



**Australian Paediatric Specialists**  
(Service Provider)

**SERVICE AGREEMENT**  
**TERMS AND CONDITIONS**

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# Service Agreement Terms and Conditions

## Parties

**DOCTOR ("Client")**

**Australian Paediatric Specialists ("Service Provider")**

## Recitals

- A. The Client conducts the Business.
- B. The Service Provider will provide the Services to the Client.
- C. The Service Provider and the Client acknowledge and accept that commercial benefits will accrue to the Client from the provision of the Services including but not limited to greater efficiencies, increased productivity, reduced staff and employment risks and greater cost controls.
- D. The Client has requested the Provider to provide the Services having determined, following a detailed consideration of the benefits that will accrue to the Client, that the Provider is competent and able to provide the Services to the Client.
- E. The parties wish to record the terms and conditions of the agreement upon which the Services will be provided.

## Operative Provisions

The Parties agree:

### 1. Definitions and Interpretation

#### 1.1 Definitions

**Accountant:** means a firm of Chartered Accountants as the parties reasonably agree to appoint or failing agreement, appointed by the president of the Queensland branch of the Australian Institute of Chartered Accountants.

**Agreement:** means this service agreement.

**Applicable Laws:** all applicable laws, statutes, regulations from time to time in force.

**Associated Doctor:** means the person described in Item 4 of the Reference Schedule.

**Billing Period:** means the billing period described in Item 12 of the Reference Schedule.

**Business:** means the business described in Item 6 of the Reference Schedule.

**Business Day:** means a week day other than a Saturday, Sunday or public holiday in Brisbane.

**Business Name:** means the business name described in Item 7 of the Reference Schedule.

**Clients of the Service Provider:** means all parties who have entered into service agreements with the Service Provider.

**Commencement Date:** means the date described in Item 1 of the Reference Schedule.

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**Common Areas** means those parts of the Premises which the Service Provider from time to time intends for common use.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Data Breach Investigation:** means an investigation as required to be carried out in accordance with clause 10.5(c).

**Data Incident:** an Eligible Data Breach that has, or is reasonably suspected to have, occurred in respect of any Personal Information the Supplier has collected, held, used or disclosed in the course of or relating to this agreement.

**Eligible Data Breach:** an eligible data breach as that term is defined in the *Privacy Amendment (Notifiable Data Breaches) Act 2016* (Cth), occurring on or after 22 February 2018.

**Equipment:** means the office equipment, medical equipment and any other plant and equipment that the Service Provider reasonably considers necessary for the provision of the Services and the operation of the Business by the Client.

**Excluded Services:** means the matters set out in Schedule 3 and any other services that the Service Provider determines is an Excluded Service pursuant to clause 2.2.

**Expiry Date:** means the expiry date described in Item 2 of the Reference Schedule.

**Extension Term:** means the extension term/s described in Item 3 of the Reference Schedule.

**Fees:** means the fees payable by the Client to the Service Provider for the provision of the Services, calculated as set out in Item 5 of the Reference Schedule.

**Financial Year:** means:

- (a) the first Financial Year is the period from the Commencement Date until the next succeeding 30th day of June;
- (b) all other Financial Years except the last is a period of 12 months ending on the 30th day of June; and
- (c) the last Financial Year is the period commencing on the 1st day of July in the relevant Financial Year and ending on the last day of the Term.

**Force Majeure:** means an event which is not reasonably within the control of the affected party, and includes a:

- (a) act of God;
- (b) industrial disturbance, for example a strike or lockout;
- (c) act of public enemy, war, or blockade;
- (d) acts of terrorism;
- (e) public riot;
- (f) lightning, storm, flood, fire or earthquake;
- (g) explosion;
- (h) governmental constraint; and
- (i) unavailability of hospital equipment.

**GST:** has the meaning ascribed in clause 15.1(a).

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**Incapacity:** means ill health (whether mental or physical) where the person is unable, because of the ill health, to again engage in the Business, for a period in excess of 6 months.

**Intellectual Property Rights:** means all current and future intellectual and industrial property rights and interests throughout the world, whether registered or unregistered including without limitation inventions, innovations, patents, innovation patents, utility models, designs, circuit layouts, topography, rights in relation to databases, copyrights and analogous rights (including rights to computer software), rights in relation to information, confidential information, trade secrets, know-how and techniques, trademarks, service marks, trade and business names, and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967 as amended from time to time and any right to apply for registration of, or any application for such rights, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these.

**Insolvency Event:** means, in relation to a person, any of the following events:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (d) the person assigns any of its property for the benefit of creditors or any class of them;
- (e) the holder of a Security Interest takes any step towards taking possession or takes possession of any assets of the person or exercises any power of sale;
- (f) the person has a judgment or order given against it in an amount exceeding \$100,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- (g) an action is taken to do any of the things listed in paragraphs (a) to (f).

**Medical Revenue:** means the total fees received of a Client of the Service Entity (including the Client) for provision of medical services as part of the Business for that month (exclusive of GST) including but not limited to all patient fees (paid by the patient or health insurance fund), applicable hospital and aged care service fees, assist fees, surgery-connect/outsourcing and medico legal income.

**Notice:** means a notice, demand, waiver, approval, consent or communication.

**Personal Information:** has the meaning given in the Privacy Act.

**Privacy Act:** the *Privacy Act 1988* (Cth) as amended from time to time.

**Premises:** means the premises described in Item 9 of the Reference Schedule.

**Reference Schedule:** means Schedule 1.

**Related Entity:** has the same meaning as in the Corporations Act.

**Resolution Institute:** means the body in Queensland that governs dispute resolution.

**Sensitive Information:** has the meaning given in the Privacy Act.

**Service Provider Information:** means information or know-how pertaining to, or in the possession or control of the Service Provider including, but not limited to, information concerning its business, systems, technology and affairs, such as:

- (a) Financial, technological, strategic or business information, concepts, plans, strategies, directions or systems;

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- (b) Research, development, technical advances in medicine or procedures and other such information;
  - (c) Operational, legal, marketing or accounting information concepts, plans, strategies, directions or systems; and
  - (d) Technology, source and object codes for computer software, intellectual property rights and technical and historical information relating thereto.

**Service Provider Standards:** means the standards, systems, policies and procedures as adopted and set out from time to time by the Service Provider governing conduct and behaviour expected of Clients of the Service Provider including but not limited to those already established by the Service Provider and described in Schedule 4.

**Services:** means the services, systems and products listed in Schedule 2 but excluding the Excluded Services.

**Unenforceable:** includes, in the context of a clause, void, voidable, illegal or invalid.

## 1.2 Interpretation

In the interpretation of this Agreement, unless the context shall otherwise require:

- (a) an inclusive definition, or an example or particularisation of a term or clause, does not limit and may extend that definition, term or clause;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (c) a reference to a person includes a partnership, a body corporate, an unincorporated association, a statutory authority, a quasi-government body or a government body;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including a person taking by novation) and assigns;
- (e) a reference to parties, clauses, exhibits, annexures or schedules is to the parties, clauses, exhibits, annexures or schedules of or to this document;
- (f) a right or obligation attaching to two or more persons binds or benefits them jointly and severally;
- (g) each gender or the neuter includes the other gender(s) or the neuter;
- (h) the singular includes the plural and the opposite;
- (i) where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

## 2. Duties and Responsibilities of Service Provider

### 2.1 Services to be provided

The Service Provider shall provide the Client during the term of this Agreement:

- (a) use of the Equipment;
- (b) use of the Premises; and
- (c) the Services.

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## **2.2 Excluded Services**

For the avoidance of doubt, the Services do not include provision of any of the Excluded Services by the Service Provider. In the event that there is disagreement between the parties as to whether or not a service is part of the Services or an Excluded Service, the Service Provider will have final discretion in determining whether a particular service is an Excluded Service.

## **2.3 Premises and Equipment**

For the purposes of performing its functions hereunder the Service Provider shall:

- (a) provide the Client with access to a suitable consulting room at the Premises during the term of this Agreement in accordance with clause 2.6; and
- (b) add to, change, modify or alter the Equipment from time to time in such manner as the Service Provider determines is reasonably necessary to accommodate the needs and requirements of the Business; and
- (c) employ such employees, contractors and agents as the Service Provider determines are necessary to conduct the Business and operate the Equipment; and
- (d) maintain the Equipment in good order to permit the efficient conduct of the Business (save as expressly otherwise provided).

## **2.4 Staffing and Training**

The Service Provider shall:

- (a) add to, change, modify or alter the staffing level from time to time in such manner as the Service Provider determines is reasonably necessary to accommodate the needs and requirements of the Business; and
- (b) ensure that relieving staff or employees are available as the Service Provider determines is reasonably necessary from time to time; and
- (c) provide for the training of all staff and other employees so that they become competent to perform the tasks to which they are assigned; and
- (d) ensure that all persons employed by the Service Provider are covered by Workers' Compensation policies.

## **2.5 Insurances**

The Service Provider shall maintain such insurance as the Service Provider considers appropriate in relation to the Equipment and employees.

## **2.6 Receipts**

The Client shall be responsible for invoicing and collecting all amounts payable to the Client from the Client's operation of the Business including all fees and GST. As part of its billing and receipts function, the Service Provider shall assist the client with invoicing and collection.

## **3. Licence to Use Premises**

### **3.1 Grant**

- (a) In consideration of payment by the Client of the Fees, the Service Provider agrees to provide the Services and the use of the Premises and the Equipment, for the term of this Agreement in accordance with this Agreement.



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- (b) The Service Provider may at its discretion allocate a certain area or areas within the Premises for the exclusive use of the Client (or any other person occupying the Premises in common with the Client under an arrangement with the Service Provider) and may specify the times and dates that the relevant area within the Premises will be available for the exclusive use of the Client.
  - (c) The benefit of this Agreement is personal to the Client and rests in contract only and does not grant the Client any tenancy, leasehold estate or other interest whatsoever in or to the Premises.

### **3.2 No exclusive possession**

The Client acknowledges and agrees that:

- (a) it does not have exclusive possession of any part of the Premises and that the Service Provider may at all times exercise all its rights as the tenant or owner of the Premises including without limitation, its rights to use, possess and enjoy the whole or any part of the Premises subject only to the rights of the Client under this Agreement;
- (b) it will not raise any objection if any part of the Premises is licensed or leased to other occupiers, whether on an exclusive basis or otherwise, provided such use does not materially prejudice or impede the Client 's rights under the terms of this Agreement;
- (c) it must not sublet, lease, hire or in any way part with possession of the Equipment or the Premises without first obtaining approval in writing from the Service Provider; and
- (d) it must not permit or suffer anybody to do anything which would result in damage, destruction or loss beyond normal fair wear and tear to the Equipment or the Premises.

### **3.3 Use of Premises**

The Client must use the Premises solely for the conduct of the Business.

### **3.4 Common Areas**

Subject to this Agreement and the Policies, the Client may use (in common with others authorised by the Service Provider) the Common Areas for the purposes for which they are intended. The Client must not obstruct the Common Areas.

## **4. Duties and Responsibilities of Client**

### **4.1 Client to make available**

The Client shall:

- (a) make available to the Service Provider such information and records as the Service Provider may require to carry out its obligations hereunder on a proper and timely basis;
- (b) give notice to the Service Provider within a reasonable time of discovering any defects in any Equipment used in the conduct of the Business; and
- (c) make available all necessary information supporting any specialist accreditation, Medicare Benefits Schedule (**MBS**) Service Provider numbers, insurance and other relevant documents to assist with accreditation at any relevant hospital campus.

### **4.2 Provision of Service Provider Standards**

The Client acknowledges that it has received a copy of, or has been made aware of the terms of each of the Service Provider Standards described in Schedule 4.

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### **4.3 Client duties**

In conducting its Business, the Client must:

- (a) at all times hold the appropriate current and valid specialist registration with AHPRA, Medicare provider and prescriber numbers;
- (b) comply at all times with the Service Provider Standards;
- (c) maintain at its own expense membership in a professional indemnity insurance scheme for medical practitioners recognised and respected in Queensland and provide evidence of current registrations and insurance coverage promptly after requested by the Service Provider;
- (d) comply with all laws, regulations and guidelines set out by Medicare and any other State or Federal regulatory authorities;
- (e) operate the Business diligently, competently, with care and skill and in a proper and professional manner and in accordance with the terms of this Agreement and in compliance with all relevant legislation and regulations in the relevant States and Territories of Australia, maintain all registrations necessary to operate the business in Australia and in accordance with the Service Provider Standards;
- (f) inform the Service Provider of any work-related incidents, injuries, potential risks, or non-conformance issues and, where required by legislation, also advise the relevant authorities;
- (g) not (and ensure that its directors, agents, employees and sub-contractors do not) directly or indirectly canvass, solicit, interfere with, or accept any approach from, or endeavour to entice away from the Service Provider, the Service Provider's clients, customers, members, Contractors, sub-contractors, employees or suppliers during the currency of this Agreement or within a period of one (1) year from the date of termination of this Agreement
- (h) not engage in any misleading or deceptive conduct or conduct that is likely to mislead or deceive;
- (i) avoid all conflicts of interest and otherwise refrain from acting or giving the appearance of acting contrary to the interests of the Service Provider;
- (j) use best endeavours to protect and promote the Service Provider's good name and reputation;
- (k) report all things that the Client becomes aware of that are relevant to the Service Provider's interests; and
- (l) must observe and comply with all duties imposed on the Client by operation of law, including without limitation any fiduciary duties and with any duties and obligations under the Corporations Act.

## **5. Term and Fees**

### **5.1 Term**

- (a) This Agreement shall commence on the Commencement Date and shall continue until the Expiry Date.

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- (b) Either party may terminate this Agreement by providing three (3) months' notice in writing of that termination.

## **5.2 Fees**

- (a) In consideration of the provision of the Services by the Service Provider to the Client, the Client shall pay to the Service Provider the Fees.
- (b) The Service Provider shall provide a Tax Invoice each Billing Period for the Fees accrued during that period.
- (c) The Client must pay to the Service Provider any Tax Invoice within seven (7) days of receipt of the relevant Tax Invoice.

## **5.3 Review of Fees**

The Fees and any corresponding rates may, at the discretion of the Service Provider, be reviewed each Financial Year. Any changes to the Consultancy Fees will be negotiated between the Service Provider and the Client, acting reasonably. If the parties cannot agree on the renewed fees within 21 days after the commencement of such negotiations, the Service Provider may elect, in its absolute discretion, to terminate this Agreement by providing 7 days' notice to the Client.

## **6. Structural Issues**

### **6.1 Governing Legislation**

This Agreement shall be construed in all aspects as being subject to all relevant Acts, Statutes, Ordinances or By-Laws which govern or relate to the manner in which medical practitioners are or shall become obliged to conduct their Business and all undertakings given by the Client in connection therewith and all work required as aforesaid to be conducted or supervised by the Client shall be conducted or supervised by them (as the case may be) and not by the Service Provider or its servants or agents.

### **6.2 Independent Contractor**

The Service Provider shall be an independent contractor in relation to the Client and nothing in this Agreement shall constitute any relationship of employer and employee between the Service Provider and the Client.

### **6.3 Business Name**

- (a) The Service Provider shall have no interest in any business name(s) of the Client, which shall continue to be used by the Client.
- (b) The Client shall have no interest in any business name(s) of the Service Provider including but not limited to the Business Name.

### **6.4 Client's Goodwill**

The parties acknowledge and declare that nothing in this Agreement shall cause any transfer or assignment of any goodwill from the Client to the Service Provider or from the Service Provider to the Client, and that neither the Service Provider nor the Client has or will acquire any of the goodwill of the other party.

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**7. Costs, expenses and taxes**

- (a) Each party agrees to pay its own legal costs and expenses in respect of the negotiation, preparation and execution of this Agreement.
- (b) Despite any other clause in this Agreement to the contrary, this clause will survive expiry or termination of this Agreement.

**8. Confidentiality**

- (a) Each party will treat information disclosed to it by the other party as confidential and the obligations regarding confidentiality survive the expiry or termination of this Agreement for a period of ten (10) years from the expiry or earlier termination of this Agreement (**confidentiality period**).
- (b) A party may, however, use and disclose the information to its employees but only to the extent reasonably necessary for the performance of this Agreement.
- (c) The obligations of confidentiality under this clause do not extend to information that:
  - (i) is rightfully known or in the possession or control of a party and is not subject to an obligation of confidentiality owed by that party to the other party;
  - (ii) is or becomes public knowledge other than as a result of a breach of this Agreement; or
  - (iii) a party is required by law to disclose.
- (d) If the confidentiality period referred to in clause 8(a) is found to be excessive by a court or tribunal, then the period will be read as:
  - (i) 9 years;
  - (ii) 8 years;
  - (iii) 7 years;
  - (iv) 6 years;
  - (v) 5 years;
  - (vi) 4 years;
  - (vii) 3 years;
  - (viii) 2 years; or
  - (ix) 1 year.
- (e) The party alleging a breach of this clause will have the benefit of each and every confidentiality period created by clause 8(d).
- (f) If one or more of the confidentiality periods contained in clause 8(d) are found to be void or unenforceable for whatever reason, that will not affect the enforceability of the remaining confidentiality periods.
- (g) The Client acknowledges that the Service Provider Information belongs to the Service Provider and is valuable to the Service Provider.

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- (h) The Client, whenever requested by the Service Provider, must deliver up to the Service Provider all information, papers, writings, disks, access keys and other material which are in the possession or custody or under the control of the Client relating in whole or in part to the affairs of the Service Provider and/or its business.
  - (i) The Client:
    - (i) Must not directly or indirectly make use of any of the Service Provider Information except with the authority and for the benefit of the Service Provider;
    - (ii) Must not without the written consent of the Service Provider publish or disclose any information concerning the business, transactions, or affairs of the Service Provider or of any related body corporate of the Service Provider within the meaning of the Corporations Act unless such publication or disclosure is made in the normal course of the provision of the Services by the Client;
    - (iii) Understands that the information referred to in clause 8(i)(ii) includes information disclosed to the Service Provider or the Client by any existing or potential customer, supplier, contractor, agent, licensee or licensee of the Service Provider;
    - (iv) Must not permit unauthorised persons to have access to the Service Provider Information; and
    - (v) Must not make or assist any other person to make any unauthorised use, disclosure, or reproduction of the Service Provider Information.
  - (j) During the confidentiality period, no party may do or say anything harmful to the reputation of the other party or take any action which may lead a person to cease, curtail or alter the terms of its dealings with the other party.
  - (k) The obligations of the parties under this clause 8 will survive termination of this Agreement.

## **9. Intellectual Property**

### **9.1 Intellectual Property Rights**

- (a) The Service Provider and the Client agree and acknowledge that any existing Intellectual Property Rights owned by either party at the commencement of this Agreement will remain the property of that party.
- (b) The Client acknowledges that all Intellectual Property Rights (present and future) relating to the Service Provider or generated by the Client using the Service Provider's resources (**Contract IP**) are owned exclusively by the Service Provider and to the extent required the Client will vest ownership in the Service Provider and transfer to the Service Provider all such Intellectual Property Rights.

### **9.2 Undertakings in relation to Contract IP**

The Client:

- (a) Undertakes to promptly disclose to the Service Provider in full detail all Contract IP together with technical information and know how relating to it;
- (b) To the extent that any Contract IP is not vested in the Service Provider by force of clause 9, hereby assigns that Contract IP to the Service Provider; and

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- (c) Must provide all information, execute all documents, and do all acts and things necessary to enable the Service Provider to secure the adequate and timely preparation of all documents necessary for the prosecution, maintenance, enforcement or defence of any registrations or other protection for Contract IP.

### **9.3 Moral Rights**

In the following subclause:

“**Moral Rights**” means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and of rights of a similar nature conferred by statute that may now exist or that may come to exist in relation to any Matter.

“**Matter**” in this subclause 9.3 includes anything on or in which information is recorded, for example, documents, computer disks and computer records.

The Client consents to:

- (a) any alterations to, including additions to or deletion from, the Matter that would otherwise infringe the Client’s Moral Rights in the Matter, whether occurring before or after the consent is given; and
- (b) waiver of the Client’s Moral Rights in the Matter,  
  
for the benefit of the Service Provider.

### **9.4 Survival**

The obligations of the parties under this clause 9 survive the termination of this Agreement.

## **10. Privacy**

### **10.1 Service Entity Compliance**

The Service Entity warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.

### **10.2 Client compliance**

The Client warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.

### **10.3 Personal Information**

If the Service Entity collects, holds, uses or discloses Personal Information in the course of or relating to this agreement, the Service Entity must:

- (a) handle all Personal Information in accordance with the Service Entity's privacy policy;
- (b) only use Personal Information for the purpose of performing its obligations under this agreement; and
- (c) not disclose Personal Information to any third party (including any subcontractor) without the Client's prior written consent or as required by law.

### **10.4 Sensitive Information**

The Client warrants that it:

- (a) will not provide any Sensitive Information to the Service Entity unless that information is necessary for the Service Entity to perform its obligations under the agreement and then only with the Service Entity's specific written consent;

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- (b) has made all necessary notifications to and obtained all necessary consents required from, the individuals whose Personal Information it is disclosing to the Service Entity in the course of this agreement to enable to the Service Entity to lawfully use the Personal Information and perform its obligations in accordance with this agreement:

## **10.5 Data Incidents**

If the Service Entity becomes aware, or there are reasonable grounds to suspect, that a Data Incident has occurred, the Service Entity must:

- (a) immediately take reasonable steps to contain the Data Incident and prevent any further serious harm to affected individuals;
- (b) immediately notify the Client in writing stating the:
  - (i) nature and details of the Data Incident;
  - (ii) specific Personal Information affected; and
  - (iii) actions taken by the Service Entity at clause 10.5(a);
- (c) identify whether the Data Incident is an Eligible Data Breach by conducting a thorough investigation of the Data Incident within 20 days of becoming aware of the Data Incident (**Data Breach Investigation**);
- (d) provide a copy of the report of the Data Breach Investigation in clause 10.5(c) to the Client on completion;
- (e) engage in discussions with the Client regarding:
  - (i) the conduct and outcomes of the Data Breach Investigation; and
  - (ii) in the case of an Eligible Data Breach, whether the Client or the Service Entity will make the relevant notifications under the Privacy Act; and
- (f) where it is agreed by the parties that the Service Entity is making the relevant notifications, the Client must approve the notifications before they are made (such approval to be given promptly and not to be unreasonably withheld).

## **10.6 Responsibility for employees and contractors**

- (a) Each party will ensure that its employees, contractors or advisors who are required to handle Personal Information in the course of this agreement are made aware of the obligations of that party in this clause 10.
- (b) Each party is responsible for the acts and omissions of its respective personnel (including subcontractors and advisors), and a breach by any such personnel is a breach by that party.

## **10.7 Client Acknowledgement**

The Client:

- (a) acknowledges that the Service Entity is reliant on the Client for direction as to the extent to which the Service Entity is entitled to use Personal Information disclosed to it in the course of and for the purpose of this agreement; and
- (b) indemnifies the Service Entity for any claim brought by any third party in connection with any act or omission by the Service Entity in relation to a third party's Personal

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Information to the extent that such act or omission resulted directly from the Client's instructions or the Client's breach of this agreement.

## **11. Non Solicitation**

In consideration of this Agreement and to protect the Service Provider's goodwill and the goodwill of its other clients, the Client agrees that for a period of 6 months after the termination of this Agreement the Client will not:

- (a) induce, solicit or canvass, approach or accept any approach from, any person who was, at any time during the 24 month period prior to the termination of this Agreement, a patient listed in the Service Provider Information or a patient or referrer of any other medical practitioner serviced by the Service Provider to obtain the custom or referrals of that person in a business or activity which relates to the provision services under the Business.
- (b) do or say anything harmful to the reputation of the Service Provider or its director/s or which may lead a person to cease, curtail or alter the terms of its dealings with the Service Provider;
- (c) interfere with:
  - (i) any other medical practitioner's relationship with its patients;
  - (ii) any other medical practitioner's relationship with its GP referrers; or
  - (iii) the Service Provider's employees;
- (d) represent itself as being in any way connected with or interested in the Service Provider;
- (e) seek to engage or engage the services of any of the Service Provider's employees; or
- (f) induce, help to induce or encourage any of the Service Provider's employees to leave their employment.

## **12. Conflict of Interest**

- (a) A party must promptly notify the other party in writing if it has or may acquire any interest or duty which may conflict with the other party's interests under this Agreement.
- (b) The Client warrants that at the date of this agreement it does not, directly or indirectly, have any contractual relationship, or obligation to, any competitor or potential competitor of the Service Provider in relation to the provision of services and that the Client will not accept any work (by whatever means) that creates a conflict of interest during the term of this Agreement. If the Service Provider believes that a conflict of interest will be created by any work that has been offered to the Client and advise the Client of this potential conflict, then the Client shall not engage in that work.

## **13. Disputes**

- (a) If a dispute arises in connection with this Agreement, the parties must negotiate in good faith to resolve the dispute in a spirit of goodwill and compromise.
- (b) If a dispute is not settled by the parties in accordance with clause 13(a) within a reasonable time of notification of dispute by either party, the parties will endeavour to settle the dispute by mediation.



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- (c) The parties agree to select a mediator within 14 days of the date of notice of intention to mediate.
  - (d) If no mediator can be agreed, the parties agree that a mediator will be appointed by the Resolution Institute at the time a dispute arises.
  - (e) The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
  - (f) This clause 13 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court that may be urgently required.
  - (g) Subject to clause 13(f), a party must not commence or maintain a court action or proceeding upon a dispute in connection with this agreement until the dispute has been submitted to mediation under this clause 13.

#### **14. Termination**

- (a) A party may terminate this Agreement with immediate effect by giving Notice to the other party if:
  - (i) an Insolvency Event occurs in respect of the other party;
  - (ii) the other party fails to comply with an obligation under this Agreement which is incapable of remedy; or
  - (iii) the other party fails to comply with an obligation under this Agreement and, if the failure is capable of remedy, fails to remedy it within thirty (30) days after receiving Notice from the unaffected party to do so.
- (b) The Service Provider may immediately terminate this Agreement if the Associated Doctor of the Client:
  - (i) ceases to have any certification, licence, registration or other accreditation or authority necessary for the Associated Doctor to legally provide medical services to patients whether in a clinical or operative capacity;
  - (ii) become bankrupt or make any arrangement or composition with his/her creditors; or
  - (iii) is convicted of a criminal offence or has committed serious malpractice and/or proven professional misconduct which in the opinion of the Service Provider brings the Service Provider into disrepute or is otherwise damaging to the business of the Service Provider.
- (c) The Client or the Service Provider may terminate this Agreement if the Client:
  - (i) is unable to continue to operate the Business as a result of the death or Incapacity of the Associated Doctor;
  - (ii) becomes of unsound mind; or
  - (iii) any other event that causes the Client to be unable to continue to operate the Business because the Associated Doctor is physically unable to work for a period of 6 months.
- (d) In the event of termination of this Agreement, the Service Provider must bill all of the Client's work-in-progress and must use its best endeavours to collect the Client's

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debtors on behalf of the Client. The Service Provider must pay those debtors as they are received (within a week of receipt) as directed by the Client for a period of one hundred and twenty (120) days after termination. The Service Provider may withhold from the amount due to the Client any fees otherwise payable under this Agreement prior to the date of termination plus a fee equal to five percent (5%) of the collected debtors in priority to making any payment to the Client under this clause. The Service Provider must provide the Client with details of any debtors not collected in the 120 day period so that the Client can attempt to recover those debtors.

- (e) Duty to deliver up material
  - (i) The Client, whenever requested by the Service Provider, must deliver up to the Service Provider all papers, writings, disks, access keys and other material which are in the possession or custody or under the control of the Client relating in whole or in part to the affairs of the Service Provider and/or its business; and
  - (ii) The Service Provider, whenever requested by the Client, must deliver up to the Service Provider all papers, writings, disks, access keys and other material which are in the possession or custody or under the control of the Service Provider which relate to the Client's Business. Any migration fees or other charges for any movement of data from any software, database, system or storage facility belonging to the Service Entity to any software, database, system or storage facility belonging to the Client or any third party will be payable by the Client. The Service Entity may require payment of those fees and charges in advance prior to releasing any material to the Client. The Service Entity makes no warranty or representation as to compatibility between any software, database, system or storage facility belonging to the Service Entity and any software, database, system or storage facility belonging to the Client or any third party.
- (f) Right to withhold.
  - (i) The Service Entity may withhold passing over of material described at clause 14(e) until such time that the Client has reimbursed the Service Entity for the balance of its fees and any other amounts payable pursuant to this Agreement.

## 15. GST

### 15.1 Definitions

- (a) "**GST**", "**GST law**" and other terms used in this clause 15 have the meanings ascribed to those terms by *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time). "**GST Act**" or any replacement or other relevant legislation and regulations and also includes any other legislation enacted to validate, recapture or recoup tax collected goods and services or value added taxes.
- (b) Any reference in this clause to GST payable by an entity includes any GST payable by the representative member of any GST group of which that entity is a member. Any reference in this clause to input tax credits to which an entity is entitled will include input tax credits to which the representative member of any GST group of which that entity is a member is entitled.
- (c) If the GST law treats part of a supply as a separate supply for the purpose of determining the tax period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purposes of this clause.

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## 15.2 Reimbursement of costs, expenses and other amounts

If a party is required under this Agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.

## 15.3 GST payable

If GST is payable by an entity ("**Supplier**") in relation to any supply that it makes under or in connection with this Agreement, the parties agree that:

- (a) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this Agreement other than under this clause 15 ("**Agreed Amount**") is exclusive of GST;
- (b) an additional amount will be payable by the party providing consideration for that supply ("**Recipient**") equal to the amount of GST payable by the Supplier on that supply;
- (c) except to the extent that clause 15.3(d) is applicable, the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Recipient in respect of that supply, no later than that time; and
- (d) where additional amounts are payable between parties to this Agreement pursuant to clause 15.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to give the other the tax invoice referred to in clause 15.3(c).

To the extent, if any, that any consideration (or part thereof) is specified in this Agreement to be inclusive of GST, that consideration (or the relevant part) shall be excluded from the Agreed Amount for the purpose of calculating the additional amount under clause 15.3(b) or 15.3(c).

## 15.4 Variations

- (a) If the Supplier determines on reasonable grounds, is advised by the Commissioner of Taxation or otherwise becomes aware that the GST payable on a supply made under or in connection with this Agreement is different to the additional amount paid by the Recipient to the Supplier in accordance with clause 15.3 (if any) in respect of that supply such that:

- (i) the Supplier is required to pay an amount (or further amount) of GST in respect of that supply; or
- (ii) the Supplier receives or becomes entitled to receive a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply,

the Supplier must either:

- (i) provide a corresponding refund or credit to the Recipient; or
- (ii) will be entitled to receive the amount of that variation (including any penalties, interest or other charges levied on, or applied to the Supplier) from the Recipient,

as the case may be.

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- (b) For the purposes of calculating further variations under this clause 15.4, any additional amount referred to in clause 15.3 is taken to be amended by the amount of any earlier variation made under this clause.
  - (c) Where an adjustment event occurs in relation to a supply made by the Supplier under or in connection with this Agreement, the Supplier will issue an adjustment note to the Recipient in respect of that supply within fourteen (14) days after becoming aware of the relevant adjustment.

#### **15.5 No merger**

This clause 15 shall not merge on completion or otherwise expiration of this Agreement.

#### **16. Governing law**

- (a) This Agreement is governed by and must be construed under the laws of Queensland.
- (b) Subject to clause 13, each of the parties submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from those courts.
- (c) Each of the parties submits to the exclusive jurisdiction of the courts of Queensland and courts of appeal from those courts.

#### **17. Force Majeure**

- (a) If Force Majeure prevents a party from fully performing its obligations under this Agreement, it must give to the other party prompt written Notice and reasonably full particulars of the Force Majeure.
- (b) The obligations of the affected party to the extent that they are affected by the Force Majeure are then suspended for as long as the affected party cannot, because of the Force Majeure, perform its obligations.
- (c) The affected party must take all reasonable steps to remove the Force Majeure and resume performance of its obligations under this Agreement.
- (d) However, the affected party need not settle any industrial disturbance in a manner contrary to its interests.

#### **18. Relationship of the parties**

Nothing in this Agreement creates a relationship of employment, agency or joint venture between the parties.

#### **19. Notices**

##### **19.1 Delivery**

- (a) A Notice or other communication required or permitted to be given to a Party under this Agreement must be in writing and may be delivered:
  - (i) personally to the Party;
  - (ii) by leaving it at the Party's address;
  - (iii) by posting it by prepaid post addressed to that Party at the Party's address; or
  - (iv) by email to the Party's email address.

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- (b) The addresses for service of Notices are as stated in this Agreement or as otherwise notified to the other party.
  - (c) If a Party is a company, a Notice or other communication may be delivered to that Party's registered office.

## **19.2 Time of delivery**

A Notice or other communication is deemed delivered:

- (a) if delivered personally or left at the Party's address (including a Party's registered office), upon delivery;
- (b) if posted within Australia to an Australian address, four (4) Business Days after posting and, in any other case, seven (7) Business Days after posting;
- (c) if delivered by email, subject to clause 19.2(d), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- (d) if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

## **20. General**

- (a) This Agreement terminates any previous agreements between the parties regarding the same subject matter.
- (b) Each party agrees to do all things and sign and execute all documents as may reasonably be required to give effect to the terms and intentions of this Agreement whether before or after its execution.
- (c) No variation, modification or waiver of any term of this Agreement nor consent, whether express or implied, to any departure by any party from its terms and conditions will be of any force or effect unless confirmed in writing, signed by the parties.
- (d) This Agreement constitutes the sole and entire agreement between or among the parties and no warranties, representations, guarantees or other terms or conditions not contained and recorded in this Agreement are of any force or effect.
- (e) If any clause of this Agreement is unenforceable under its terms, all other clauses which are self-sustaining and capable of separate enforcement without regard to the unenforceable clause are enforceable.
- (f) A party may not assign or attempt to assign this Agreement or any right or obligation arising out of it without the prior written consent of the other party.
- (g) If this Agreement consists of a number of counterparts, taken together they constitute one and the same instrument.

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## Schedule 1

### Reference Schedule

<b>Item 1 Commencement Date</b>	As shown on the service agreement
<b>Item 2 Expiry Date</b>	N/A
<b>Item 3 Extension</b>	
<b>Item 4 Associated Doctor</b>	As shown on the service agreement
<b>Item 5 Fees</b>	<p>The Fees in each Billing Period will be:</p> <p>(a) The percentage shown on the service agreement</p> <p>The Fees will be calculated on a monthly basis. The Client will pay to the Service Provider the Fees and any applicable GST each month.</p>
<b>Item 6 Business</b>	The provision of specialist paediatric medical services.
<b>Item 7 Business Name</b>	Australian Paediatric Specialists
<b>Item 8 Notice Address</b>	<p><b>Client:</b> Address listed on the service agreement</p> <p><b>Service Provider: Australian Paediatric Specialists</b></p> <p>Service address: Suite 5, Premion Place, 39 White Street, Southport QLD 4215</p> <p>Attention: Kelly Kink</p> <p>Email Address: <a href="mailto:manager@qldpaeds.com.au">manager@qldpaeds.com.au</a></p> <p>Authorised Representative: Kelly Kink</p>
<b>Item 9 Premises</b>	<p>Premion Place,</p> <p>Suite 5, 39 White Street,</p> <p>Southport QLD 4215</p>
<b>Item 10 Committed Sessions</b>	
<b>Item 11 On Call and After Hours requirements</b>	
<b>Item 12 Billing Period</b>	Monthly

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## Schedule 2

### Services

#### 1. Management Services

Providing management services including marketing and website, supplies management, payroll management, banking, treasury management, recruitment, general office management and support staff management and the provision of a manager to perform such services.

#### 2. Marketing Services

Provide marketing and patient referral services including but not limited to inclusion in the Service Provider's marketing and website materials, access to patients of the Service Provider contained in the Service Provider Information and patient bookings through the Service Provider's online and telephone booking systems.

Signage and appropriate directional material as the Service Provider determines necessary for the conduct of the Business

The service provider will from time to time organise General Practitioner training and information sessions to promote the Clients services.

#### 3. Office and Administration Services

Providing office and administration services, including billing and invoices, cash receipts, accounts payable, petty cash, Medicare reconciliations, health fund reconciliations, debtors, archive maintenance, appointment scheduling and reminders, theatre list booking / coordination, hospital liaison, anaesthetist and assistant liaison, information technology (including remote access support), telecommunications, postage, printing and courier services, photocopying, letter transcribing, and the provision of support staff to perform such services.

#### 4. Premises

Providing Premises with facilities suitable for the Business (as determined by the Service Provider from time to time) located in Southport, Queensland.

#### 5. Equipment

Providing the use of all such Equipment as shall be required in connection with the Business, including:

- (a) the use of all clerical and accounting equipment and all machinery, plant, instruments, fixtures and devices as the Service Provider determines are necessary in relation to the Business. Including the use of the clinic's EFTPOS terminal.

*Note: It is requested that the Client set up on the EFTPOS terminal their own bank account so payments can be processed and deposited straight into the nominated account on the date of service. The Client will be responsible for any fees associated with credit card charges, merchant fees and setup costs.*

- (b) Subscription to either Genie or Gentu medical practice software that the Service Provider determines necessary for the conduct of the Business. Including medical objects and eclipse.
- (c) maintain a recording and filing system for all records, documents and materials concerning patients of the Business;
- (d) ensure proper cleaning, repair and maintenance of all facilities, Premises, equipment provided hereunder;
- (e) access to EEG service;

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- (f) PPE and other consumables; and
  - (g) such telephone, internet, computer and information technology services as the Service Provider determines necessary for the conduct of the Business plus data backups of those systems and information.

**6. Staffing**

Providing reception, clerical and administration for, or in connection with, the conduct of the Business as determined by the Service Provider.



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## **Schedule 3**

### **Excluded Services**

1. Professional Indemnity and Public Liability Insurance which must be maintained by the Client throughout the term of this Agreement;
2. Professional Memberships and Subscriptions;
3. Conference registration and ancillary expenses or other fees and expenses incurred by the Client relating to continual professional development;
4. Hardware, software and related computer equipment used by the Client at the Client's residence or remotely or any initial installation and connection costs for home internet connection;
5. WorkCover insurance for any employees of the Client;
6. Remuneration and benefits, including superannuation contributions, annual leave, sick leave, long service leave, overtime and penalty rates, the provision of accommodation and sustenance;
7. Fringe benefits tax;
8. Any payment upon termination of service, payable to or in respect of any employee or locum of the Client or of the Associated Doctor.

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## **Schedule 4**

### **Service Provider Standards**

#### **1. OCCUPATIONAL HEALTH AND SAFETY**

The Service Provider and the Client must:

- (a) Comply with their respective obligations under the Work Health and Safety Act 2011 (Qld);
- (b) provide to the Client and any of its Authorised Representatives, directors, employees, agents or sub Clients any relevant training and/or induction program and provide to the Client and any of its directors, employees, agents or sub Clients access to any manuals, safety procedures or safety equipment as may be necessary for the Client and any of its directors, employees, agents or sub Clients to safely undertake the Business.

#### **2. ON-CALL AND AFTER HOURS REQUIREMENTS**

If as part of the Client's business, the Client has agreed to participate in on-call work with other Clients of the Service provider, this will be specified in Item 10 of the Reference Schedule or otherwise as be agreed by the parties in writing and the Client will participate in those on-call activities in line with the practices usual standards.

#### **3. MEDICAL BILLING POLICY**

The Client must adhere to the Service Provider's medical billing policy as revised by the Service Provider from time to time.

#### **4. STANDARDS OF BEHAVIOUR**

The Client must adhere to the Services Provider's policy on Standards of Behaviour, Bullying and Harassment. There will be zero tolerance to any breach of this policy and remedies including Termination of this agreement may apply.