**SERVICE AGREEMENT**

# Details of the Parties

|  |
| --- |
| **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 Recipient:** Address: ABN: Contact for Notices: Fax for Notices: Phone Number:  |

|  |
| --- |
|  |

THIS AGREEMENT IS MADE BETWEEN THE INSTITUTION AND THE SERVICE RECIPIENT

**Purpose of this Agreement**

This Agreement specifies:

1. The Services that will be provided by the Institution to the Service Recipient;
2. The payments the Service Recipient will provide to the Institution as consideration for the provision of Services; and
3. The terms and conditions on which the Services will be provided by the Institution.
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;

**HREC** means Human Research Ethics Committee;

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

**Medical Product** means the product prepared by the Institution for the Service Recipient as described in **Schedule 1**;

**Medical Service** means the service provided by the Institution for the Service Recipient as described in **Schedule 1**;

**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;

**Services** means the Medical Product and/or Medical Service to be provided by the Institution as described in **Schedule 1** of this Agreement;

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

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

**Term** means the period from the Commencement Date until termination of this Agreement pursuant to **clause 14**; 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 Service Recipient 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 INSTITUTION’S RESPONSIBILITIES**
	1. The Institution will, to the best of its ability, but subject to **clause 20**, provide the Services to the Service Recipient.
	2. The Institution 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 Institution shall provide the Service Recipient 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 SERVICE RECIPIENT’S RESPONSIBILITIES**
	1. The Service Recipient will notify the Institution of any Adverse Events (including Serious Adverse Events) involving the Services.
	2. The Institution will cooperate with the Service Recipient 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 Service Recipient warrants that where its Personnel use or operate equipment which is the property of the Institution, those Personnel will be appropriately trained and have the relevant skills and expertise in the use or operation of any such equipment.
	4. The Service Recipient 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 Institution for the purposes of this Agreement.
2. **MEDICAL PRODUCT**
	1. The Institution must:
		* 1. ensure that all Medical Product is prepared strictly according to the specifications set out in **Schedule 1** and is not used for any other purposes, unless agreed to in writing by the Service Recipient;
			2. provide a written explanation accounting for any missing Medical Product;
			3. keep all Medical Product under appropriate storage conditions as specified in **Schedule 1** in a secured area accessible only to authorised Personnel of the Institution or the Service Recipient, and that complete and current records are maintained for all received, dispensed and returned Medical Product; and
			4. in the event of termination of this Agreement, the Institution must promptly return (or destroy if requested by the Service Recipient, and provide evidence of such destruction) to the Service Recipient any Medical Product but may retain sufficient samples for evidentiary purposes if a Serious Adverse Event is reported by the Service Recipient.
	2. To assist the Institution to comply with **subclause 1**, the Service Recipient will provide the Institution with adequate information and all necessary product accountability forms.
3. **MEDICAL SERVICE**

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

1. **PAYMENTS**
	1. In consideration of the Institution providing the Services, the Service Recipient will pay to the Institution the Service Fees specified in **Schedule 2** in the manner and at the times set out in **Schedule 2**. The fees set out in **Schedule 2** do not include GST. At the time of payment, the Service Recipient must pay to the Institution any amount of GST that the Institution is required to pay in addition to the fees set out in **Schedule 2**, and in accordance with GST Law.
	2. Payments will be made by the Service Recipient upon either receipt of a valid tax invoice issued by the Institution or a “Recipient Created Tax Invoice” issued by the Service Recipient.
	3. The Institution and the Service Recipient warrant that they are registered under GST Law. Tax invoices must identify supplies for which GST is payable.
	4. If the Service Recipient disputes the whole or any portion of the amount stated in an invoice supplied pursuant to clause 7.2, then:
		1. the Service Recipient must pay that portion of the invoice which is not in dispute. The Service Recipient must notify the Institution in writing of the reasons for disputing the remainder of the invoice; and
		2. if the parties are unable to agree within seven days of the giving of the notice referred to in clause 7.4(a), either party may choose to settle the dispute in accordance with the dispute resolution procedures specified in clause 12 of this Agreement.
2. **VARIATION OF SERVICE FEE**
	1. On the first anniversary of the Commencement Date, and on each anniversary thereafter during the Term, the Service Fees will be increased in accordance with movements in the CPI Index over the preceding 12 month period.
	2. For the purposes of this clause, "**CPI Index**"means the Consumer Price Index, Health Group, for Perth last published by the Australian Bureau of Statistics before the relevant date.
	3. Without limiting **clause 8.1**, the Service Fees specified in this Agreement may be varied by the Institution, acting reasonably, to take into account any increase in the volume or cost of consumables used providing the Services or increases in the Institution’s capital user charges or staffing costs associated with providing the Service. Any resultant changes to the Service Fee will take effect forty-five (45) days after the Institution notifies the Service Recipient of that increase. If the Service Recipient disputes the amount of an increase, the dispute will be referred for resolution pursuant to clause 12.
	4. The fees for the Service will be specified in the pricing schedule issued by the relevant department of the Institution.
3. **INDEMNITY**
	1. Other than in respect of a negligent act, error or omission of the Institution or the Institution's Personnel:
		1. the maximum liability of the Institution to the Service Recipient is limited to the fee paid for the Service not received by the Service Recipient; and
		2. to the extent permitted by law, in no circumstances is the Institution liable to the Service Recipient in contract, tort or otherwise, and whatever the cause, to compensate the Service Recipient for any special, indirect or consequential loss or damage of any nature arising from the Service.
	2. Except to the extent that a warranty is expressly given in this Agreement or is implied by an applicable law and cannot be excluded, the Institution gives no representation, warranty, statement or promise, either express or implied, as to any matter whatsoever concerning the Service.
	3. The Service Recipient will release, assume and bear all liability for and indemnify and keep indemnified and defend the Institution, including all of the Institution’s Personnel and the Minister and the State from and against all Claims which have been or which are, might or could be brought or made against or maintained or suffered or incurred by the Institution, the Minister and the State arising from or in connection with or relating to this Agreement including, without limitation, all Claims for in respect of:
		1. bodily injury to or death of or illness to any person or persons;
		2. loss or destruction of or damage to any property real or personal; and
		3. any absolute or strict liability of the Institution pursuant to statute, operation of law or otherwise,

to the extent recoverable at law and arising out of or as a consequence of:

(i) the performance or non-performance under this Agreement by the Service Recipient; or

(ii) the negligence of the Service Recipient or its Personnel.

* 1. The provisions of this clause 9 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.
1. **INSURANCES**
	1. The Service Recipient 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 Institution will be provided to the Service Recipient on request.
	3. The provision of the Service may not commence unless the Service Recipient has complied with **clause 10.1** and failure on the Service Recipient'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.
2. **IDENTIFICATION**

The Service Recipient shall ensure that its Personnel wear identification badges at all times when on the Premises clearly identifying them as the Service Recipient’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. Without limiting **clause 8**, 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. Without limiting **clause 8,** this Agreement may be varied only by agreement in writing signed by both parties.
	3. The terms of this Agreement will be reviewed every two years or at other times 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 Institution or the Service Recipient may terminate this Agreement with 25 Business Days prior written notice or such shorter time period as is reasonably required in the circumstances if the other party:

### is in breach of any obligations under this Agreement (including without just cause to meet a timeframe) and fails to remedy such breach where it is capable of remedy within 25 Business Days of a written notice from the terminating party specifying the breach and requiring its remedy; or

### is declared insolvent or has an administrator or receiver appointed over all or any part of its assets or ceases or threatens to cease to carry on its business.

* 1. The Institution or the Service Recipient may terminate this Agreement without needing to provide a reason by giving 25 Business Days prior written notice to the other party.
	2. In the event of termination of this Agreement, the Service Recipient will pay the Service Fees relating to the Services provided by the Institution up to the date of termination calculated in accordance with **Schedule 2**.
	3. In the event of termination, the Institution, subject to any applicable retention requirements imposed by law, must return to the Service Recipient (or destroy if requested by the Service Recipient, and provide evidence of such destruction) all materials received from the Service Recipient.
	4. The following provisions survive termination of this Agreement, **clauses** **1.1, 1.2, 4.1, 4.2, 9,10, 12, 13.2, 14, 17, 18 and 23.1**.
1. **ASSIGNMENT AND SUB-CONTRACTING**
	1. The Service Recipient 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 Recipient.
2. **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 Recipient***

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 INSTITUTION**

[to be inserted]

Acknowledged by the Head of the Department(s)

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

**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** **Institution** | **Address:**[to be inserted]**Fax number:**[to be inserted]**Attention:**[to be inserted] |
| **Service Recipient** | **Address:**[to be inserted]**Fax number:**[to be inserted]**Attention:** [to be inserted] |
| **Item 6: Authorised Representatives****Institution****Service Recipient** | [to be inserted][to be inserted] |

Acknowledged by the Head of the Department(s)

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….