**SERVICE AGREEMENT**

**Provision of research services by the Health Service**

# Details of the Parties

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| **Health Service:** **(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: |

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THIS AGREEMENT IS MADE BETWEEN THE HEALTH SERVICE AND THE SERVICE RECIPIENT

**Purpose of this Agreement**

The Health Service has agreed to provide the Services to the Service Recipient, and the Service Recipient has agreed to accept and pay for the Services, on the terms and conditions of this Agreement.

1. **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;

**Approval** means any approval, consent, exemption, licence, permit or regulation however described, of an Authority or otherwise required by Law, and any renewal of them, and includes any ethics approval;

**Authorised Personnel** means the Service Recipient's Personnel listed as authorised personnel in **Schedule 1**;

**Background IP** means any Intellectual Property of a party which is in existence before the date of this Agreement or comes into existing after the date of this Agreement other than in connection with this Agreement;

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

**Claim** includes any claim, action, proceeding, suit, demand or cause of action of any nature, made under or arising in connection with this Agreement or under any Law;

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

**Data** has the meaning given in **Schedule 1**;

**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;

**Intellectual Property** means all present and future industrial and intellectual property rights, including:

### inventions, patents, copyright, trade business, company or domain names, rights in relation to circuit layouts, plant breeders rights, registered designs, registered and unregistered trademarks, database rights, know how, trade secrets and the right to have confidential information kept confidential, and any and all other rights to intellectual property which may subsist anywhere in the world; and

### any application for or right to apply for registration of any of those rights.

**Law** means Commonwealth, Western Australian and local government acts, ordinances, regulations, by-laws, orders, awards and other subordinate legislation, the common law and principles of equity;

**Location** means the location specified in **Schedule 1**;

**Loss** includes any liability of any kind whatsoever, cost, expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use, loss of revenue and loss of profit;

**Material** means the materials specified in **Item 4** of **Schedule 1**, and includes any Modification;

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

**Medical Service** means the service provided by the Health Service for the Service Recipient as described in **Item 2** of **Schedule 1**;

**Modification** means any progeny, modification or improvements to the Material that the Service Recipient develops, directly or indirectly, while using the Material provided by the Health Service;

**Personnel** means, in respect of a party, its officers, employees, contractors, agents and authorised representatives;

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

**Project** means the investigation being conducted by the Service Recipient for which the Services are required, as identified in **Item 4** of **Schedule 2**;

**Publication** means any disclosure which results from, or references, the Services or the Project, whether in written, oral, electronic or any other form, including any article, manuscript, abstract, report, paper, presentation, slides or internet post.

**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 Fees** means the fees to paid by the Service Recipient for the provision of Services as set out in **Schedule 3**, as varied in accordance with clause 8;

**Service Recipient Material** means the data and materials specified in **Item 5** of **Schedule 2** (if any) to be provided by the Service Recipient to the Health Service for the purpose of the Services;

**Services** means the provision of the Medical Product and/or Medical Service (as applicable);

**Special Conditions** means the special conditions in **Item 5** of **Schedule 1**;

**Term** means the period of time specified in clause 2; 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;

### a reference to any legislation includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;

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

### the words “including”, “includes” and “include” will be read as if followed by the words “without limitation”;

### if the Service Recipient consists of a partnership or joint venture, then:

### an obligation imposed on the Service Recipient under this Agreement binds each person who comprises the Service Recipient jointly and severally;

### each person who comprises the Service Recipient is deemed to agree to do all things necessary to enable the obligations imposed on the Service Recipient under this Agreement to be undertaken; and

### the act of one person who comprises the Service Recipient binds the other persons who comprise the Service Recipient;

### a breach by one person who comprises the Service Recipient constitutes a breach by the Service Recipient;

### an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;

### 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.

* 1. 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. **TERM**

This Agreement commences on the Commencement Date and remains in force for the period of time specified in **Item 2** of **Schedule 2**, subject to earlier termination in accordance with **clause 10** or **clause 17**.

1. **THE HEALTH SERVICE’S RESPONSIBILITIES**
   1. The Health Service will provide the Services to the Service Recipient for the Term, subject to the terms and conditions of this Agreement.
   2. The Health Service will ensure that any Medical Product is prepared, and any Medical Service is provided, strictly in accordance with the applicable specifications set out in **Schedule 1**.
   3. If the Services include Medical Product, the Health Service will:

### ensure that Medical Product is not used for any purpose other than that purpose contemplated by this Agreement, unless agreed to in writing by the Service Recipient;

### provide a written explanation accounting for any missing Medical Product;

### keep all Medical Product under appropriate storage conditions as specified in Schedule 1 in a secured area accessible only to authorised Personnel of the Health Service or the Service Recipient; and

### ensure that complete and current records are maintained for all received, dispensed and returned Medical Product.

* 1. The Health Service warrants that:

### any consumables or equipment used in providing the Services (excluding any consumables or equipment provided by the Service Recipient) are in safe and proper working order and suitable for the purpose; and

### all persons providing the Services are suitably skilled, trained, qualified and competent; and

### the Services will be provided in accordance with all applicable Laws.

1. **THE SERVICE RECIPIENT’S RESPONSIBILITIES**
   1. The Service Recipient must ensure that all necessary approvals, consents and authorisations (including patient consents, participant consents, relevant ethics and research governance approvals) for the Project and, if applicable, the Services are obtained prior to the Health Service providing the Services.
   2. If the Services include Medical Product, the Service Recipient must provide the Health Service with adequate information and all necessary product accountability forms and all other information required to allow the Health Service to comply with its obligations under **clauses 3.2** and **3.3**.
   3. The Service Recipient must:

### provide the Service Recipient Materials to the Health Service for the purpose of the Services;

### ensure that all necessary Approvals (including patient consents, participant consents, relevant ethics and research governance approvals) to the collection, transportation, provision and use of the Service Recipient Materials contemplated by this Agreement are obtained; and

### deliver the Service Recipient Materials to the Health Service in accordance with the instructions in Item 5 of Schedule 2.

* 1. The Service Recipient will notify the Health Service of any Adverse Events (including Serious Adverse Events) involving the Services or the Project.
  2. The Health Service 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 Services or the Project.

1. **DATA**
   1. The Health Service will provide the Data to the Recipient. Nothing in this Agreement provides the Service Recipient with exclusive rights to the Data. The Health Service may in its discretion use and exploit the Data and sell, assign, disclose, distribute, licence and supply Data to third parties, including for commercial purposes.
   2. The Service Recipient will:

### use, and ensure the use of, the Data solely for the Project and exclusively for non-commercial purposes;

### use and store, and ensure the use and storage of, the Data in accordance with all applicable Laws, industry standards, Approvals and the Special Conditions (if any) and to the standards reasonably expected of a prudent, expert and experienced user of data such as the Data;

### if a Location is specified in Schedule 1, retain the Data only at the Location; and

### if Authorised Personnel are identified in Schedule 1 as supervisory, ensure that the Data is only used under the direct supervision of those Personnel,

unless (and to the extent) otherwise required by Law, or in accordance with the prior written consent of the Health Service.

* 1. Where the Data includes information that is not personal information, the Service Recipient must not modify or use it, or link it to other information, in a way that identifies, or might lead to the identification of an individual to whom it relates unless authorised to do so. The Service Recipient acknowledges that a breach of this clause may constitute an offence under the *Health Services Act 2016*.
  2. The Service Recipient must not:

### disclose the Data to any person other than the Authorised Personnel;

### allow any person, other than the Authorised Personnel, access to the Data; or

### transfer, sell, licence or provide the Data to any other person,

unless (and to the extent) otherwise required by Law, or in accordance with the prior written consent of the Health Service.

1. **MATERIAL**

If Material is specified in Schedule 1, the terms and conditions in **Schedule 4** apply as if set out in full in this clause 6.

1. **HEALTH SERVICE EQUIPMENT AND PREMISES**
   1. The Health Service 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.
   2. The Service Recipient warrants that where its Personnel use or operate equipment which is the property of the Health Service, those Personnel will be appropriately trained and have the relevant skills and expertise in the use or operation of any such equipment.
   3. 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 Health Service for the purposes of this Agreement.
   4. The Service Recipient must ensure that its Personnel:

### promptly comply with any directions of the Health Service or its Personnel in respect of access, health, safety and security; and

### wear identification badges, clearly identifying them as the Service Recipient’s Personnel,

### at all times when on the Premises.

1. **SERVICE FEE, VARIATION OF SERVICE FEE AND PAYMENTS**
   1. In consideration of the Health Service providing the Services, the Service Recipient will pay to the Health Service the Service Fees in the manner and at the times set out in **Schedule 3**. The Service Fees set out in **Schedule 3** do not include GST.
   2. 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. 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 8.2**, the Service Fees may be varied by the Health Service, acting reasonably, to take into account any increase in the volume or cost of consumables used providing the Services or increases in the Health Service’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 Health Service 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 16**.
2. **GST**
   1. At the time of payment, the Service Recipient must pay to the Health Service any amount of GST that the Health Service is required to pay in addition to the Service Fees, 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 Health Service or a “Recipient Created Tax Invoice” issued by the Service Recipient.
   3. The Health Service 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 9.2**, then:

### the Service Recipient must pay that portion of the invoice which is not in dispute when due and notify the Health Service in writing of the reasons for disputing the remainder of the invoice; and

### if the parties are unable to resolve the dispute within seven days of the giving of the notice referred to in clause 9.4(a), either party may choose to settle the dispute in accordance with the dispute resolution procedures specified in clause 16.

1. **FORCE MAJEURE**
   1. If a party is delayed in, or prevented from, performing any of its obligations under this Agreement (other than an obligation to pay the Service Fee) by any event or circumstance beyond the reasonable control of that party, including any act of god, act of nature, epidemic or pandemic, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies or labour disputes of whatever nature:

### it will promptly notify the other party; and

### performance of those obligations is suspended to the extent that performance is prevented or delayed by the event or circumstance.

* 1. If the suspension under **clause 10.1** continues for aperiod in excess of 25 Business Days**,** either party may, by written notice to the other party, terminate this Agreement.

1. **INFORMATION AND PRIVACY**
   1. Each party will keep confidential and not disclose the other party's Confidential Information, except to the extent:

### in the case of the Health Service, necessary to provide the Services;

### without limiting clauses 5 and 6, in the case of the Service Recipient, necessary to carry out the Project;

### that the information is:

### lawfully in the recipient's possession and control prior to the date of disclosure by the other party;

### in the public domain or enters the public domain, otherwise than through default by the recipient or its Personnel; or

### independently developed by the recipient without the knowledge of the information provided by the other party, as evidenced by contemporaneous written records; or

### the disclosure is required to comply with its obligations under this Agreement, provided that the party ensures that the person to whom the disclosure is to be made is bound by obligations of confidentiality no less restrictive than those in this Agreement;

### the disclosure is required to comply with any Law, including the *Freedom of Information Act 1992* (WA), or an order of any court or government authority; or

### in the case of the Health Service, to any Western Australian Minister and the Western Australian Auditor General.

* 1. Each party will comply with the *Privacy Act 1988* (Cth), the Australian Privacy Principles and any Western Australian Laws, codes or guidelines which apply to the use, collection, storage or disclosure of any personal and/or health information.

1. **INTELLECTUAL PROPERTY**
   1. (**Background IP**) Nothing in this Agreement affects the ownership of any Background IP.
   2. (**Working methods**) Any knowledge or skills developed by the Health Service or its Personnel in performing the Services may be used by the Health Service and its Personnel for other projects and other service recipients.
   3. (**Health Service Data**) The Health Service:

### owns all Intellectual Property in the Data; and

### grants the Service Recipient a royalty free, non-exclusive, non-transferable and non sub-licenseable (without the Health Service's prior consent) right to use the Data for the Project on the terms and conditions of this Agreement.

No express or implied licence or other right is provided to use the Data for commercial purposes.

1. **RECORDS, PUBLICATIONS AND PUBLICITY**
   1. The Service Recipient must keep and maintain, for not less than 7 years, all records in whatever form that relate to the use of the Data or Material in accordance with (as applicable having regard to the nature of the record) good accounting practices or good record keeping practices, standards and procedures. The Service Recipient must make those records available for inspection by the Health Service as reasonably required by the Health Service. The Health Service has the right, on notice to the Service Recipient, to inspect the Service Recipient's premises to confirm compliance with the requirements of this agreement. The Service Recipient must at its cost provide all appropriate resources and assistance to the Health Service, its employees, agents and contractors in accessing records or inspecting premises as contemplated by this clause.
   2. Subject to any special condition in **Item 5** of **Schedule 1** in respect of Publications:

### the Health Service must not make or given any Publication without the prior consent of the Service Recipient; and

### the Service Recipient may make or give Publications without the prior consent of the Health Service, provided that the Service Recipient acknowledges:

### the source of the Medical Product and Medical Services and any Data and Material and appropriately cites the Health Service; and

### where required by the Australian Code for the Responsible Conduct of Research (as amended from time to time), staff members of the Health Service.

* 1. Neither party may use:

### this Agreement or the other party's (or, in the case of the Health Service, the State of Western Australia's) name or logo;

### the name or logo of any person specified in this Agreement,

in any publication, advertisement or media release, or for any other promotional purposes, without the prior written consent of the other party and in accordance with the terms and conditions imposed by that party.

1. **LIABILITY AND INDEMNITY**
   1. The maximum liability of the Health Service to the Service Recipient for any Loss or Claim in connection with this Agreement is limited to the amount of Service Fee paid to the Health Service for Services not provided to the Service Recipient.
   2. The limit on the Health Service's liability in clause 14.1 will not apply in respect of any personal injury or death to the extent caused by the negligent act or omission or breach of this Agreement by the Health Service or its Personnel.
   3. To the maximum extent permitted by Law:

### notwithstanding any other provision of this Agreement, in no circumstances is the Health Service liable to the Service Recipient in contract, tort or otherwise, and whatever the cause, for any special, indirect or consequential loss or damage of any nature, including any loss of profit, loss of revenue, loss of business, loss of opportunity, loss of anticipated savings or loss of business reputation; and

### the Health Service excludes all terms, conditions, representations, warranties, statements or promises implied by custom or Law.

* 1. The Service Recipient indemnifies the Health Service, the Health Service’s Personnel, the Western Australian Minister for Health and the State of Western Australia from and against any Loss or Claim arising from or in connection with:

### the performance or non-performance under, or breach of, this Agreement by the Service Recipient or its Personnel; or

### any wilful, tortious or unlawful act or omission by the Service Recipient or its Personnel,

### except to the extent that the Claim or Loss is caused by the negligence of the Health Service or its Personnel.

* 1. Part 1F of the Civil Liability Act 2002 (WA) does not apply to this Agreement.

1. **INSURANCES**
   1. The Service Recipient must take out and maintain, with reputable and solvent insurers which:

### carry on insurance business in Australia and are authorised in Australia to operate as insurance companies; or

### are otherwise approved by the Health Service,

the following insurance policies:

### general liability insurance (including coverage for liability for loss of or damage to property, death of or personal injury, sickness or disease to any person and to the extent to which insurance is ordinarily available include a liability of others assumed by the Service Recipient under this Agreement), professional indemnity insurance, workers compensation insurance and such other insurance to cover any liability it may incur under or in connection with this Agreement; and

### any other insurance required in any Schedule to this Agreement, on the terms required in that Schedule.

* 1. The Service Recipient must provide evidence (including certificates of currency) of the Service Recipient's compliance with **clause 15.1** to the Health Service when reasonably requested by the Health Service.
  2. The Service Recipient must comply with **clause 15.1** prior to commencement of the Services and failure by the Service Recipient to comply with **clause 15.1** will entitle the Health Service to treat this Agreement as being at an end without affecting the Health Service's right to damages for breach of contract.
  3. The Health Service 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 Health Service will be provided to the Service Recipient on request.

1. **DISPUTES**
   1. No party may commence legal proceedings against the other in respect of a dispute arising in relation to this Agreement (except for urgent interlocutory relief) unless it has complied with this clause.
   2. If a dispute in connection with this Agreement arises:

### the party claiming there is a dispute must notify the other party in writing of the dispute; and

### within 20 Business Days of such notice, the authorised representatives of the parties (or such other persons with authority to resolve the dispute) will endeavour to resolve the dispute.

* 1. In the event that the dispute is not settled within that 20 Business Days, then the parties are free to pursue any other procedures available at law for the resolution of the dispute.

1. **TERMINATION**
   1. Either party may terminate this Agreement with 10 Business Days prior written notice to the other party, 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. Either party may terminate this Agreement without needing to provide a reason by giving 45 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 Health Service up to the date of termination calculated in accordance with **Schedule 3**.
  3. On expiry or termination of this Agreement, the Health Service may retain:

### Service Recipient Material and any other Service Recipient data and material to the extent required to comply with retention requirements imposed by Law, including to comply with the *State Records Act 2000* (WA), or any good record keeping practices, standards and procedures; and

### sufficient samples of Medical Product for evidentiary purposes if a Serious Adverse Event is reported by the Service Recipient,

and will otherwise return to the Service Recipient (or destroy if requested by the Service Recipient) all Service Recipient Material and Medical Product received from the Service Recipient.

* 1. The Service Recipient must, at its cost, on the earlier of:

### expiry or termination of this Agreement;

### within 30 days of receipt of a request from the Health Service; or

### when the Project for which the Material and Data were supplied discontinues or there is no further need for the Data and Material in connection with the Project,

return to the Health Service or, at the Health Service's request, destroy the Data and all remaining or unused Material, except to the extent retention of Data or Material is required by Law. The Service Recipient will use all reasonable efforts to ensure that such return or destruction is completed within 30 days.

* 1. The following provisions survive termination or expiry of this Agreement, **clauses** **1**, **4.4**, **4.5**, **9**, **11**, **13**, **14**, **15**, **16**, **20**, **21**, **22**, **26** and this clause **17**.

1. **REVIEW AND VARIATION OF TERMS OF AGREEMENT**
   1. Without limiting **clause 8**:

### the parties acknowledge that variations to the provision of Services may occur during the Term and such variations will be the subject of negotiation at the time; and

### this Agreement may be varied only by agreement in writing signed by both parties.

* 1. The terms of this Agreement will be reviewed every two years during the Term or at other times by mutual agreement of the parties.

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 Health Service.
   2. The Health Service may assign this Agreement to any entity which assumes control of the Health Service without the requirement of consent from, or notice to, the Service Recipient.
2. **WAIVER**
   1. 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.
   2. 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.
3. **NOTICES AND AUTHORISED REPRESENTATIVES** 
   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,

as set out on the front page of this Agreement or as last notified by that party to the other party.

* 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. Each party will ensure that its authorised representative specified in **Item 6** of **Schedule 2** (or such replacement authorised representative as notified to the other party) provides such information and assistance as is reasonably required by the other party in performing its obligations under 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. **GENERAL CLAUSES**
   1. (**Governing law and jurisdiction**) 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. (**Authorisation**) Each party represents and warrants to the other that it has full power to enter into and perform its obligations under this Agreement and that when executed this Agreement will constitute legal, valid, and binding obligations under its terms.
   3. (**Further action**) Each party must do all things and execute all further documents necessary to give full effect to this Agreement.
   4. (**Representations**) 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.
   5. (**Officers and employees**) The Health Service 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]*** by its duly authorised representative who declares that he or she has no notice of revocation or suspension of his or her authority:

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

Signed on behalf of the [insert name of **Health Service]** in accordance with section 41 of the *Health Services Act 2016* by:

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

**SCHEDULE 1**

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

|  |  |
| --- | --- |
| **Item 1: Medical Product** | [to be inserted (including specifications, storage conditions) or insert "Not Applicable"] |
| **Item 2: Medical Service** | [to be inserted (including specifications) or insert "Not Applicable"] |
| **Item 3: Project** |  |
| **Item 4: Material and Data** | [*If Health Service is providing Data or Material fill out the following sections. Otherwise, state "not applicable" here and in (a) to (d) below*] |
| * 1. **Data:** | *Health Service Data to be listed or state "Not applicable"* |
| * 1. **Material:** | *Health Service Material to be listed (e.g. bio specimens- tissue , blood and blood products, fluids, including cerebro spinal fluid, breast milk, peritoneal dialysis, urine, nasal swab) or state "Not applicable".* |
| * 1. **Location** | *Insert location for Data and/or Material to be held (if applicable).* |
| * 1. **Authorised Personnel** | *Insert details of Authorised Personnel re access to Material and/or Data or insert "Not applicable". [Note, specify if only Material or only Data]*  *[If use under supervision is required, state which Authorised Personnel are supervisory]* |
| **Item 5: Special Conditions** | [to be inserted]  [*Publication Rights – Detail any Publication rights in addition to the rights in clause 13. For example, state whether authorship must be acknowledged*]]  *[insert any special conditions re the Material and Data. Note, if Modifications are to be owned by the Service Recipient it needs to be specified here]* |

Acknowledged by the Head of the Department(s)

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

**SCHEDULE 2**

**DETAILS**

|  |  |
| --- | --- |
| **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 Recipient Project** | [description to be inserted, example below]  [*The investigation to be conducted in accordance with the [insert details of Protocol] which describes the objective(s), design, methodology, statistical considerations and organisation of the Project*.] |
| **Item 5: Service Recipient Material** | [insert details of any material or data to be provided by the Service Recipient to the Health Service for the purpose of the Services or insert "Not Applicable"]  [If material or data being provided to the Health Service, insert any additional requirements on the Service Recipient including instructions/ requirements for delivery of material to Health Service]  [If material or data being provided by the Health Service, refer to Schedule 1 above] |
| **Item 6: Notices**  **Health Service** | **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**  **Health Service** | [insert name / title]  [insert telephone, email and address] |
| **Service Recipient** | [insert name / title]  [insert telephone, email and address] |

Acknowledged by the Head of the Department(s)

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

**SCHEDULE 3**

**PRICING SCHEDULE**

|  |  |
| --- | --- |
| **Item** | **Amount\* (ex GST)** |
| [Insert triggers/timing/milestones for payment] | $[Insert amounts] |
|  | $ |
|  | $ |
|  | $ |
|  | $ |
|  | $ |
|  | $ |

\*The Service Fees specified above will be increased in accordance with clause 8.

Acknowledged by the Head of the Department(s)

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: …………………………………

**SCHEDULE 4**

**Terms and Conditions for Material**

1. **Supply of and risk in Material**

Unless the Health Service otherwise agrees, the Service Recipient must (at the Service Recipient's cost) collect the Material from the Health Service premises identified by the Health Service. On receipt or collection of the Material (as applicable), risk in the Material transfers to the Service Recipient.

1. **Non-exclusive**

Nothing in this Agreement provides the Service Recipient with exclusive rights to the Material. The Health Service may in its discretion use and exploit the Material and sell, assign, disclose, distribute, licence and supply Material to third parties, including for commercial purposes.

1. **Use**

The Service Recipient will:

* + 1. use, and ensure the use of, the Material solely for the Project and exclusively for non-commercial purposes;
    2. use and store, and ensure the use and storage of, the Material in accordance with all applicable Laws, industry standards, Approvals and the Special Conditions (if any) and to the standards reasonably expected of a prudent, expert and experienced user of material such as the Material;
    3. if a Location is specified in Schedule 1, retain the Material only at the Location; and
    4. if Authorised Personnel are identified in Schedule 1 as supervisory, ensure that the Material is only used under the direct supervision of those Personnel,

unless (and to the extent) otherwise required by Law, or in accordance with the prior written consent of the Health Service.

1. **No third parties**

The Service Recipient must not allow any person, other than the Authorised Personnel, access to the Material or transfer, sell, licence or provide the Material to any other person, unless (and to the extent) otherwise required by Law, or in accordance with the prior written consent of the Health Service.

1. **Intellectual Property**

The Health Service:

* + 1. owns all Intellectual Property in the Material (excluding any Modification); and
    2. will, subject to any Special Condition to the contrary, own all Intellectual Property in any Modification, and the Service Recipient (and its Personnel) automatically assign the entire future Intellectual Property in all Modifications to the Health Service upon their creation.

The Health Service grants the Service Recipient a royalty free, non-exclusive, non-transferable and non sub-licenseable (without the Health Service's prior consent) right to use the Material for the Project on the terms and conditions of this Agreement. No express or implied licence or other right is provided to use the Material for commercial purposes.