**SERVICE AGREEMENT**

# Details of the Parties

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| --- |
| **Institution:** **(name of Health Service Provider), a body corporate established under section 32 of the Health Services Act 2016**  Address:  ABN:  Contact for Notices:  Fax for Notices:  Phone Number: |
| **Service Provider:**  Address:  ABN:  Contact for Notices:  Fax for Notices:  Phone Number: |

THIS AGREEMENT IS MADE BETWEEN THE SERVICE PROVIDER AND THE INSTITUTION

**Purpose of this Agreement**

This Agreement specifies:

1. The Services that will be provided by the Service Provider to the Institution;
2. The payments the Institution will provide to the Service Provider as consideration for the provision of Services; and
3. The terms and conditions on which the Services will be provided by the Service Provider.
4. **DEFINITIONS**
   1. Unless the context otherwise requires, the following definitions apply in this Agreement:

**Adverse Event** has the meaning given in the document issued by the TGA entitled “Access to Unapproved Therapeutic Goods – Clinical Trials in Australia” (October 2004) or any replacement of that document;

**Agreement** means this service agreement (including the Schedules) as amended, supplemented or varied from time to time;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia;

**Claims** means actions, proceedings, suits, claims, demands, losses, damage and expenses of every kind and character whatsoever;

**Commencement Date** means the date this Agreement is last signed by the parties;

**GST** means the Goods and Services Tax payable under a GST Law;

**GST** **Law** means the same as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time, and any regulations made pursuant to that Act;

**Institution** means ***name of institution***, whose details are set out on the front page of this Agreement;

**HREC** means Human Research Ethics Committee;

**Personnel** means officers, employees, contractors, agents and/or authorised representatives;

**Premises** means the land and buildings used by the Institution in relation to the Service;

**Serious Adverse Event** has the meaning given in the document issued by the TGA entitled “Access to Unapproved Therapeutic Goods – Clinical Trials in Australia” (October 2004) or any replacement of that document;

**Service Provider** means ***name of service provider***, whose details are set out on the front page of this Agreement;

**Services** means the Service to be provided by the Service Provider as described in **Schedule 1** of this Agreement;

**Service Fees** means the fees to paid by the Institution for the provision of Services as set out in **Schedule 2** of this Agreement;

**Term** means the period from the Commencement Date until termination of this Agreement pursuant to **clause 12;** and

**TGA** means the Therapeutic Goods Administration of the Commonwealth of Australia or any successor body.

* 1. Except where the context otherwise requires:

### clause headings are for convenient reference only and are not intended to affect the interpretation of this Agreement;

### where any word or phrase has a defined meaning, any other form of that word or phrase has a corresponding meaning;

### any reference to a person or body includes a partnership and a body corporate or body politic;

### words in the singular include the plural and vice versa;

### all the provisions in any schedule to this Agreement are incorporated in, and form part of, this Agreement and bind the parties;

### if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

### a reference to a monetary amount means that amount in Australian currency; and

### references to the Institution include its Personnel.

### This Agreement may be executed in any number of counterparts. All of such counterparts taken together are deemed to constitute one and the same Agreement.

1. **GOOD FAITH AND FURTHER ASSURANCES**

Each party agrees to co-operate and deal with the other in good faith and to execute and do all acts and things necessary or desirable to implement and give effect to the provisions and purpose of this Agreement.

1. **THE SERVICE PROVIDER’S RESPONSIBILITIES**
   1. The Service Provider will, to the best of its ability, but subject to **clause 20**, provide the Services to the Institution.
   2. The Service Provider warrants that:

(a) any consumables or equipment used in providing the Services are in safe and proper working order and suitable for the purpose; and

(b) all persons providing the Services are suitably skilled, trained, qualified and competent.

* 1. The Service Provider shall provide the Institution with access to copies of any policies, regulations, rules, procedure manuals, directions or other similar documents, which relate to or concern access to the Premises.

1. **THE INSTITUTION’S RESPONSIBILITIES**
   1. The Institution will notify the Service Provider of any Adverse Events (including Serious Adverse Events) involving the Services.
   2. The Service Provider will cooperate with the Institution and the responsible HREC in investigating any Adverse Event (including a Serious Adverse Event) arising out of or in connection with the Service.
   3. The Institution warrants that where its Personnel use or operate equipment which is the property of the Service Provider, those Personnel will be appropriately trained and have the relevant skills and expertise in the use or operation of any such equipment.
   4. The Institution must take all reasonable measures to ensure that its Personnel read, understand and comply with any policies, regulations, rules, procedure manuals, directions or other similar documents provided by the Service Provider for the purposes of this Agreement.
2. **SERVICE**

The Service Provider must ensure that the Services are provided strictly in accordance with the specifications set out in **Schedule 1**.

1. **PAYMENTS**

In consideration of the Service Provider providing the Services, the Institution will pay to the Service Provider the Service Fees specified in **Schedule 2** in the manner and at the times set out in **Schedule 2**.

1. **INDEMNITY**
   1. Each party releases and indemnifies, and keep indemnified, each other party, their directors, officers, employees and agents from and against all claims, demands and proceedings (**Claims**), and all losses, costs, expenses and damages as a result of or in connection with such claims (**Losses**), by or on behalf of any person as a result of or in connection with the indemnifying party’s conduct of the Service, the indemnifying party’s performance or breach of its obligations under this Agreement or any matters incidental to or arising therefrom, except to the extent the Claim or Loss was caused by the gross negligence, unlawful conduct or wilful misconduct by or on behalf of the indemnified party.
   2. The indemnified party will promptly inform the indemnifying party of any Claim to which clause 7.1 applies, and will provide such information and assistance to the indemnifying party in connection with such Claim as the indemnifying party reasonably requests.
   3. The indemnifying party shall keep the indemnified party and its legal advisers fully informed of the progress of any Claim to which clause 7.1 applies consult fully with the indemnified party on the nature of any defence to be advanced and not settle any such Claim without the written consent of the indemnified party, which consent shall not be unreasonably withheld.
   4. The provisions of this clause 7 are continuing obligations of the parties and shall survive the termination of this Agreement to the extent relevant to any claim where the cause of action arose before this Agreement is terminated.
2. **INSURANCES**
   1. The Service Provider must maintain such insurances as are reasonably available and necessary to cover its indemnity obligations under this Agreement.
   2. The Institution arranges self-insurance through the Insurance Commission of Western Australia, a body corporate constituted under the *Insurance Commission of Western Australia Act 1986*. A “certificate of currency” for the Service Provider will be provided to the Institution on request.
   3. The provision of the Service may not commence unless the Service Provider has complied with **clause 8.1** and failure on the Service Provider's part to comply with that clause will entitle the Institution to treat this Agreement as being at an end without affecting the Institution's right to damages for breach of contract.
3. **IDENTIFICATION**

The Institution shall ensure that its Personnel wear identification badges at all times when on the Premises clearly identifying them as the Institution’s Personnel.

1. **DISPUTES**
   1. No party may commence legal proceedings against another in respect of a dispute arising in relation to this Agreement (except for urgent interlocutory relief) unless the parties have complied with this clause. If a dispute arises, either party must first notify the other party in writing of the dispute and then the parties must use all reasonable endeavours to resolve the dispute with the other party within 20 Business Days of the giving of that notice.
   2. In the event that the dispute is not settled within 20 Business Days, then the parties are free to pursue any other procedures available at law for the resolution of the dispute.
2. **REVIEW OF TERMS OF AGREEMENT**
   1. Both parties acknowledge that variations to the provision of Service may occur during the Term and such variations will be the subject of negotiation at the time.
   2. This Agreement may be varied only by agreement in writing signed by both parties.
   3. The terms of this Agreement will be reviewed by mutual agreement of the parties.
3. **TERM AND TERMINATION**
   1. This Agreement commences on the Commencement Date and will remain in force for the Term.
   2. Either the Service Provider or the Institution may terminate this Agreement with 24 hours prior written notice
   3. The following provisions survive termination of this Agreement, **clauses** **1.1, 1.2, 4.1, 4.2, 7, 8, 10, 11.2, 12, 15, 16 and 21.1**.
4. **ASSIGNMENT AND SUB-CONTRACTING**
   1. The Service Provider may not assign or sub-contract its rights and obligations under this Agreement without prior written consent from the Institution.
   2. The Institution may assign this Agreement to any entity which assumes control of the Institution without the requirement of consent from, or notice to, the Service Provider
5. **WAIVER**

## No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right. A waiver by any party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any other breach.

## Failure or delay by any party to enforce any provision of this Agreement will not be deemed to be a waiver by that party of any right in respect of any other such breach.

1. **NOTICES**
   1. A notice, consent, approval or other communication (each a notice) under this Agreement must be:

### delivered to the party’s address;

### sent by pre-paid mail to the party’s address; or

### transmitted by facsimile to the party’s address.

* 1. A notice given by a party in accordance with this clause is treated as having been given and received:

### if delivered to a person’s address, on the day of delivery if a Business Day, otherwise on the next Business Day;

### if sent by pre-paid mail, on the third Business Day after posting; or

### if transmitted by facsimile to a person’s address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

* 1. The addresses of the parties for the purposes of giving any notice are set out on the front page of this Agreement.

1. **ENTIRE AGREEMENT**

This Agreement (including all documents referred to in this Agreement) constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

1. **SEVERANCE**

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of this Agreement provided that if the party which benefited from the part so severed forms the opinion, acting reasonably, that any such severance materially prejudices its rights under the Agreement, the party so affected may by notice in writing to the other terminate this Agreement.

1. **COSTS**

Each party agrees to bear its own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and of other related documentation.

1. **RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement creates a relationship of employer and employee, principal and agent, joint venture or partnership between the parties and no party will hold itself out as an agent for another.

1. **FORCE MAJEURE**

If any party is delayed or prevented from the performance of any act required under this Agreement by reason of any act of god, act of nature, including any epidemic or outbreak of pandemic disease, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies, labour disputes of whatever nature or whatever reason beyond the control of the party, performance of such act shall be excused for the period of such event provided that if such interference lasts for any period in excess of 25 Business Days each party may, by written notice to the other party, terminate this Agreement.

1. **GENERAL CLAUSES**
   1. This agreement is governed by the laws of Western Australia, and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia and courts competent to hear appeals from those Courts.
   2. Any warranties and representations made by either party prior to the execution of this Agreement are to the fullest extent permitted by law excluded from the operation of this Agreement.
   3. The Institution may act through its officers and employees.

The parties have caused this Agreement to be executed as an agreement

Signed on behalf of ***name of Service Provider***

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

Signed on behalf of the **Institution**

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

for and on behalf of (**name of Health Service Provider)** in accordance with section 41 of the *Health Services Act 2016*

**SCHEDULE 1**

**SERVICES TO BE PROVIDED BY THE SERVICE PROVIDER**

[to be inserted]

**SCHEDULE 2**

**PAYMENTS**

|  |  |
| --- | --- |
| **Item 1: Commencement Date** | [to be inserted] |
| **Item 2: Term of Agreement** | [to be inserted] |
| **Item 3: Annual Fee** | [to be inserted] |
| **Item 4: Service Fee** | [to be inserted] |
| **Item 5: Notices**  **Service Provider** | **Address:** [to be inserted]  **Fax number:**  [to be inserted]  **Attention:**  [to be inserted] |
| **Institution** | **Address:**  [to be inserted]  **Fax number:**  [to be inserted]  **Attention:** [to be inserted] |
| **Item 6: Authorised Representatives**  **Service Provider**  **Institution** | [to be inserted]  [to be inserted] |