FACS Funding Deed;
- Annexure 'B': FACS Program Level Agreement;
- [Annexure 'C': Service Delivery Schedule] [include this if there is a Service Delivery Schedule.

Fees means the fees set out in Item 13 of Schedule 1 to be paid at the Intervals.

Funding Deed means the agreement between the Lead Contractor and FACS. A copy is attached to this agreement as Annexure A.

Intervals means the intervals set out in Item 14 of the Schedule by the Lead Contractor

Management Fees means the fees set out in Item 15 of Schedule 1.

Performance Measurement Cycle focuses on activities undertaken by contract managers and funded services staff in managing, monitoring, and recording progress towards performance goals agreed in the contract and in the course of the ongoing contract relationship.

Performance Measures means the level of service or number of services required to be achieved, as set out in a Program Level Agreement, in respect of the Services the subject of this agreement.

Personnel means officers, employees, agents, volunteers or sub-contractors.

Program Level Agreement means the agreement between the Lead Contractor and FACS a copy of which is attached to this agreement as Annexure B.

Services means services provided in accordance with this agreement as set out in Item 9 of Schedule 1.

Service Outlet means the usual place at which Services will be provided, as specified in in Item 10 of Schedule 1.

Start Date means the date specified in Item 12 of Schedule 1.

Term is the period determined in clause 2.

<Note that there are extra defined terms in Schedule 2 and within various clauses, for example the Indemnity clause>

2 Term

2.1 The Sub-contractor will provide the Services during the period set out in Item 11 of Schedule 1.

3 Relationship of the Parties

3.1 This agreement does not create a relationship of agency, or create a partnership or joint venture relationship between the Parties.

4 Sub-contractor's obligations

4.1 During the Term, the Sub-contractor must:

- (a) provide the Services in accordance with the terms of this agreement;
- (b) comply at all times with all provisions of the FACS Funding Agreements which relate to the Sub-contractor's performance of the Services under this agreement, including without limitation the requirements and conditions summarised in Schedule 2, so that the Lead Contractor can meet its obligations under the FACS Funding Agreements;
- (c) cooperate with and provide all reasonable assistance and information to the Lead Contractor to enable it to meet its obligations under this agreement and the FACS Funding Agreements;
- (d) not do, or fail to do, anything that would cause the Lead Contractor to be in breach of its obligations under any of the FACS Funding Agreements;
- (e) pay the Management Fees (if applicable) as set out in Schedule 1; and
- (f) will be reimbursed reasonable expenses that have been pre-approved by the Lead Contractor related to meeting requirements under the FACS Funding Agreements.

<Note to parties – it is helpful to explicitly set out who will be responsible for bearing costs for modifications that are required because of FACS Funding Agreements requirements>

5 Lead Contractor's obligations

5.1 During the Term, the Lead Contractor must:

- (a) provide the Sub-contractor with the Fees to be paid to the Sub-contractor at the Intervals;

<Note: Parties could consider including extra obligations, especially if the Lead Contractor will be charging a management fee, such as: provide referrals and intake; provide resources/support/training; invite the Sub-contractor to attend sub-contractor meetings/forums>

6 Collaborative working

6.1 The Parties must:

- (a) work collaboratively with one another when performing their obligations under this agreement and undertaking activities related to this agreement;
- (b) use reasonable endeavours to communicate with each other and FACS as necessary to develop and maintain collaborative relationships for the delivery of the Services; and
- (c) comply with requests or directions of the other party where that request is reasonable and necessary so that the other party can meet its obligations under this agreement or the FACS Funding Agreements.

7 Relationship of this agreement to other agreements

7.1 If there is an inconsistency between this agreement and the FACS Funding Agreements, the inconsistency should be dealt with as follows:

- (a) if complying with this agreement would mean that the Lead Contractor will breach its obligations under the FACS Funding Agreements, the terms of the FACS Funding Agreements apply in priority to the terms of this agreement and the terms of this agreement will be deemed amended to incorporate those terms of the FACS Funding Agreement, only to the extent of the inconsistency; and
- (b) in any other case, the terms of this agreement apply in priority to the terms of the FACS Funding Agreements.

8 Notification of breach of this agreement

8.1 The Sub-contractor must notify the Lead Contractor in writing within 5 Business Days of becoming aware of a breach or suspected breach of this agreement.

9 Conflict of Interest

9.1 The Sub-contractor warrants that, to the best of its knowledge after making diligent inquiry, no conflict of interest exists or is likely to arise in the performance of its obligations under this agreement with other obligations or interests that it holds.

9.2 If a conflict of interest arises, or appears likely to arise, the Sub-contractor must:

- (a) immediately notify the Lead Contractor in writing of the conflict or potential conflict, providing all relevant information relating to the conflict and setting out the steps the Sub-contractor proposes to take to resolve or otherwise deal with the conflict; and
- (b) take any reasonable steps requested in writing by the Lead Contractor to eliminate, resolve or otherwise deal with the conflict.

10 Sub-contracting

10.1 The Sub-contractor must not sub-contract or delegate any of its obligations under this agreement without the express prior written consent of Lead Contractor, which may be withheld for any reason at the Lead Contractor's discretion.

11 Dispute resolution

11.1 Disputes arising between the Lead Contractor and the Sub-contractor in relation to this agreement and/or the Services must first be attempted to be resolved as set out in the following clauses, as soon as possible.

11.2 If a party believes there is a dispute in connection with this agreement, that party must provide written notice to the other party, setting out in reasonable detail a summary of its concerns, the outcome it is seeking and the actions it proposes should be taken to resolve the dispute (**Dispute Notice**). Once a Dispute Notice has been issued, senior staff from each of the Lead Contractor and Sub-contractor must meet (in person) within 5 Business Days, and act in good faith to resolve the dispute.

- 11.3 The Parties must continue to make every effort to resolve the dispute by negotiation for a period of 21 days from the Dispute Notice being provided under 11.2. If the Parties have not resolved the dispute by the end of this period, then either party may give notice to the other party that it seeks to refer the dispute to mediation with an independent mediator.
- 11.4 The independent mediator must be agreed upon by the Parties. If the Parties cannot agree on a mediator within 5 days from the end of the 21 day period in 11.3, then either party may request that [insert person agreed upon by the Parties eg NSW Law Society Mediation Program Executive] appoint an independent mediator.
- 11.5 The dispute must be mediated within 30 days of the end of the 21 day period in 11.3. The mediator will determine a time and place for the mediation. The Parties must attend the mediation and attempt in good faith to resolve the dispute. The Parties will share the costs of the mediator, and are responsible for meeting their own expenses associated with the mediation.
- 11.6 The Parties agree to use the dispute resolution process in this clause before enforcing any other rights permitted by law in relation to disputes under this agreement, unless there is urgent need to seek relief (for example a need to seek an urgent injunction) or the party is unable to comply with clauses 11.1 to 11.5 because the other party will not comply with those clauses.

12 Insurance

- 12.1 The Sub-contractor must hold and continue to hold for the duration of the Term and any extensions of the Term:
- (a) appropriate public liability insurance;
 - (b) appropriate professional indemnity insurance;
 - (c) workers compensation insurance as required by law; and
 - (d) any other insurances as may be deemed necessary in relation to this agreement and the provision of the Services.
- 12.2 If requested, the Sub-contractor must provide evidence to the Lead Contractor that the required insurance policies are in place.

13 Indemnity

- 13.1 In this clause:

Loss means any loss, damage, liability, action, suit, Claim, demand, charge, cost or expense of any kind.

Claim means any claim, demand, proceedings, dispute or complaint of any nature or any kind.

- 13.2 The Sub-contractor indemnifies, and agrees to keep indemnified, the Lead Contractor and FACS and their respective Personnel, against any Loss which they pay, suffer, incur or are liable for in connection with or arising from:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Sub-contractor or its Personnel;

- (b) any breach of this agreement by the Sub-contractor or its Personnel;
- (c) any infringement of intellectual property rights by the Sub-contractor or its Personnel in relation to the Services or this agreement; or
- (d) any death, personal injury, loss or damage suffered by any person accessing or affected by the Services that are caused or contributed to by the Sub-Contractor or its Personnel.

Where Loss has been caused in part by the Sub-contractor, the indemnity only applies to the extent that the Sub-contractor is responsible for the Loss.

13.3 The Lead Contractor indemnifies and agrees to keep indemnified the Sub-contractor and its Personnel, against any Loss which they pay, suffer, incur or are liable for in connection with or arising from:

- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Lead Contractor or its Personnel or any breach of this agreement; and
- (b) FACS terminating the FACS Funding Agreements for cause under clause 19.1 of the FACS Funding Deed, but only where the breach of the FACS Funding Agreements by the Lead Contractor resulting in the termination of the FACS Funding Agreements is not caused or contributed to by the acts or omissions of the Sub-contractor or its Personnel (whether under this agreement or otherwise).

13.4 The Lead Contractor does not indemnify the Sub-contractor for any Loss connected to reasonable acts or omissions of the Lead Contractor taken because of acts or omissions of FACS (for example where FACS terminates the FACS Funding Agreements for convenience), or any Loss that is connected to reasonable acts or omissions of the Lead Contractor related to meeting its obligations under the FACS Funding Agreements or under law.

14 Warranties

14.1 The Sub-contractor represents and warrants to the Lead Contractor that the following warranties are true and correct and not misleading on the commencement of this agreement and for the duration of the Term:

- (a) if it is a body corporate, it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as is being conducted;
- (b) it has the power to enter into and perform its obligations under this agreement;
- (c) the execution, delivery and performance of this agreement has been duly and validly authorised by the Sub-contractor;
- (d) no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it that may have an adverse effect on the performance of this agreement;

- (e) it has, and will continue to have and to use, the skills, qualifications and experience to perform the Services in an efficient and effective manner, with a high degree of quality and responsiveness; and
- (f) it has, and will continue to have, skilled, qualified and experienced Personnel who are capable of performing the Services in accordance with the agreement.

15 Public Statements and Representations

- 15.1 In performing the Services the Sub-contractor must not make any public statements for or on behalf of Lead Contractor or FACS or represent itself as an agent, partner, joint venturer or spokesperson for Lead Contractor or FACS.

16 Confidential Information

- 16.1 The Sub-contractor recognises that in performing this agreement it may have access to the Confidential Information and/or intellectual property of the Lead Contractor and FACS, including information concerning the Lead Contractor's business.
- 16.2 The Sub-contractor must:
- (a) treat all Confidential Information as secret and confidential and take all steps necessary to preserve the confidentiality of the Confidential Information; and
 - (b) not reproduce or permit the disclosure or reproduction of the Confidential Information other than to the extent necessary to perform its obligations under this agreement.
- 16.3 The Lead Contractor recognises that in performing this agreement it may have access to the Confidential Information and/or intellectual property of the Sub-contractor, including information concerning the Sub-contractor's business.
- 16.4 The Lead Contractor must:
- (a) treat all Confidential Information as secret and confidential and take all steps necessary to preserve the confidentiality of the Confidential Information; and
 - (b) not reproduce or permit the disclosure or reproduction of the Confidential Information other than to the extent necessary to perform its obligations under this agreement.

17 Records and Information-sharing

- 17.1 The Lead Contractor:
- (a) must provide details of the records and information that it requires the Sub-contractor to keep under this agreement and negotiate in good faith about the form in which those records should be kept and provided to the Lead Contractor; and
 - (b) agrees to provide the Sub-contractor with reasonable notice of any request to collect information so that the Sub-contractor can put in place systems to collect and manage that information.

17.2 The Sub-contractor must:

- (a) in delivering the Services, comply with the *Privacy and Personal Information Protection Act 1998* (NSW) (as if it were a public sector agency for the purposes of that Act), and the *Health Records and Information Privacy Act 2002* (NSW) (together “Privacy Laws”);
- (b) establish and maintain clear operational records for the Services, in a form that meets appropriate record-keeping standards and all applicable legislative requirements, and any reasonable requirements set out by the Lead Contractor;
- (c) establish and maintain records of interest earned on Funds (as defined under Schedule 2 of this document);
- (d) take steps to make sure that collecting the information required under this agreement and providing that information to the Lead Contractor will not breach Privacy Laws or confidentiality laws;
- (e) retain the records and information collected throughout the Term and for 7 years after the expiry or termination of this agreement, or as otherwise required under legislation or specified in writing by the Lead Contractor and/or FACS;
- (f) dispose of the records referred to in clause 17.2(b) above, once they are no longer required to be maintained in accordance with clause 17.2(e), in accordance with sound record management practice; and
- (g) share the records and information collected under this clause with the Lead Contractor within a reasonable period of time after receiving a request for that information.

18 Access to Information

18.1 The Sub-contractor acknowledges that the Lead Contractor and/or FACS may disclose certain information about this agreement and the Services provided in accordance with Community Services’ obligation under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**), including making certain information about this agreement publicly available in any disclosure log of contracts FACS is required to maintain.

18.2 The Sub-contractor must, within 5 Business Days of receiving a written request from FACS, provide FACS with immediate access to the following information contained in records held by the Sub-contractor:

- (a) information that relates directly to the performance of the Services;
- (b) information collected by the Sub-contractor from members of the public to whom it provides, or offers to provide, the Services; and
- (c) information received by the Sub-contractor from the Lead Contractor and/or FACS to enable it to perform the Services.

18.3 For the purposes of clause 18.2, such information does not include:

- (a) information that discloses or would tend to disclose the Sub-contractors financing arrangement, financing modelling, cost structure or profit margin;

- (b) information that the Sub-contractor is prohibited from disclosing to the Lead Contractor and/or FACS by provision made under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to the Lead Contractor and/or FACS, could reasonably be expected to place the Sub-contractor at a substantial commercial disadvantage in relation to FACS, whether at present or in the future.

18.4 The Sub-contractor may request a copy of any public information or report compiled by the Lead Contractor as a result of surveys or any annual report compiled from ongoing data collections. The Sub-contractor must make its request in writing and the Lead Contractor must provide copies of document requested to the Sub-contractor within 35 Business Days of them receiving a written request.

18.5 All requests for information under this section are also subject to clause 19 regarding intellectual property rights.

19 Intellectual Property Rights

19.1 In this clause:

Protected Works means all material conceived, developed or produced by the Sub-contractor (whether alone or jointly with others), in connection with or pursuant to its performance of the Services, including (without limitation) works of authorship, databases, documents, reports, findings, recommendations, designs, drawings, sketches, notebooks, ideas, concepts, technical data and/or training materials, and improvements to or derivatives from any of the above, whether or not patentable, or subject to copyright or trademark protection.

Intellectual Property Rights means all present and future rights of authorship, all rights in patents and patent applications, all copyrights, all trademark and service mark rights, all rights in trade secret and proprietary information, and other moral rights, and all other intellectual property rights of any type whether non-registrable, registrable or patentable..

19.2 The Parties agree that:

- (a) the Protected Works and all Intellectual Property Rights in them are owned by the Sub-contractor;
- (b) the Sub-contractor agrees to provide an irrevocable, royalty-free licence to the Lead Contractor to use the Protected Works where that use is required so that the Lead Contractor can meet its obligations under the FACS Funding Agreements; and
- (c) the Sub-contractor will execute any documents reasonably required by Lead Contractor to evidence Lead Contractor's rights to use the Protected Works as contemplated by this agreement

<Note to parties: consider whether the Lead Contractor will be providing any intellectual property to the Sub-contractor. If so, add protection here>

20 Termination

20.1 If any of the FACS Funding Agreements are terminated in whole or part, for any or no reason, and that termination affects the provision of the Services, then:

- (a) where that termination affects the provision of all of the Services this agreement will automatically terminate on the same date that the relevant FACS Funding Agreement terminates; and
- (b) where that termination affects provision of part of the Services, the parties will act in good faith to amend this agreement so that it relates to the remaining Services to be provided by the Sub-contractor.

20.2 The Lead Contractor must notify the Sub-contractor if it becomes aware that this agreement will be terminated pursuant to clause 20.1 as soon as reasonably practicable after becoming aware of the date of termination.

20.3 The Lead Contractor may terminate this agreement if it has been directed in writing by FACS to do so.

20.4 This agreement may be terminated by either party:

- (a) immediately, by notice in writing if:
 - (i) a party is in material breach of its obligations under this agreement which cannot be fixed; or
 - (ii) the breach is material and can be fixed but the party at fault fails to fix the breach within 10 Business Days of being requested by the other party to do so in writing (or such longer timeframe specified in the request); or
 - (iii) the party becomes insolvent under the meaning of insolvency used in companies law in Australia, or bankrupt under the meaning of bankruptcy laws of Australia (whichever is relevant to the party).

<Note: the termination clause is very important. Parties should carefully consider other circumstances where they might need a right to terminate and what clauses might be appropriate. For example the FACS Funding Deed has a termination for convenience clause which allows either party to terminate the Deed with 90 days' notice so you could include a clause for either party to terminate with eg: no less than 80 days' notice. Alternatively, parties can consider a clause to terminate by mutual agreement.>

20.5 FACS and the Lead Contractor will not, in any circumstance, be liable for any Consequential Loss suffered by the Sub-contractor as a result of the termination of this agreement, except as contemplated in clause 20.7.

20.6 At the expiry or termination under this clause, the Sub-contractor must:

- (a) if requested by the Lead Contractor and/or FACS, work with the Lead Contractor and/or FACS to ensure the orderly transition of clients of the Services to a new service provider;

- (b) provide the following to the Lead Contractor and/or FACS, within 15 Business Days of expiry or termination of this agreement:
 - (i) any reports or data due to the Lead Contractor and/or FACS under this agreement, or otherwise requested by the Lead Contractor and/or FACS;
 - (ii) any Protected Works and licences that the Lead Contractor is entitled to under clause 19 of this agreement; and
 - (iii) all Confidential Information of the Lead Contractor relating to this agreement, in the possession or control of the Sub-contractor.

20.7 Where FACS terminates the FACS Funding Agreements for cause under clause 19.1 of the FACS Funding Agreements, in circumstances where the breach of the FACS Funding Agreements by the Lead Contractor resulting in the termination of the FACS Funding Agreements is not caused or contributed to by the acts or omissions of the Sub-contractor or its Personnel (whether under this agreement or otherwise), the Sub-contractor will be entitled to be paid by the Lead Contractor:

- (a) the amount due to the Sub-contractor shown in any unpaid payment schedule;
- (b) for the Services performed prior to the termination date, the amount which would have been payable if this Sub-contract had not been terminated and the Sub-contractor had been entitled to and made a payment claim on the date of termination;
- (c) the cost of materials reasonably ordered by the Sub-contractor to perform the Services which the Sub-contractor is legally liable to accept, but only if the materials become the property of the Lead Contractor upon payment;
- (d) any demobilisation costs reasonably incurred by the Sub-contractor as a direct result of the termination;
- (e) costs reasonably incurred by the Sub-contractor in the expectation of completing the whole of the Services and not included in any payment by the Lead Contractor,

subject to the Sub-contractor taking all reasonable steps to mitigate such costs and up to and not exceeding [*parties to insert pecuniary cap or formula*].

20.8 The amount payable under clause 20.7 is the Sub-contractor's sole entitlement in connection with the termination of this agreement under clause 20.1, whether under this agreement or otherwise.

<Note to parties: carefully consider and negotiate the consequences of termination of this Agreement. Consider whether there should be different consequences depending on whether termination is for cause or the fault of a party, compared with where parties or FACS has terminated for convenience>

21 Accrued Rights

21.1 Termination of this agreement will not affect any accrued rights of either Party.

22 Survival

- 22.1 Clauses Definitions, Confidential Information, Records and Information-sharing, Intellectual Property Rights, Insurance and Indemnity and any clauses of the FACS Funding Agreements which are intended to survive termination of the FACS Funding Agreement (to the extent they apply to the Sub-contractor), will survive termination of this agreement.

23 Variation

- 23.1 This agreement may only be varied by another agreement signed by both Parties.

24 Notices

- 24.1 Any notice required or given under this agreement must be provided in writing. This can include in electronic form (such as email).

25 Entire Agreement

- 25.1 This agreement constitutes the whole and entire agreement between the Parties and supersedes any prior representation, understanding or arrangement given or made by the Parties whether orally or in writing.

26 Counterparts

- 26.1 This agreement may be executed in any number of counterparts. All counterparts taken together constitute one agreement.

27 Invalidity

- 27.1 A word or provision must be read down if:
- (a) this agreement is void, voidable or unenforceable if it is not read down;
 - (b) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (c) the provision is capable of being read down.
- 27.2 A word or provision must be severed if:
- (a) despite the operation of clause 27.1, the provision is void, voidable or unenforceable if it is not severed; and
 - (b) this agreement will be void, voidable, or unenforceable if it is not severed.
- 27.3 The remainder of this agreement has full effect even if clause 27.2 applies.

28 Waiver

- 28.1 A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

29 Governing Law and Jurisdiction

- 29.1 This agreement is governed by the laws of New South Wales, Australia and the Parties agree to irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

<Note to parties: make sure that the people executing this agreement has been appropriately authorised to do so. This may be through a formal delegation of the board to the person, or through a power of attorney. These signature blocks may need to be amended to meet internal requirements of organisations for executing documents. For example some organisations require two directors to execute agreements over a certain value.>

SIGNED for and on behalf of [Lead Contractor] by its duly authorised representative

[CEO / Director]

Date:

SIGNED for and on behalf of [Sub-contractor] by its duly authorised representative

[CEO / Director]

Date:

SCHEDULE 1

	Description	Details
1.	Details of Lead Contractor	Name: <Parties to insert> A.C.N: <Parties to insert> A.B.N: <Parties to insert> Address: <Parties to insert>
2.	Details of Sub-contractor	Name: <Parties to insert> A.C.N: <Parties to insert> A.B.N: <Parties to insert> Address: <Parties to insert>
3.	Lead Contractor's nominated contact/s' details for requests and communications made under this agreements	Name: <Parties to insert> Address: <Parties to insert> Email: <Parties to insert>
4.	Sub-contractor's nominated contact/s' details for requests and communications made under this agreements	Name : <Parties to insert> Address: <Parties to insert>] Email: <Parties to insert>
5.	Sub-contract supervisor at Sub-contractor	<Name of Program Manager at Lead Contractor>
6.	Sub-contractor senior staff to be contacted if a dispute arises for the purposes of dispute resolution clause 11	<Parties to insert>
7.	Lead Contractor senior staff to be contacted if a dispute arises for the purposes of dispute resolution clause 11	<Parties to insert>
8.	Account Code	<Lead Contractor cost code>

	Description	Details
9.	Services	<i><Parties to insert a description of the Services to be provided by the Sub-contractor. It should be as close to the description under the FACS Funding Agreements as possible ></i>
10.	Service Outlet	<i><Parties to insert the usual location(s) the Services will be provided></i>
11.	Term	<i><Parties to determine. Should include the agreed Term, and any options or extension provisions that the parties have negotiated. Consideration should be given to the term contained in the FACS Funding Agreements></i>
12.	Start Date	<i><The date agreed between parties where Services will start to be delivered></i>
13.	Fees (exclusive of GST)	<p><i>\$ <Parties to determine</i></p> <p><i><Note that if Fees include funding that derives from FACS as well as other fees, these should be separated out for clarity. Any changes that may occur to Fees throughout the agreement, such as application of CPI to the Fees, or pass-through of increases to Funds provided by FACS to the Lead Contractor should be clearly set out here. Further, any interest earned on Fees must only be used for the Services.></i></p>
14.	Invoicing intervals	<i><Parties to determine invoicing requirements and payment timeframes></i>
15.	Management Fees	<i><Parties to determine></i>
16.	<i><Parties can insert any other terms required></i>	<i><Parties can insert any other terms required></i>

SCHEDULE 2

Overview of requirements under the FACS Funding Agreements that apply to this agreement

1. Application of FACS Funding Agreements requirements

The Sub-contractor must deliver the Services in accordance with this agreement and in a way that the Lead Contractor can meet the requirements and conditions in the FACS Funding Agreements. This schedule sets out some of the requirements and conditions from the FACS Funding Agreements that are relevant to the Sub-contractor, however the Sub-contractor should refer to the FACS Funding Agreements for a full list of the requirements and conditions applying to the Lead Contractor and which the Sub-Contractor is also required to meet. If the Sub-contractor does not meet requirements in the FACS Funding Agreements, FACS may instruct the Lead Contractor to terminate this agreement.

2. Schedule Definitions

In this Schedule:

Asset in respect of the Services means an item of tangible property purchased or leased either wholly or in part with the use of the Funds provided under this agreement, with a value of \$5,000 or more (inclusive of GST).

Funds mean any portion of the Fees paid under this agreement, or other funds paid in relation to this agreement to the Sub-contractor that derive from FACS and are subject to the FACS Funding Agreement.

Capitalised terms not otherwise defined in this Schedule have the meaning given to those terms in the FACS Funding Agreement.

3. Performance of Program and Services

3.1. So that the Lead Contractor can comply with the FACS Funding Agreements, in delivery of the Service the Sub-contractor must:

- (a) provide reasonable access to the Services and Service Outlets all people in the identified client group (set out in the Program Level Agreement), regardless of race, gender, age, pregnancy, marital status, disability, sexual preference, religion, cultural background, transgender or health status. The provision of reasonable access may require the use of interpreters and translators for clients from diverse linguistic and cultural backgrounds.
- (b) take reasonable action to ensure that any Service Outlets are physically accessible to people with disabilities, having regard to the circumstances of a particular case, including:
 - (i) the needs of the client;
 - (ii) the consequences for the client of exclusion from Services;
 - (iii) the financial circumstances of the Service Provider; and
 - (iv) the estimated cost of accessibility.

- (c) encourage and enable clients to whom Services are provided and, where appropriate, their guardians or advocates, to exercise their rights. In particular, the right to:
 - (i) obtain other assistance or services, which the Service Provider must inform its clients about;
 - (ii) negotiate how Services are delivered to them
 - (iii) privacy and to be treated with respect and dignity; and
 - (v) have access, without fear, to an effective complaints mechanism, which the Service Provider must provide.
- (d) only exclude people in the identified client group (set out in the Program Level Agreement) where the Sub-contractor can demonstrate to the reasonable satisfaction of FACS and/or the Lead-Contractor that the exclusion is supported by a client assessment of current risk and that it has made reasonable attempts to manage that identified risk.
- (e) provide services in accordance with:
 - (i) the requirements of the Program Level Agreement and this agreement;
 - (ii) the Sub-contractor's constituent documents;
 - (iii) all applicable laws and accreditation requirements, including but not limited to the legislation, guidelines, frameworks and policies referred to at the FACS website; and
 - (iv) all applicable professional ethics, principles and standards.
- (f) Notify the Lead-Contractor immediately in writing, if:
 - (i) Services will not be ready to commence within 60 days from the Start Date;
 - (ii) Services have not been operating for a period of 5 consecutive Business Days or more, including the Christmas holiday period, in which the Services are required to operate;
 - (iii) a Service Outlet may not be accessible to clients for 5, or more, consecutive days on which Services would normally be provided; and
 - (iv) Services required have ceased to operate.

4. Personnel

- 4.1. The Sub-contractor must ensure that all Personnel engaged in providing Services are properly authorised, accredited, trained and experienced to provide the Services.
- 4.2. If the Sub-contractor is an 'employer' for the purposes of section 9 of the Child Protection (*Working With Children*) Act 2012 (NSW) (CPWC Act), ensuring that all mandatory employment screening (referred to in the CPWC Act as the 'working with children check clearance') has been undertaken on all Personnel engaged to work in 'child-related work' (as defined in the CPWC Act), prior to such Personnel performing any such work.

- 4.3. The Sub-contractor must ensure that a person who is a Barred Person, or who is otherwise undesirable to work with children, does not undertake child-related work under this agreement.
- 4.4. FACS and/or the Lead Contractor may object to any Personnel allocated by the Sub-contractor to perform the Services where the Sub-contractor's Personnel has engaged in misconduct or cannot perform the inherent requirements of the Services.
- 4.5. Where FACS and/or the Lead Contractor objects to the Sub-contractor's Personnel, a senior executive from FACS and/or the Lead Contractor will consult with the Sub-contractor about the objection particularly about the reasons for the objection.

5. Other Obligations

5.1. The Sub-contractor must:

- (a) ensure that the provisions of this agreement are reflected in the Sub-contractors service standards and other relevant policies and that these documents are readily available to Personnel and clients of the Sub-contractor;
- (b) provide input into the Lead Contractor and/or FACS' planning processes (where requested by the Lead Contractor and/or FACS);
- (c) promptly notify the Lead Contractor, in writing, if the Sub-contractor's address or bank account details change;
- (d) use any interest earned on the Fees as if that money earned on the Fees were part of the Fees and must only use that money for the purposes of the Services;
- (e) not enter into any arrangement or commitment in relation to the Services which are inconsistent with this agreement; and
- (f) notify the Lead Contractor, in writing, if financial assistance is provided by any other agency or authority in relation to the Services.

6. Research, Evaluation and Data Collection

- 6.1. The Sub-contractor must comply with the research, evaluation and data collection requirements of the Program Level Agreement, in respect of the Services.
- 6.2. The Sub-contractor must comply with any request from the Lead Contractor and/or FACS for statistical or other information relating to the Services to be used for surveys or research authorised by FACS.
- 6.3. If the Sub-contractor makes a written request to the Lead Contractor and/or FACS, the Lead Contractor and/or FACS will provide the Sub-contractor with a copy of any public information or report compiled by FACS as a result of any surveys or research referred to in clause 6.2 above within 21 days of the Sub-contractor's request.

- 6.4. The Sub-contractor must promptly notify the Lead Contractor if it, or any third party, intends to conduct research into activities that are part of the Services. The Sub-contractor agrees that any such research must comply with FACS' Guidelines for External Researchers, available at the FACS website.

7. Audits

- 7.1. FACS and/or the Lead Contractor may audit compliance with the FACS Funding Agreements, which may include auditing the Sub-Contractor's compliance with this agreement.
- 7.2. FACS and/or the Lead Contractor may attend any premises at which the Sub-contractor performs the Services to inspect the operation of the Services, as follows:
- (a) if FACS and/or the Lead Contractor wishes to attend a Service Outlet, FACS and/or the Lead Contractor will, where practicable, endeavour to provide at least 48 hours prior notice;
 - (b) if FACS and/or the Lead Contractor wishes to attend a client or carer's private home, FACS and/or the Lead Contractor will, where practicable, endeavour to provide 14 days' prior notice to the client or carer and must only attend the client or carer's private home with the client or carer's permissions.
- 7.3. FACS and/or the Lead Contractor may conduct an audit of the Sub-contractor's compliance with its obligations under this agreement and the FACS Funding Agreements, at any time during the Term and for seven years after the expiry or termination of the Term. In conducting an audit, FACS and/or the Lead Contractor will, where practicable, endeavour to provide the Sub-contractor with:
- (a) written advice at least 10 Business Days prior to commencing the audit;
 - (b) written terms of reference for the audit;
 - (c) instruction about the Sub-contractor's obligations during the audit;
 - (d) a copy of any reporting arising from the audit; and
 - (e) an opportunity to respond to any audit report.
- 7.4. The Sub-contractor agrees to, at no cost or expense to FACS and/or the Lead Contractor:
- (a) make available to FACS and/or the Lead Contractor all requested records and documents, upon 7 days written notice from FACS and/or the Lead Contractor; and
 - (b) provide all reasonable assistance to FACS and/or the Lead Contractor in the conduct of an inspection or audit under this clause.
- 7.5. If FACS and/or the Lead Contractor hold serious concerns about the operation of the Services, to FACS and/or the Lead Contractor reserves the right to, with the approval of the relevant senior executive officer from FACS and/or the Lead Contractor, attend premises or inspect records or documents without prior notice to the Sub-contractor. FACS and/or the

Lead Contractor will, where practicable, endeavour to provide reasons upon attending the premises or inspecting the records or documents.

- 7.6. FACS and/or the Lead Contractor may appoint an independent person for the purposes of an inspection or audit under this clause.

8. Managing Performance

- 8.1. The Sub-contractor must meet or exceed the Performance Measures for Services for which it is responsible, as specified in the Program Level Agreement.
- 8.2. The Sub-contractor must report on the Sub-contractor's performance against the Performance Measures, as outlined in the Program Level Agreement, or as otherwise notified to the Sub-contractor by FACS and/or the Lead Contractor.
- 8.3. The Sub-contractor must participate in all Performance Measurement Cycles for Services for which it is responsible. The framework, policies and guidelines outlining these cycles are available at the FACS website.
- 8.4. The Sub-contractor must meet the Performance Measures for Services referred to in clause 8.1 above. A failure by the Sub-contractor to comply with this clause may be taken to constitute a breach of this agreement (as described in clause 20 of this agreement).

9. Financial Reporting

- 9.1. Subject to clause 9.4, if the Sub-contractor is required by law to prepare audited financial statements, the Sub-contractor must provide FACS and/or the Lead Contractor with copies of such audited financial statements, within four months of the end of each Financial Year during the Term.
- 9.2. Any audited financial statement provided to FACS and/or the Lead Contractor in accordance with this Financial Reporting section must be accompanied by an audit certificate signed by an auditor who is a member of a professional accounting or auditing body that meets Australian Accounting Standards. The auditor must be independent of the Sub-contractor and must not have any financial interest in the Sub-contractor. The audit certificate must include a statement that the audit has been completed in accordance with Australian Accounting Standards.
- 9.3. Subject to clause 9.4 below, if the Sub-contractor is not required by law to prepare audited financial statements, the Sub-contractor must provide FACS and/or the Lead Contractor with the following financial statements, within four months of the end of each Financial Year during the Term:
- (b) a balance sheet;
 - (c) an income and expenditure statement; and
 - (d) a statement of changes in equity for the financial year.
- 9.4. The Sub-contractor is not required to comply with clauses 9.1 and 9.3 if the Sub-contractor is a local council, university or other body established under NSW legislation.

- 9.5. The Sub-contractor must provide a certificate in relation to the expenditure of all Funds provided to the Sub-contractor under this agreement which are directly attributable to the Services that the Sub-contractor is engaged to perform under this agreement:
- (a) certifying that the Funds have been properly spent, in accordance with any requirements in the FACS Funding Agreements;
 - (b) signed by two members of the Sub-contractor's board of management (or equivalent);
and
 - (c) within four months of the end of each Financial Year during the Term.
- 9.6. The Sub-contractor must include in the audited financial statement any additional funding or fees provided by FACS through the Lead Contractor to the Sub-contractor (outside this agreement) which are directly attributable to the Services that the Sub-contractor is engaged to perform under this agreement, within four months of the end of each Financial Year during the Term.

10. Program Level Agreement

- 10.1. The Sub-contractor must provide relevant information to the Lead Contractor to assist the Lead Contractor to meet its obligations to provide an income and expenditure statement within four months of the end of each Financial Year during the term of funding between FACS and the Lead Contractor, where:
- (a) funds are provided under Program Level Agreements between the Lead Contractor and FACS valued at above \$25,000;
 - (b) additional funds are provided by FACS to the Lead Contractor and/or the Sub-contractor under a Program Level Agreement.

11. Asset Management and Ownership

- 11.1. The Sub-contractor agrees that any assets purchased with Funds are the property of FACS and are held in trust by the Sub-contractor on behalf of and for the benefit of FACS unless otherwise approved by FACS. The Sub-contractor must:
- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause, without the prior written approval of FACS;
 - (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (c) maintain all Assets in good working order;
 - (d) maintain appropriate insurance in respect of any Assets;
 - (e) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;

- (f) maintain a register of these Assets over the value of \$5,000; and
- (g) provide a copy of the register of Assets to FACS and/or the Lead Contractor within four months of the end of each Financial Year during the Term.

11.2. The Sub-contractor must obtain prior written approval from FACS before selling or otherwise disposing of an Asset. The Service Provider must, at the direction of the Lead Contractor and/or FACS:

- (a) pay to the Lead Contractor and/or FACS within 15 Business Days of the date of the sale or disposal, the written down value of the Asset using the Australian Taxation Office depreciation rates to calculate the depreciation of the asset;
- (b) pay to the Lead Contractor and/or FACS within 15 Business Days of the date of the sale or disposal, the proceeds of the sale or disposal, less an amount equal to the sum of the Sub-contractor's proportionate contribution to the purchase price of the Asset and the Sub-contractor's reasonable costs of sale or disposal of the Asset; or
- (c) use the funds from the disposal of the asset for a purposes approved in in writing by FACS (and such approval may be sought by the Sub-contractor from FACS directly, or via the Lead Contractor).

<Note: if the Lead Contractor received proceeds of sale of Assets, it will be under an obligation to pass through those proceeds to FACS under the FACS Funding Deed. It therefore may be more appropriate and less administratively burdensome for the Sub-contractor to provide Asset sale funds directly to FACS rather than via the Lead Contractor. Timelines have been shortened to accommodate payments to Lead Contractor for purposes of passing on to FACS within timeframes indicated in the FACS Funding Deed >

11.3. At the expiration or termination of this agreement, the Sub-contractor must, at the direction of the Lead Contractor and/or FACS:

- (a) pay to the [Lead Contractor and/or FACS] within 15 Business Days of the date of the sale or disposal, the written down value of the Asset using the Australian Taxation Office depreciation rates to calculate the value of the Asset;
- (b) sell the Asset for the best price reasonably obtainable and pay to the [Lead Contractor and/or FACS] within 20 Business Days of the date of the sale the proceeds of the sale, less an amount equal to the sum of the Sub-contractor's proportionate contribution to the purchase price of the Asset and the Sub-contractor's reasonable costs of the sale of the Asset; or
- (c) use the Asset for a purpose approved in writing by the [Lead Contractor and/or FACS].

11.4. Assets acquired under any previous funding arrangement involving FACS and the Sub-contractor must be treated as an Asset for the purposes of this section on Asset Management and Ownership.

<Note: parties should consider whether payments under this clause should be made to the Lead Contractor or would be more appropriately made directly to FACS. Timelines have been shortened to accommodate payments to Lead Contractor for purposes of passing on to FACS within timeframes indicated in the FACS Funding Deed>

ANNEXURE A – FACS Funding Deed

ANNEXURE B – FACS Program Level Agreement

[ANNEXURE C – Service Delivery Schedule] [to be included if there is a Service Delivery Schedule]

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