Services Agreement

Grampians Health – State-wide Equipment Program (SWEP)

And

[Contractor]

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**Parties**

**Grampians Health trading as SWEP** (ABN 39 089 584 391) of 1 Drummond St North, Ballarat Central VIC 3350 (**SWEP**)

and

**[Contractor]** ABN **[insert ABN]** of **[insert address]** (**the** **Clinical Advisor)**

Recitals

A The Health Service has chosen the Contractor as the provider of the services specified in Item 1of **Schedule 2** (‘**the Services**’) to the Health Service.

B This Agreement records the terms and conditions on which the provision of the Services will take place.

The parties now agree as follows:

# Period of Agreement

## Commencement Date

* + 1. This Agreement commences on the date specified in Item 2 of Schedule 1 (‘the Commencement Date’) and will end on the date specified in Item 3 of Schedule 1 (‘the Expiry Date’) unless otherwise terminated or extended in accordance with this Agreement.

## Further Agreement

* + 1. If the Health Service notifies the Contractor in writing that it wishes to do so 3 months prior to the Expiry Date, the Contractor must enter into a new agreement on the same terms and conditions as this Agreement for a further term of 1year x 2, except that:

the fees to be charged the same as the previous agreement;

any other term or condition nominated by the SWEP must be re-negotiated; and

there will be no further option to renew the Agreement unless both parties agree.

The new agreement will be made in writing between the Clinical Advisor and the SWEP and must be executed prior to the expiry of this Agreement.

# Services to be provided

* + 1. During the term of this Agreement, the Clinical Advisor must provide the Services to the SWEP at the locations specified in Item 4 of **Schedule 1** in accordance with the terms and conditions contained in this Agreement.
    2. At all times when providing the Services, the Clinical Advisor must comply with the SWEP’s current policies, rules, procedures and standards.

## Failure to discharge duties

* + 1. If the Clinical Advisor is unable or unwilling to carry out, perform or discharge its duties, responsibilities or obligations under this Agreement on any particular occasion then, in addition to any other rights which the SWEP may exercise, the SWEP (after due consideration and discussion with the Clinical Advisor) will be at liberty to retain or engage any other entity or person to provide the Services, as may be considered necessary in the circumstances without being liable to the Clinical Advisor in any way.
    2. The Clinical Advisor will be liable for the reasonable costs incurred by the SWEP in exercising its rights referred to in **clause** 2.3 plus an additional 10% as an administration charge. This amount may be recovered by the SWEP from the Clinical Advisor by deduction from any payment otherwise due from the SWEP to the Clinical Advisor.

# Standard of Service

## Timing of service provision

* + 1. The Clinical Advisor must provide the Services in accordance with instructions from the SWEP.
    2. The Clinical Advisor must be prepared to provide the Services at any time during the times specified in Item 5 of **Schedule 1**. The actual time when the Services must be provided will be agreed between the Clinical Advisor and the Authorised Officer.
    3. The provision of the Services by the Clinical Advisor must be within the time frame specified in Item 6 of **Schedule 1**. The Clinical Advisor is not liable to the SWEP for any failure to provide or delay in providing the Services in accordance with an order if that failure or delay is the result of a Cause Beyond the Reasonable Control of the Contractor.

## Quality of Service

* + 1. The Service must be provided to the highest practical standard at all times.
    2. Without limiting the requirements of clause 3.4, the Clinical Advisor must ensure that the Services, and all of the Clinical Advisor’s work practices associated with providing the Services, meet the service standards specified in Item 7 of **Schedule 1**.

## Continuous improvement

* + 1. The Clinical Advisor recognises the necessity for and commits itself to a philosophy of continuous improvement in quality of service and professional standards. The Clinical Advisor will maintain and develop policies, procedures and training activities utilised by it to enable the Services to be provided to the standards required by **clauses** 3.4 and 3.5. The Clinical Advisor must produce evidence of these policies, procedures and training activities to the SWEP when requested by the SWEP.
    2. Subject to the remaining provisions of this Agreement, the Clinical Advisor must review all policies and procedures annually (at a minimum) in light of industry wide practice and inform the SWEP when the review(s) has occurred and if any changes are necessary. The Clinical Advisor’s policies and procedures cannot be in conflict with any SWEP policy or procedure. Where conflict does exist, then the SWEP policy or procedure must be followed.

## Performance Indicators

* + 1. The Clinical Advisor must ensure the Services conform to the performance indicators set out in Item 8 of **Schedule 1**. Failure to comply with those indicators will entitle the SWEP to require more frequent reporting and monitoring of the Clinical Advisor’s performance of the Services, the extent of which will be in the SWEP’s absolute discretion.
    2. Non-compliance with the performance indicators may also be taken into account by the SWEP when considering whether to extend or terminate this Agreement. Nothing in this clause affects the rights contained in clause 1.2.

## Reports and Surveys

* + 1. The Clinical Advisor must provide the SWEP with such periodic reports relating to the Services as required by the SWEP

## Conditions of service

## Police check

* + 1. The Contractor must ensure that they undergo and pass a police check and working with children check before providing the Services in accordance with the Health Service’s policy on this issue (as amended from time to time).

## WorkCover

* + 1. The Clinical Advisor warrants that it is registered as an employer in accordance with the requirements of the Workplace Injury Rehabilitation and Compensation Act 2013 and that its insurance arrangements relating to its employees are and will remain current during the term of this Agreement. The Contractor must provide the Health Service with evidence of this registration and these arrangements annually and as requested.

# Contractor’s Additional Obligations

## Documentation

* + 1. The Clinical Advisor must produce, provide, update and amend any Documentation provided to the SWEP to ensure that the Documentation provided is current and remains up to date throughout the term of this Agreement.
    2. The Documentation must be:

of reasonable standard in terms of its presentation, accuracy and scope;

in the English language; and all key terms, words and symbols must be adequately defined; and

of sufficient quality and clarity to enable the Health Service to effectively, support and operate the Services.

* + 1. The SWEP must be advised immediately in writing of any changes in the Documentation which will result in varied operational procedures.

## Compliance with relevant laws

* + 1. The Clinical Advisor must comply with all legislation which regulates the development, and provision of the Services to the SWEP. In particular, the Clinical Advisor must hold all registrations, permits and licenses which are required to lawfully perform its obligations under this Agreement.

## Training

* + 1. The Contractor must undertake training at the Health Service’s premises, as required. Records
    2. The Clinical Advisor must keep the following records and accounts:

instructions for the Services which have been made by the SWEP;

reports regarding the amount and nature of the Services provided to the SWEP, including the means of calculation of invoices to the SWEP, and any complaints made regarding the provision of the Services; and

all other reports and records required to be made in accordance with this Agreement.

* + 1. In accordance with the requirements of the Victorian Government Purchasing Board, the Clinical Advisor must keep these records for at least 7 years after the end of this Agreement.

# Equipment

* + 1. The Contractor must provide all equipment that may be necessary for the Services to be provided to the standards required under this Agreement.
    2. The Contractor must ensure, at its cost, that:

all equipment conforms to the latest Department of Health or any relevant Australian Standards specification, where such exists or otherwise to generally accepted industry standards and to the reasonable requirements of the Authorised Officer;

* + 1. The Contractor must maintain in safe, serviceable and clean condition all equipment used by the Contractor.

# Secure Storage

* + 1. Upon expiry or termination of the whole or part of this Agreement or all or any of the Services, the Contractor must, if requested by the Health Service, provide all reasonable assistance to the Health Service in the orderly transfer of the Service and data, provided pursuant to this Agreement. Such assistance may include any or all of the following assistance (referred to as ‘**Services Transfer Assistance**’):

returning or destroying any documents or materials together with any reproduction of those documents or materials;

# Entry onto the Health Service’s Premises

## General right

* + 1. The SWEP must permit the Clinical Advisor reasonable entry to the SWEP’s premises where necessary to provide the Services under this Agreement. The permission given to enter the SWEP’s premises is personal to the Clinical Advisor and the Contract Personnel and ceases immediately upon the ending or expiry of this Agreement. The Clinical Advisor must report to the Authorised Officer prior to commencing any activities on site.

## Security

* + 1. If the Clinical Advisor or its staff detect any breach of security whilst providing the Services, the Health Service must be immediately notified of details of that breach.

## Security passes

* + 1. The Clinical Advisor may be provided with security passes to gain access to appropriate areas of the SWEP’s premises. No additional passes are to be produced without the prior written consent of the SWEP. The loss of security passes is to be reported immediately to the Authorised Officer and the cost of any replacement security passes and associated hardware will be borne by the Clinical Advisor. The Clinical Advisor must return all security passes which allow access to the areas of the SWEP’s premises (including any replacements) to the Authorised Officer upon the expiry or termination of this Agreement.

# Intellectual Property

* + 1. Any Intellectual Property which is created pursuant to this Agreement will be the property of the SWEP. The SWEP grants the Clinical Advisor a non-exclusive license to use the Intellectual Property where necessary to provide the Services.

# Parties’ representatives

## Authorised officer

* + 1. The SWEP will appoint a person or persons to be the duly authorised representative of the SWEP for all purposes connected with this Agreement (‘**the Authorised Officer**’). Any notice, information or communication given or made to the Authorised Officer will be deemed to have been given or made to the SWEP. The Authorised Officer at the Commencement Date is the person or persons specified in Item 11 of **Schedule 1**.
    2. The SWEP will give notice in writing to the Clinical Advisor’s Representative of any subsequent appointment as Authorised Officer. Until notice of a subsequent appointment has been given, the Clinical Advisor is entitled to treat as the Authorised Officer the person last notified to the Clinical Advisor as being the Authorised Officer.

## Clinical Advisor’s Representative

* + 1. The Clinical Advisor must appoint one of its senior staff to be the Clinical Advisor’s Representative. The Clinical Advisor’s Representative at the Commencement Date is the person or persons specified in Item 12 of **Schedule 1**.
    2. The Clinical Advisor’s Representative will be the duly authorised representative of the Clinical Advisor for all purposes connected with this Agreement. Any notice, information, instruction or other communication given or made to the Clinical Advisor’s Representative will be deemed to have been given or made to the Clinical Advisor.
    3. The Clinical Advisor will give notice in writing to the Authorised Officer of any subsequent appointment as Clinical Advisor’s Representative. Until notice of a subsequent appointment has been given, the SWEP will be entitled to treat as the Clinical Advisor’s Representative the person last notified to the SWEP as being the Clinical Advisor’s Representative.
    4. The Clinical Advisor will ensure that the Clinical Advisor’s Representative or a competent deputy duly authorised to act on his or her behalf is always available for consultation with the SWEP.
    5. The Clinical Advisor must inform the Authorised Officer of the administrative arrangements made by the Clinical Advisor whereby one of its employees acts as deputy for the Clinical Advisor’s Representative under **clause**10.6.
    6. The Clinical Advisor’s Representative or his or her deputy must consult with the Authorised Officer and the Health Service’s staff as often as may reasonably be necessary for the efficient provision of the Services in accordance with the terms of this Agreement.

# Payment for Services

## Interpretation

* + 1. Terms used in this clause have the same meaning as those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## Fees payable

* + 1. The Health Service must pay the Clinical Advisor for the Services on the basis of the prices set out **Schedule 2**. The prices specified in **Schedule 2** do not include GST. At the time of payment, the SWEP must pay to the Clinical Advisor any amount of GST that the SWEP is required to pay in addition to the prices specified in Schedule 1.

## No other amounts

* + 1. The only amounts payable by the SWEP to the Clinical Advisor will be the amounts specified in **Schedule 2** and any applicable GST. All other costs, charges, fees and expenses for or arising out of or in connection with the provision of Services must be paid by the Clinical Advisor unless otherwise negotiated with SWEP

## Invoice requirements

* + 1. The obligation of the SWEP to pay the Clinical Advisor for the Services arises on delivery by the Clinical Advisor to the SWEP of a tax invoice in the format required by the law to the SWEP for the supply. The tax invoice must include sufficient details to enable the SWEP to determine whether the amount invoiced is accurate. At a minimum the invoices must:

state the amount payable;

set out the amount of the GST payable by the SWEP;

refer to the relevant consumer/project in respect of which the invoice relates;

be received within three months of the service being provided

be itemised wherever possible; including the number of hours during which the service was performed, the activity undertaken, the date and time the services were performed and any other information that may be relevant; and

include all appropriate support documentation.

## Payment terms

* + 1. Unless the SWEP disputes the amount stated in the invoice in accordance with **clause 11.10**, the SWEP will pay the Clinical Advisor for the amount invoiced within 30 days from end of month after the invoice is received.
    2. For clarity, there will be suspension of the required timeframe for payment of an invoice under this **clause 11.10** in the event of a disputed amount in accordance with **clause 11.10**.
    3. Payment by the SWEP of an invoice is not to be taken as evidence that the Services have been supplied in accordance with this Agreement, but must be taken only as payment on account.

## Disputing amounts

* + 1. If the SWEP does not agree with any part of an account, it must immediately give the Clinical Advisor a written notice stating that it is disputing the account and giving reasons. If the Clinical Advisor’s response does not satisfy the SWEP the dispute must be mediated in accordance with **clause**19.
    2. If the SWEP disputes its obligation to pay any amount in the invoice, the SWEP may withhold that part of the invoice amount until such time as the dispute is resolved.

## Australian Business Number Registration

* + 1. The Clinical Advisor warrants that it is registered or will be registered for Australian Business Number and for GST purposes at each time of taxable supply is made. The Clinical Advisor must continually indemnify the SWEP for any loss it suffers as a result of the Clinical Advisor not being registered for Australian Business Number and GST purposes. On request by the SWEP, the Clinical Advisor must produce evidence that it is registered.

# Report, audit and survey

## Right

* + 1. The SWEP may, from time to time and at its cost, appoint a third party to or itself conduct an audit of the performance of the Clinical Advisor’s obligations under this Agreement.

Regulatory Standards Survey

* + 1. The Clinical Advisor acknowledges that the SWEP and its operations may be the subject of regulatory standards survey during the term of this Agreement.

## Access

* + 1. If required by the SWEP, the Clinical Advisor may:

## Be requested to participate with any regulatory audit where SWEP considers the Contractor could contribute References to ‘an auditor’

* + 1. For the avoidance of doubt, all references to ‘an auditor’ in this clause refers to the appointment of any individual (including a staff member of the Health Service) pursuant to clauses 12.1and 12.2.

# Variation to terms and conditions

* + 1. If the SWEP requires the Services to be varied, extended or reduced the SWEP will give the Clinical Advisor reasonable written notice of such variation, extension or reduction.
    2. The Services are deemed to be varied, extended or reduced in accordance with the written notice referred to in clause 13.1 if the Clinical Advisor agrees to the requested change(s). Such agreement must not be unreasonably withheld.
    3. If the Services are varied, extended or reduced in accordance with clause 13.2 the parties may re-negotiate the fee payable under this Agreement.

# Assignment or Transfer

* + 1. The Clinical Advisor must not sub‑contract any part of the provision of the Services without the prior approval in writing of the SWEP.
    2. Each party may assign any of its rights under this Agreement only with the written consent of the other party. Such consent cannot be unreasonably withheld. The assignment will not affect any contractual obligations undertaken by either party prior to the assignment taking place.

# Confidentiality and Privacy

## General obligation

* + 1. The Clinical Advisor and the Clinical Advisor’s staff must regard as confidential and must not disclose to any person other than a person approved by the Authorised Officer any information acquired by the Clinical Advisor or the Clinical Advisor’s staff in or in connection with the provision of the Services, concerning, the SWEP, its staff, patients or procedures (**‘the Confidential Information’**).

## Non-disclosure of patient information

* + 1. The Clinical Advisor must ensure that its staff are made aware and comply with the provisions of section 141 of the Health Services Act 1988 (Vic) [and section 346 of the Mental Health Act 2014 (Vic)] which relates to the unlawful disclosure of patient information.

## Serious misconduct

* + 1. Failure to observe the terms of clauses 15.1 and 15.2 will be regarded as serious misconduct which requires disciplinary action to be taken by the Clinical Advisor against an offender. In addition to other options which the SWEP may have against the offender and the Clinical Advisor, the SWEP may, as a consequence of a breach of the obligations imposed under those clauses, insist that the staff member involved not be assigned for duty in any dealings with or regarding the SWEP in the future.

## Compliance with privacy laws

* + 1. The Clinical Advisor must comply with:

all Commonwealth, State and Territory privacy, health records or similar legislation and regulations which the Health Service is required to comply with, from time to time, including but not limited to the Privacy and Data Protection Act 2014 (Vic) and the Health Records Act 2001 (Vic); and

any request which the SWEP may make in writing to the Clinical Advisor, from time to time, which may be reasonably required to ensure the SWEP complies with its obligations arising under any Commonwealth, State or Territory privacy, health records or similar legislation or regulations.

## Data Breach

* + 1. The Clinical Advisor must immediately notify the SWEP if it becomes aware that an “eligible data breach” has occurred which is required to be notified to individuals and/or the Office of the Australian Information Commissioner under the *Privacy Act 1988* (Cth) in relation to “personal information” handled in relation to this Agreement. The Clinical Advisor agrees to work in good faith with the SWEP to agree a response plan for any required notification of individuals of an eligible data breach, subject at all times to compliance with its obligations under law. For the purposes of this clause, “eligible data breach” and “personal information” have the same meaning as within the *Privacy Act* *1988* (Cth).

## Compulsion to disclose

* + 1. If the Clinical Advisor becomes aware of any steps taken, being taken, or considered, to legally compel the Clinical Advisor or any of its agents or employees to disclose Confidential Information, the Clinical Advisor must:

to the extent legally permitted, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible;

promptly notify the SWEP; and

do anything reasonably required by the SWEP including the institution and conduct of legal proceedings at the SWEP’s direction and expense to oppose or restrict that disclosure.

## Freedom of Information

* + 1. The Clinical Advisor must provide the SWEP with all information necessary to enable the SWEP to discharge its obligations under the Freedom of Information Act 1982 (Vic) in relation to matters relating to this Agreement.

## Publicity

* + 1. The Clinical Advisor must not make any public announcement or representation to any media representative about this Agreement or anything in relation to it without the SWEP’s written consent.

## Continuing effect

* + 1. This clause will continue to have effect after the expiry or termination of this Agreement.

# Indemnity

* + 1. The Clinical Advisor is liable for and must indemnify the SWEP and its officers, employees and agents against any liability, loss, damage, or expense (including legal costs on a full indemnity basis) incurred or suffered as a direct or indirect result of any of the following:

the provision of the Services by or on behalf of the Clinical Advisor under this Agreement;

any negligence or other wrongful act or omission of the Clinical Advisor or the Clinical Advisor’s staff, employees, or agents or of any other person for whose acts or omissions the Clinical Advisor is vicariously liable;

any damage to property, real or personal, including any infringement of third party patents, copyright and registered designs;

any injury to persons, including injury resulting in death and economic loss; and

any breach of this Agreement by the Clinical Advisor.

* + 1. The Clinical Advisor’s liability under this **clause**16 will be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of the SWEP or any person for whose acts or omissions the SWEP is liable.
    2. The indemnity contained in this clause is continuous and will survive the expiry or termination of this Agreement.

# Insurance

## General Requirement

* + 1. Without prejudice to the Clinical Advisor’s obligation to indemnify the SWEP, the Clinical Advisor must throughout the term of this Agreement and during any further term, maintain such insurances of the types specified in **1**3 of **Schedule 1**.
    2. The Clinical Advisor must comply with and observe the insurance policies referred to in **clause**17.1 and must not do anything which could result in any such policy being avoided or unenforceable or which may entitle the insurer to limit or reduce the amount otherwise payable under the policy.

## Proof

* + 1. At the time of execution of this Agreement the Clinical Advisor must provide to the SWEP documentary evidence suitable to the reasonable requirements of the SWEP that the Clinical Advisor has effected insurance of the types specified in Item 13 of **Schedule 1** with a reputable insurer approved by the SWEP (which approval must not be unreasonably withheld) and has paid the full premium required by such insurer.
    2. If the SWEP makes a written request, the Clinical Advisor must within 5 Business Days give proof that its insurance policies are current.

## Default

* + 1. Should the Clinical Advisor default in obtaining or maintaining insurance, the SWEP may itself insure against any risk in respect of which such default has occurred and may charge the cost of such insurance, plus any insurance brokerage fee, to the Clinical Advisor.

## Runoff

* + 1. If an insurance policy effected and maintained under this **clause** 17 is a claims made policy, the Clinical Advisor must maintain a current policy (or run off cover if the Clinical Advisor has ceased to provide services) for at least 10 years after the expiry or termination of this Agreement.
    2. The provisions of this clause survive the expiration or earlier termination of this Agreement and do not modify or limit any indemnity provided under **clause**16.

# Default

* + 1. If the Clinical Advisor fails to provide any part of the Services to the SWEP at any time when they ought to have been provided, or to the standard required to be provided, under the terms of this Agreement then, without prejudice to any other right or remedy which the SWEP may possess in respect of such failure, the SWEP may:

require the Clinical Advisor to remedy the default in a reasonable manner and within a reasonable time as may be specified in writing by the Authorised Officer; and/or

without terminating this Agreement in whole or in part, themselves provide or procure the provision by others of that part of the Services until the Clinical Advisor has proved to the reasonable satisfaction of the Authorised Officer that the Services will once more be provided by the Clinical Advisor to the standard and in the manner required by this Agreement; and/or

without terminating the whole of this Agreement, terminate this Agreement in accordance with the provisions of **clause**20 in respect of such part of the Services only and thereafter themselves provide or procure from others such part of the Services.

* + 1. If the Clinical Advisor is able to rectify the problem within the specified period, then the SWEP must resume taking the Services. If the Clinical Advisor is unable to rectify the problem within the specified period, the SWEP may end this Agreement immediately by giving written notice to the Contractor.

## Recovery of costs

* + 1. The SWEP may recover such proportion of the cost of any services procured or provided by it in accordance with this clause as exceeds the amount which would otherwise have been payable under the terms of this Agreement to the Clinical Advisor if the Clinical Advisor had provided those services, together with an administration charge equal to 10% of the additional cost. This amount may be recovered by the SWEP from the Clinical Advisor by deduction from any payment otherwise due from the SWEP to the Clinical Advisor.

## Successive remedies

* + 1. The remedies of the SWP under **clause**18 may be exercised successively in respect of any given default by the Clinical Advisor.

# Dispute resolution

## Mediation

* + 1. If a dispute arises in relation to this Agreement or any accounts given by the Clinical Advisor to the SWEP, the parties must adhere to the following procedure:

in the first instance, 2 representatives of each party must meet and endeavour to resolve the dispute in an expeditious and informal manner;

if resolution is not achieved within 5 Business Days, either party may give the other a notice requiring that an attempt be made to resolve the dispute with the help of a mediator to be appointed jointly by the parties. The notice must state that a dispute has arisen, and must state the matters in dispute;

if the parties do not agree on a mediator within 5 Business Days after the notice is given, a mediator is to be appointed by the Australian Mediation Association;

each of the parties must co-operate fully with the mediator. The mediator may engage an appropriately qualified expert to give an opinion on technical matters; and

parties may only commence legal proceedings when the mediator gives written notice that he or she considers that it is no longer productive to continue the mediation.

## Payment for mediation

* + 1. In relation to a dispute about payment for the Services supplied to the SWEP, the Clinical Advisor must pay all fees and expenses of the mediator if a calculation by the Clinical Advisor is too high by more than 1%. If the calculations are correct or are too low, the SWEP must pay the fees and expenses of the mediator.
    2. In relation to a dispute about the construction of this Agreement or any other matter, the parties are to pay an equal share of the fees and expenses of the mediator.

# Termination

## Right of termination

* + 1. This Agreement may be terminated by mutual consent or in accordance with this clause.

## Failure to rectify

* + 1. In addition to the rights set out in **clause**20, if a party (referred to as the dissatisfied party in this clause) reasonably considers that the other party is not meeting any of its obligations under this Agreement, then the dissatisfied party may:

by notice in writing to the other party specify in what respect this Agreement is or has been breached; and

if after 14 days from the notification has been served, the dissatisfied party is still of the opinion that the breach has not been rectified, the dissatisfied party may terminate this Agreement in whole or in part on giving notice in writing to the other party.

## Immediate termination

* + 1. Notwithstanding the remaining clauses of this Agreement, the SWEP may end this Agreement immediately, by giving written notice to the Clinical Advisor , if any of the following events occur:

a warranty by the Clinical Advisor is inaccurate;

an Event Indicating Insolvency happens in relation to the Clinical Advisor ;

the Clinical Advisor ceases, or indicates that it is about to cease, carrying on the business;

the Clinical Advisor breaches this Agreement and either this breach is unable to be rectified or the Clinical Advisor is unwilling to rectify the breach;

the Clinical Advisor is for any reason unable to supply the Services for a continuous period of 7 days;

the Clinical Advisor commits any offence or do any act or fail to do any act which in the reasonable opinion of the SWEP is of such a nature as to be likely to harm the SWEP’s reputation or affect the capacity of the Clinical Advisor to discharge its obligations under this Agreement;

the Clinical Advisor fails to deliver the Services within the agreed timeframe; and/or

## No liability for services not provided

* + 1. If the SWEP exercises it rights pursuant to this clause, it is not liable to pay anything in respect of any Service that has not been provided to the SWEP at the time of the termination.

## No claims and no prejudice

* + 1. Any termination under this clause will not afford to the Clinical Advisor a ground for any claim for damages, compensation or costs or expenses of any kind, but will not prejudice the right of the SWEP to recover for any sum paid to the Clinical Advisor for undelivered Clinical Advisor Services.
    2. Any termination under this clause will not prejudice the rights of either party in respect of any antecedent breach of this Agreement.

# Notices

* + 1. Subject to **clause**21.2, a notice, consent, information or request that must or may be given or made to a party under this Agreement is only given or made if it is:

delivered or posted to that party at the address stated in Item 13 of **Schedule 1**;

* + 1. If a party gives another party 3 Business Days written notice of details for the purposes of this clause, a notice, consent, information or request is only given or made by that other party if it is delivered, posted or emailed to the latest details on **Item 13 Schedule 1**.
    2. A notice, consent, information or request that must or may be given or made to a party under this Agreement is to be treated as given or made at the following time:

if it is hand delivered, when it is left at the relevant address;

if it is sent by registered post, 3 Business Days after it is posted;

* + 1. If a notice, consent, information or request is delivered and is received after 8:00pm or on a day which isn’t a Business Day, it is to be treated as having been given or made at the beginning of the next Business Day.

# Warranties and Representations of the Contractor

* + 1. The Clinical Advisor makes the following representations to the SWEP in the expectation that the SWEP will rely and act upon them without making its own independent enquiries:

The Clinical Advisor:

has the power to perform this Agreement;

does not require the consent of a third party before entering into this Agreement;

has and continues to perform and observe its obligations under the Corporations Act, the Income Tax Assessment Act 1936, the Occupational Health and Safety Act 1985 and the Workplace Injury Rehabilitation and Compensation Act 2013;

has held any meetings required and resolutions required have been passed which authorise the making of this Agreement;

has obtained all registrations, warranties, licences and authorities to enter into this Agreement;

is not aware of any breach of obligation likely to give rise to legal proceedings; and

has not been threatened with or had commenced against them any legal proceedings.

All of the representations made by the Clinical Advisor prior to this Agreement (including any tender submission which led to the appointment of the Clinical Advisor under this Agreement) are both accurate and not misleading.

## **Victorian State Government's Supplier Code of Conduct**

* + 1. The Victorian State Government's Supplier Code of Conduct (**Code**) is available at the Victorian Government Purchasing Board website: http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct.
    2. Updates and amendments to the Code will also be made available at this website.
    3. The Clinical Advisor acknowledges that:

the Code is an important part of the State’s approach to procurement and describes the State’s minimum expectations regarding the conduct of its suppliers;

the Contractor has read the Code; and

the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Contractor, whether under this Agreement or under law.

## Further co-operation

* + 1. Each party must do anything (including executing a document) that the other party reasonably requires to give full effect to, and to comply with any legislative requirements arising as a result of, this Agreement and the transactions it contemplates.

## Accrued Rights

* + 1. The ending of this Agreement does not affect any accrued rights.

## Set off

* + 1. The SWEP is entitled to set off any amount the Clinical Advisor owes the SWEP under this Agreement against any amount that the SWEP owes the Clinical Advisor under it.

## Liability for costs

* + 1. Each party must pay its own costs in relation to preparing, negotiating, and executing this Agreement and any document related to the transaction that this Agreement contemplates.

## Variation

* + 1. The terms of this Agreement may only be varied by agreement in writing of both parties.

## Waiver

* + 1. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, the other party. A waiver by a party is only effective if it is in writing.
    2. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

## Severability

* + 1. If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## Inconsistencies

* + 1. The terms of this Agreement override any inconsistent conditions in any document or other communication used by the Clinical Advisor in relation to the provision of the Services, and any industry practice and any earlier conduct of dealing. This applies even if the Clinical Advisor’s acceptance of order or other document contains a similar condition to this one.

## Entire agreement

* + 1. This Agreement contains everything the parties have agreed on in relation to this transaction. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employment of that party) before this Agreement was executed.

## Relationship of the Parties

* + 1. This Agreement does not create a partnership, employment, agency, fiduciary or any other relationship, except the relationship of contracting parties.
    2. No party is liable for an act or omission of another party, except to the extent set out in this Agreement. The Clinical Advisor has no authority to enter into any agreement or incur any liability on behalf of the SWEP, and must not represent to any person that it has any such authority.

## Governing law

* + 1. This Agreement is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

# Definitions and Interpretations

* + 1. In this Agreement unless the contrary intention appears:

“**Business Day**” means any weekday that is not gazetted as a public holiday in Ballarat, Victoria;

“**Cause Beyond the Reasonable Control**” includes an act of God, strike, lockout, other disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a person, government or other competent authority, except the party relying on force majeure;

"**Documentation**" means the manuals, documents and reference material and other relevant publications and aids and includes the revisions, replacements, amendments and additions in user form and technical form;

“**Event Indicating Insolvency**” in relation to a party, means something that reasonably indicates that there is a significant risk that the party is or will become unable to pay debts as they fall due.

**“Intellectual Property”** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and any rights to registration of such rights existing in Australia or elsewhere.

* + 1. A reference to a clause or schedule is a reference to a clause or schedule of this Agreement.
    2. A reference to any legislation or legislative provision means that legislative provision as amended from time to time.

Execution

Signed by Jeni Burton

**Operations Director - SWEP**

for and on behalf of **Grampians Health**

**(ABN 39 089 584 391)**

……………………………………………………………………………………

Date:……………………………………………………………………..……….

Signed by (**Insert name)**

**(Insert position)**

for and on behalf of **(Insert name of organisation)**

**(ABN XX XXX XXX XXX)**

…………………………………………………………………………….……….

Date:……………………………………………………………………..……….

Schedule 1

|  |  |  |
| --- | --- | --- |
|  | The Services | As per Schedule 2 |
|  | The Commencement Date | 7th December 2024 |
|  | The Expiry Date | 7th December 2025  With an option to extend for 2 x 1 year period |
|  | Location for the delivery of the Services | Dependent on work required, usually remotely from Contractor’s usual place of work |
|  | Times for provision of the Services | As requested |
|  | Time frame for provision of the Services | Schedule 2 |
|  | Service Standards | Schedule 2 |
|  | Performance Indicators | Schedule 2 |
|  | Matters to be included in periodic reports | Not applicable |
|  | Training | As negotiated between parties |
|  | Authorised Officer | Sue Vincent SWEP Operations Manager |
|  | Clinical Advisor’s Representative |  |
| Item 13 | Addresses | **The State-wide Equipment Program:**  Address: 1 Drummond St North, Ballarat Central VIC 3350  Email: [swepcontracts@gh.org.au](mailto:swepcontracts@gh.org.au)  **The Clinical Advisor:**  Address:  Email: |
| Item 14 | Required Insurance Coverage | \*(a) Public and products liability insurance insuring the Contractor and its officers and employees against liability for:  (i) death of or injury to any person;  (ii) loss of, destruction of or damage to property;  happening during the policy period and arising out of occurrences in connection with the Contractor’s business for an amount not less than $20,000.000 in respect of any one claim, unlimited as to the number of claims insured and with a deductible of no more than $5,000 each and every claim;  \*(c) professional indemnity insurance insuring against liability arising out of claims first made against the Clinical Advisor or its officers or employees during the policy period in respect of any act, error, or omission committed or thing done in a professional capacity for an amount of not less than $10,000,000 in respect of any one claim with a deductible of no more than $5,000 each claim. |

Schedule 2

|  |  |
| --- | --- |
| Program: | SWEP Clinical Advisor |
| Statement of Duties: | Provide relevant consultancy advice on SWEP projects including but not limited to:   * Provide expert clinical advice in specific categories of assistive technology * Ensure SWEP clinical advice and written material to AT Practitioners is evidence based and in line with best practice * Contribute to the development of relevant educational and support material for SWEP AT Practitioners * Where required (and agreed to) participate in the delivery of education * Provide support and mentoring to AT Practitioners as referred to from SWEP administration * Participate in Clinical Advisor meetings as required to monitor progress of the program; consider gaps in program delivery; review and revise where appropriate systems and process supporting the CA role * Work collaboratively with other Clinical Advisors * Meet the key responsibilities of the Clinical Advisor role as per the SWEP Clinical Advisor Roles and Responsibilities document.   Role Key Performance Indicators for script reviews;   * Acknowledge receipt of the CA Request within 24 hours.  This is a simple reply email to the sender to confirm you have received it * Complete and return the CA requests within three business days.  If you require more time please email SWEP to advise why and how much longer you think it will be. This way we can keep our teams updated * If you receive a CA request and do not believe you can meet the three day response time please let us know ASAP so it can be reallocated to another CA * In the event you need to liaise with the practitioner and have been unable to contact them within two business days please let us know and we will assist.  We can either look for an alternate email or phone number or call them ourselves to try & follow up.   Role Key Performance Indicators general   * If you have a change of email address and/or contact phone number please ensure to email [swepimt@gh.org.au](mailto:swepimt@gh.org.au)  so we can update our records * Please ensure you advise SWEP if you are going on leave or are unavailable for work prior to leave.  If your leave is more than the five days you will need to ensure all CA requests are completed and sent back into SWEP prior to going on leave.  If you are unable to achieve this please let the SWEP IM&T team know * SWEP anticipates the maximum time to review a script should take no longer than 60 mins. If you believe your script validation will take longer than this then you will need to contact SWEP to seek prior approval and provide rationale for this |
| Dates/Times: | As negotiated with the Clinical Advisor |
| Remuneration/Price: | $124.70 per hour (exclusive of GST) |
| Travel | * Where the Clinical Advisor is required to travel outside a radius of 20km, the Clinical Advisor may invoice SWEP for the distance travelled (km) to the location as advised by SWEP. * The calculation will be based on the following formula: * Starting location (zero) + distance to end location – 20km = chargeable distance. * The amount charged will be based on the cents per km method as stated by the Australian Tax Office for the given financial period. The figure as stated by the Australian Tax Office takes into account all vehicle running expenses. * In the instance that the Clinical Advisor has travelled by public transport; being train or bus only. SWEP will reimburse the cost of the train or bus ticket upon presentation of the relevant receipt stating the exact date as the required travel stated by SWEP was undertaken. |