

# Contract for the provision of medical services

Shire of Jerramungup (Shire)



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# Table of Contents

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<b>Copyright notice</b>	<b>i</b>
<b>Details</b>	<b>1</b>
<b>Agreed terms</b>	<b>2</b>
1. <b>Defined terms and interpretation</b>	<b>2</b>
1.1 Defined terms	2
1.2 Interpretation	3
2. <b>Agreement</b>	<b>4</b>
2.1 Covenants	4
2.2 Term	4
2.3 Review	4
3. <b>Obligations of the Shire</b>	<b>4</b>
3.1 Trading guarantee	4
3.2 Consulting rooms	5
3.3 General support	5
3.4 Start-up stock and equipment	5
4. <b>Obligations of the Medical Services Provider</b>	<b>5</b>
4.1 Medical Services	5
4.2 Use of Medical Centres	6
4.3 Assistance with replacement	7
4.4 Reporting to the Shire	7
4.5 Information and assistance	7
4.6 Failure to perform obligations	7
5. <b>Miscellaneous</b>	<b>8</b>
5.1 Confidentiality	8
5.2 Discretion not fettered	8
5.3 Relationship between the Shire and the Medical Services Provider	8
5.4 Entire agreement – no warranty	8
5.5 Notices	8
5.6 Dispute resolution	9
5.7 Force Majeure	9
5.8 Suspension of Services	10
5.9 Default and termination	10
5.10 Severability	11
5.11 Modification and waiver	11
5.12 Laws of Western Australia apply	11
5.13 Legal costs	11
5.14 GST	11
<b>Schedule</b>	<b>13</b>
<b>Signing page</b>	<b>14</b>

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# Details

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## Parties

### **Shire of Jerramungup**

of PO Box 92, Jerramungup, Western Australia, 6337  
(Shire)

### **Medical Services Provider specified in Item 1 of the Schedule**

of the details specified in Item 2 of the Schedule  
(Medical Services Provider)

## Background

- A The Shire wishes to ensure that the provision of medical services is continued within the Shire's district.
- B The Medical Services Provider has agreed to provide medical services within the district.
- C The Shire and the Medical Services Provider have agreed to enter into this Contract to evidence the terms of their agreement in relation to the provision of the medical services.

# Agreed terms

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## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Agreement -

**Claim** means all and any claim, demand, writ, summons, action, suit, prosecution, proceeding, judgment, order, decree, damages, costs (including legal costs), loss and expense of any nature whatsoever;

**Contract** means this document as varied, amended, supplemented, novated or replaced from time to time;

**Commencement Date** means the date specified in Item 3 of the Schedule;

**Expiry Date** means the date specified in Item 4 of the Schedule;

**Force Majeure** means any event or circumstance beyond the reasonable control of a party which prevents or impedes the due performance of the obligations under the Contract and which by the exercise of reasonable diligence that party is unable to prevent, including acts of war, acts of terrorism, civil commotion, regional strikes or similar labour disputes, acts of God or other severe weather conditions, legal restraint, governmental interference or regulation. Force Majeure does not include lack of finances, breakdown of any equipment used by the Medical Services Provider unless caused by a Force Majeure event, or contractual commitment made by the Medical Services Provider to third parties which limits the ability of the Medical Services Provider to perform under the Contract;

**Gross Annual Income** means the total revenue from the provision of all of the Medical Services in any one year;

**Guaranteed Amount** means the amount specified in item 5 of the Schedule;

**LEADR** means the organisation known as LEADR of 15-17 Young Street, Sydney, New South Wales;

**Medical Centres** mean the Jerramungup and Bremmer Bay Centres (or any alternative premises provided by the Shire) including the fixtures, fittings, plant and equipment at those centres (or at the alternative premises);

**Medical Services** means –

- (a) those services ordinarily provided by a rural general medical practitioner registered under the *Health Practitioners Regulation National Law (WA) Act 2010*; and
- (b) those services specified in clause 4;

**Officer** means -

- (a) the Chief Executive Officer of the Shire; and
- (b) any employee of the Shire or person authorised by the Chief Executive Officer of the Shire, and notified to the Medical Services Provider, as an authorised officer for the purpose of the Contract;

**Review** means a review of the operation of the Contract conducted by both parties at the end of the first 12 months;

**Schedule** means the schedule to this Agreement;

**Shire Obligations** mean the obligations specified in clause 3;

**Term** means the term of the Contract specified in clause 2.2; and

**written law** has the same meaning given to that term in the *Interpretation Act 1984*.

## 1.2 Interpretation

In the Contract, unless inconsistent with the context -

- (a) headings and bolding are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a gender includes a reference to each other gender;
- (d) a reference to a person or individual includes a reference to a firm, corporation or other corporate body, authorities, governments and governmental agencies and vice versa;
- (e) where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- (f) a reference to any written law includes -
  - (i) all written laws amending, consolidating or replacing that written law; and
  - (ii) all regulations, proclamations, planning schemes or local laws made under that written law;
- (g) a reference to a party includes that party, its successors, permitted assigns, receivers, administrators, executors, substitutes and liquidators;
- (h) a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document;
- (i) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it;
- (k) an obligation, representation or warranty in favour of two or more persons -
  - (i) is for the benefit of them jointly and severally; and
  - (ii) binds them jointly and severally;
- (l) a reference to '\$' or 'dollars' is a reference to Australian dollars;
- (m) unless expressly stated otherwise, a reference to a party, clause, sub-clause, paragraph or part, is a reference a party, clause, sub-clause, paragraph or part of or in the Contract; and

- (n) anything in the Contract which is expressed to be done or performed by the Shire, is to properly and lawfully be done and performed if so done and performed by an Officer.

## **2. Agreement**

### **2.1 Covenants**

- (1) The parties covenant with each other on the terms and conditions outlined in the Contract.
- (2) In consideration for the performance by the Shire of the Shire's Obligations, the Medical Services Provider covenants with the Shire, during the Term -
  - (a) to provide the Medical Services in accordance with the Contract; and
  - (b) to do and perform all other things that are reasonably necessary for the provision of the Medical Services in accordance with the Contract.

### **2.2 Term**

The Term of the Contract commences on the Commencement Date and, subject to clause 2.3 and this Contract, ends on the Expiry Date.

### **2.3 Review**

- (1) Within 30 days of the first anniversary of the Commencement Date, the parties will meet to carry out the Review.
- (2) The parties may agree to amend the terms of the Contract as a result of the Review.
- (3) Within 30 days of the date of the Review, either party may choose to end the Contract by giving 30 days notice to the other party.
- (4) On the expiration of a notice under clause 2.3(3), the Contract will be at an end and neither party will have any further obligation to the other, except for any outstanding obligation that may have accrued before the end of the Contract and clause 5.9(2).

## **3. Obligations of the Shire**

### **3.1 Trading guarantee**

- (1) The Shire undertakes to underwrite the Gross Annual Income from the provision of the Medical Services to the Guaranteed Amount.
- (2) The Gross Annual Income is to be calculated from the Commencement Date to the anniversary of the Commencement Date in the first year of the Contract and thereafter, annually to the same day and month in each subsequent year of the Term.
- (3) If the Gross Annual Income is less than the Guaranteed Amount at the date of calculation, the Medical Services Provider may claim from the Shire the difference between the Gross Annual Income and the Guaranteed Amount.
- (4) To make a claim under clause 3.1(3), the Medical Service Provider must provide to the Shire audited accounts that demonstrate, to the satisfaction of the Shire, the claimed shortfall in Gross Annual Income.

- (5) If the Shire wishes to verify the claimed shortfall in Gross Annual Income, the Medical Service Provider must grant to the Shire reasonable access (with or without an auditor or accountant) to the Medical Service Provider's accounting records to enable the Shire to verify the claim.
- (6) Any dispute with respect to the Shire's liability to pay any portion of the Guaranteed Amount is to be dealt with under clause 5.6.

### **3.2 Consulting rooms**

During the Term, the Shire must, at its own cost –

- (a) provide the Medical Services Provider with the use of consulting rooms located at –
  - (i) Lot 146 Kokoda Road, Jerramungup; and
  - (ii) Lot 198 John Street, Bremer Bay,for the provision of the Medical Services;
- (b) provide the Medical Services Provider with the use of the fixtures, fittings, furniture and equipment located in the consulting rooms referred to in paragraph (a) at the Commencement Date;
- (c) provide and maintain computer hardware and the software specified in Item 6 of the Schedule; and
- (d) provide and maintain a telephone system.

### **3.3 General support**

- (1) During the Term, the Shire must at its own cost, subject to clause 3.3(2), provide the Medical Service Provider with –
  - (a) the use of a 4 bedroom, 2 bathroom residential property at Lot 204 Kokoda Road, Jerramungup; and
  - (b) a modern 4x4 Toyota Prado GXL or equivalent vehicle.
- (2) The Shire may require the Medical Services Provider to enter into any reasonable agreement with respect to the maintenance and preservation of the residence and vehicle referred to in clause 3.3(1).

### **3.4 Start-up stock and equipment**

The Shire will provide a limited range of medical equipment and a stock of pharmaceuticals, as specified in Item 7 of the Schedule, to support the commencement of the provision of the Medical Services.

## **4. Obligations of the Medical Services Provider**

### **4.1 Medical Services**

- (1) The Medical Services Provider must be registered under the *Health Practitioner Regulation National Law (WA) Act* to practice as a medical practitioner, or hold a provisional registration under that Act that permits the Medical Services Provider to provide the Medical Services.
- (2) The Medical Services Provider must, during the Term, provide the Medical Services in accordance with the Contract and to the reasonable satisfaction of the Shire.



- (3) In particular, the Medical Services Provider during the Term and to the reasonable satisfaction of the Shire, must –
- (a) provide all aspects of general practice services and management of the Medical Centres;
  - (b) employ all clinical and administrative staff required to conduct the Medical Services and to dispense services from the practice pharmacy;
  - (c) provide medical services from the Medical Centres for a minimum of one day each week at each centre; and
  - (d) comply with all applicable obligations under the *Health Practitioner Regulation National Law (WA) Act* and any standard, code or guideline made by the Medical Board of Australia established under that Act, and any other written law relevant to the provision of the Medical Services.

## **4.2 Use of Medical Centres**

- (1) The Medical Services Provider must ensure that –
- (a) the Medical Centres are used, or permitted to be used, only for the provision of the Medical Services;
  - (b) nothing is done or permitted to be done on or in respect of either centre that would or might –
    - (i) damage the centre;
    - (ii) result in a nuisance or adversely affect the Shire or any other person;
    - (iii) result in any policy of insurance in respect of a centre being voided or voidable; or
    - (iv) affect the premium or excess payable under any policy of insurance in respect of a centre;
  - (c) the Medical Centres are used only for the purposes for which they were constructed or are provided;
  - (d) no chemicals or inflammable gasses, fluids or substances are used, or permitted to be used, at either Medical Centre except in the course of, and for the purposes of, providing the Medical Services;
  - (e) except with the written consent of the Shire (which must not be unreasonably withheld), no sign is constructed, affixed or displayed on or to the exterior or interior of either Medical Centre;
  - (f) the Medical Centres are kept free from dirt and rubbish, and all medical waste and other rubbish and refuse is stored in appropriate receptacles;
  - (g) nothing is done that would result in excessive stress, strain or floor loading to any part of either Medical Centre;
  - (h) all reasonable precautions are taken to keep both Medical Centres free of rodents, vermin, insects, pests, birds and animals; and
  - (i) all reasonable precautions are taken to prevent pollution or contamination at each of the Medical Centres.

- (2) In the absence of a written request by the Shire to the contrary, before the expiry of the Term or earlier termination of the Contract, the Medical Services Provider must ensure that both Medical Centres are returned to the state that they were in at the Commencement Date

#### **4.3 Assistance with replacement**

Pending the cessation of the Contract (for whatever reason), the Medical Services Provider must use his or her best endeavours to assist the Shire to find a replacement medical services provider to ensure that, in the interests of the community, any disruption in the provision of Medical Services is minimised.

#### **4.4 Reporting to the Shire**

- (1) The Medical Services Provider must immediately report to the Shire any breakage of glass, including plate glass and exterior windows, and all damaged or defective heating, lighting or electrical equipment or plumbing installed at either Medical Centre.
- (2) The Medical Services Provider must give the Shire written notice of –
  - (a) any accident to, or defect in respect of, either Medical Centre; and
  - (b) any circumstances known to the Medical Services Provider,

that may be, or may cause, a risk or hazard to either Medical Centre or to any person at either centre.

#### **4.5 Information and assistance**

On or before the Expiry Date or earlier termination of the Contract, the Medical Services Provider must ensure that all information and records generated by him or on his behalf which relate to the provision of the Medical Services are given to –

- (a) the medical practitioner who is to replace the Medical Services Provider; or
- (b) if there is no replacement medical practitioner at that time, subject to any obligations imposed by the Medical Board of Australia, under the *Health Practitioner Regulation National Law (WA) Act* or under any written law, to a medical practitioner nominated by the Shire.

#### **4.6 Failure to perform obligations**

- (1) Without limiting the generality of any other clause in this Contract or the rights or obligations of a party at law, if –
  - (a) the Medical Services Provider defaults in the observance or performance of any term or condition of the Contract to be observed or performed by the Medical Services Provider; and
  - (b) the Medical Services Provider fails to remedy the default within 14 days after the Shire gives notice in writing to the Medical Services Provider specifying the default and requiring the default to be remedied,

the Shire may perform the obligation itself or engage a third party to do so.

- (2) The Chief Executive Officer of the Shire may determine the cost to the Shire of the performance of the Medical Services Provider's obligations by the Shire or a third party and that determination is to be final and conclusive. The Shire must give the Medical Services Provider written notice of the Chief Executive Officer's determination.

- (3) The cost to the Shire or a third party for performing the Medical Services Provider's obligations must be paid by the Medical Services Provider to the Shire within 7 days of receipt of the notice of the Chief Executive Officer's determination under subclause (2).

## **5. Miscellaneous**

### **5.1 Confidentiality**

The parties must ensure that, subject to overriding disclosure requirements (such as those in the *Freedom of Information Act 1992*), documents and other information, that are supplied and clearly identified as confidential, are kept confidential. If required in writing by a party, the other party must enter into a separate agreement not to disclose to anyone else any confidential matter even after the Expiry Date or earlier termination of the Contract.

### **5.2 Discretion not fettered**

Nothing in the Contract is to fetter or is to be construed as an attempt to fetter the discretion or the powers of the Shire under any written law.

### **5.3 Relationship between the Shire and the Medical Services Provider**

- (1) Nothing in the Contract is to be construed so as to constitute a relationship of master and servant or principal and agent as between the Shire and the Medical Services Provider, or any relationship of employment or trust between the Shire and the Medical Services Provider.
- (2) The Medical Services Provider must not hold himself or herself or his or her employees or agents out to be employees or agents of the Shire, and the Medical Services Provider must indemnify the Shire and keep the Shire at all times indemnified against any Claim incurred as a result of doing so.
- (3) For the purposes of subclause (2), the provisions of Part 1F of the *Civil Liability Act 2002* are excluded.

### **5.4 Entire agreement – no warranty**

- (1) The Medical Services Provider acknowledges that he or she has entered into the Contract in full reliance on his or her own enquiries, investigations, examinations and advice and not in reliance on or as a result of any statement, claim, representation or warranty (expressed or implied) made or given by the Shire or any employee, agent or other person on behalf of the Shire in respect of any matter whatsoever affecting the Contract.
- (2) The parties agree that the Contract constitutes the whole and entire agreement between them and supersedes all previous negotiations and agreements written or oral.

### **5.5 Notices**

Any notice, direction or other communication which must or may be given in connection with the Contract -

- (a) must be in writing in order to be valid;
- (b) is sufficient if executed by the party giving the notice or on its behalf by any director, secretary, duly authorised officer or solicitor of that party;
- (c) in order to be valid must be given to a party as follows -
- (i) delivered or sent by prepaid post to, or left at, the 'notice details' address of that party as set out in this Agreement;

- (ii) sent to the facsimile number of that party as set out in this Agreement;
  - (iii) sent to the email address of that party as set out in this Agreement; or
  - (iv) delivered or sent to another address or facsimile number as is notified in writing by that party to the other parties from time to time; and
- (d) if given in accordance with paragraph (c), will be deemed to take effect -
- (i) in the case of prepaid post, on the second business day after the date of posting;
  - (ii) in the case of email, on receipt of return email from the recipient acknowledging receipt of the email;
  - (iii) in the case of facsimile, on receipt of a transmission report from the sending machine confirming successful transmission; and
  - (iv) in the case of delivery by hand, on delivery.

## **5.6 Dispute resolution**

- (1) If a dispute arises between the parties in connection with the Contract, then a party must give notice of the dispute to the other party identifying the dispute and providing details of it.
- (2) If a dispute is not resolved between the parties within 14 days of a notice under subclause (1) being given, the parties must endeavour to settle the dispute by mediation to be conducted by a mediator independent of the parties, appointed by agreement of the parties within 35 days of a notice in subclause (1) being given or, failing agreement, by a person appointed by the chair of LEADR or her or his nominee.
- (3) The mediation rules of the Law Society of NSW are to apply to the mediation.
- (4) It is a condition precedent to the right of any party to arbitrate or litigate a dispute under the Contract that it first has complied with the mediation process in accordance with this clause.
- (5) Each party may be represented by a qualified legal practitioner or other representative in any mediation proceedings.
- (6) The parties must continue to comply with their obligations under the Contract despite any dispute being referred to mediation, unless agreed otherwise by the parties in writing.

## **5.7 Force Majeure**

- (1) Should a party be delayed in the performance of the Contract by an event which the party concerned considers is a Force Majeure occurrence, then the party delayed must -
  - (a) give written notice to the other party immediately giving the full particulars of the event and why it is considered a Force Majeure occurrence; and
  - (b) use its best efforts to remedy the situation.
- (2) On giving a notification under subclause (1), the performance or compliance by either party of or with any of the responsibilities or obligations under the Contract are to be suspended. The suspension is to continue as long as the performance or compliance with that responsibility or obligation under the Contract is so prevented or hindered. During the suspension, the parties must consult with each other without delay as to the measures to be taken regarding the continuation of the Medical Services and the implementation of the Contract. The parties must agree on a solution equitable to both parties.

- (3) On cessation of any Force Majeure occurrence, the Medical Services Provider must take all reasonable measures necessary to minimise the effects of the delay.
- (4) Should the Force Majeure continue for more than 15 consecutive days either party may terminate the Contract with immediate effect by giving the other party written notice of termination.
- (5) Neither party is to be liable for any delay or failure of performance of the terms and conditions of the Contract to the extent such delay or failure is attributable to events of Force Majeure which has been notified in accordance with this clause.
- (6) Force Majeure may not be invoked by a party if, and to the extent that, any prior default under the Contract of the party concerned caused or contributed to the prevention or impediment of the due performance of the obligations under the Contract.

## **5.8 Suspension of Services**

- (1) The Shire may direct the Medical Services Provider to suspend the provision of all or part of the Medical Services for such time as the Shire thinks fit, if the Shire reasonably forms the opinion that it is necessary -
  - (a) because of an act, default or omission of either party or someone else;
  - (b) for the protection or safety of any person or property; or
  - (c) to comply with a court order.
- (2) If the Medical Services Provider wishes to suspend the performance of the whole or part of the Medical Services, the Medical Services Provider must obtain the Shire's prior written approval. The Shire may approve the suspension and may impose conditions of approval.
- (3) As soon as the Shire becomes aware that the reason for any suspension no longer exists, the Shire must direct the Medical Services Provider to recommence the suspended Medical Services as soon as reasonably practical.

## **5.9 Default and termination**

- (1) If -
  - (a) the Medical Services Provider defaults in the observance or performance of any term or condition of the Contract to be observed or performed by him or her, and he or she fails to remedy such default (if it is capable of remedy) within 14 days after the Shire gives notice in writing to him or her specifying the default and requiring the default to be remedied;
  - (b) the Medical Services Provider calls a meeting of the his or her creditors or makes any composition or arrangement with or assignment for the benefit of such creditors, or suffers any execution under any legal process issued or levied on or against any of his or her goods or chattels;
  - (c) the Shire ceases to be a local government for the purposes of the *Local Government Act 1995*;
  - (d) any execution or process is made against the Medical Services Provider;
  - (e) the Medical Services Provider knowingly maintains or gives the Shire information under the Contract that is false;
  - (f) the Medical Services Provider commits a criminal offence the subject of a final conviction which has not been overturned or stayed pending an appeal and is sentenced to

imprisonment of at least 1 year or the criminal offence involves serious dishonesty or moral turpitude in connection with his or her dealings,

then, in any of these cases (but subject to the *Bankruptcy Act 1966* (Cth)) the Shire may, by notice in writing given to the Medical Services Provider, without prejudice to any other powers, rights, authorities or remedies against the Medical Services Provider under the Contract or otherwise, terminate the Contract, but without releasing the Medical Services Provider from liability for any previous breach or failure to observe or perform any term or condition of the Contract.

- (2) The parties' rights and obligations under clauses 4.2(2), 4.6, 5.1 and 5.3(2) are to survive the termination of the Contract.

#### **5.10 Severability**

In the event of part of the Contract being or becoming void or unenforceable then that part shall be severed from the Contract with the intention that the balance of the Contract is to remain in full force and effect, unaffected by the severance.

#### **5.11 Modification and waiver**

- (1) The Contract may not be modified, amended or varied except by a document in writing signed by or on behalf of each of the parties.
- (2) Any modification to a term or condition of the Contract, or waiver or relinquishment of the performance of any term or condition of the Contract, will be effective only if made in writing and executed by or on behalf of the party granting the waiver.
- (3) No waiver of any one breach of any term or condition of the Contract is to operate as a waiver of any other breach of the same or other term or condition of the Contract.

#### **5.12 Laws of Western Australia apply**

The Contract is to be construed and interpreted in accordance with the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals from them.

#### **5.13 Legal costs**

Each party is to pay its own costs and expenses (including legal costs) of and incidental to the preparation, negotiations, completion and signing of the Contract.

#### **5.14 GST**

- (1) In this clause -

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** means the GST Act and any associated legislation including without limitation delegated legislation.

**GST, Registered, supply, tax invoice** and any other expression used that is defined in the GST Law has the same meaning as given to it in the GST Law.

- (2) Unless specifically described in the Contract as 'GST-inclusive', any consideration to be paid or provided for a supply made under or in connection with the Contract does not include an amount on account of GST and is 'GST-exclusive'.

- (3) Where, under the GST Law, any supply to be made by a party (**Supplier**) to another party (**Recipient**) under or in connection with the Contract is subject to GST (other than a supply the consideration for which is specifically described in the Contract as GST-inclusive), then -
- (a) the consideration payable or to be provided for that supply under the Contract will be increased by, and the Recipient will pay to the Supplier, an amount equal to the GST calculated according to the GST Law;
  - (b) the Recipient shall pay that additional GST amount at the same time and in the same manner as the GST-exclusive consideration is paid or provided; and
  - (c) a reference to the consideration payable for a supply includes the value of any non-monetary consideration for the provision.
- (4) If the Supplier is Registered or required to be Registered, the Supplier must provide a GST compliant tax invoice in connection with any supply made by it under the Contract, failing which the Recipient will not be obliged to make any payment for that supply until the invoice is provided.

# Schedule

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Item 1      Medical Services Provider

Item 2      Medical Services Provider's notice details (clause 5.5)

Item 3      Commencement Date (clauses 1.1 and 2.2)

Date on which the Contract is signed by the Shire.

Item 4      Expiry Date (clauses 1.1 and 2.2)

5 years from the Commencement Date or such other date as may be agreed in writing between the Shire and the Medical Services Provider.

Item 5      Guaranteed Amount (clauses 1.1 and 3.1)

Up to \$150,000 each full calendar year that the Contract is in force.

Item 6      Software (clause 3.2(c))

Medical Director – current software version 3.14d for clinical data entry and PracSoft – current software version 3.14d for billing and appointments (including licences).

Item 7      Stock and Equipment (clause 3.4)

Item 8      Shire's notice details (clause 5.5)



# Signing page

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EXECUTED [**add day and month**] 2013

**Signed** on behalf of the Shire of Jerramungup  
in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of Chief Executive Officer



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Address of witness

**Signed** by the Medical Services Provider in the  
presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of Medical Services Provider



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Address of witness

OR

The common seal of [**Name of company**] is  
fixed to this document in accordance with its  
constitution in the presence of

\_\_\_\_\_  
Director



\_\_\_\_\_  
Secretary

[**Insert execution clause for Guarantor**]