

**THE COUNTRY HEALTH SA RURAL GENERAL
PRACTITIONER FEE FOR SERVICE AGREEMENT**

BETWEEN

COUNTRY HEALTH SA HOSPITAL INC

AND

.....
(“Contracting Medical Practitioner”)



**Government
of South Australia**

CROWN SOLICITOR

Level 10, Citicentre, 11 Hindmarsh Sq. Adelaide SA 5000

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CHSA SERVICE FOR MEDICAL & DENTAL PRACTITIONERS, JULY
2009**

THIS AGREEMENT is made between the

PARTIES:

Country Health SA Hospital Inc an incorporated hospital established under the *Health Care Act, 2008 (SA)* ("**CHSA**")

AND

The Contracting Medical Practitioner set out in Item 1 of Schedule 1 ("**the Contracting Medical Practitioner**")

1. DEFINITIONS & INTERPRETATION

In this Agreement unless the contrary intention appears

- 1.1 "**ABN**" means Australian Business Number under the *A New Tax System (Australian Business Number) Act 1999 (Cth)*;
- 1.2 "**Additional Services**" means the services agreed between the parties and as set out in Schedule 4;
- 1.3 "**Agreement**" means this agreement being the Country Health SA Rural General Practitioner Fee for Service Agreement;
- 1.4 "**Chief Operating Officer, CHSA**" means the person acting in that position from time to time with designated responsibility for the Hospital where Services under this Agreement are provided;
- 1.5 "**Commencement Date**" means the date specified in Item 7 of Schedule 1;
- 1.6 "**Confidential Information**" means information disclosed by, or on behalf of a party to this Agreement that:
 - 1.6.1 is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
 - 1.6.2 is designated by the disclosing party as confidential or identified in terms connoting its confidentiality,but does not include information which is or becomes public knowledge other than by a breach of this Agreement or information which is included in this Agreement;
- 1.7 "**Contracting Medical Practitioner**" means the entity named in Item 1 of Schedule 1;
- 1.8 "**Country Health SA Hospital Inc.**" or "**CHSA**" means an incorporated hospital established under the *Health Care Act 2008 (SA)*;

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- 1.9 “**Documents**” means all of the documents to be used by the Contracting Medical Practitioner in providing the Services including, without limitation, policies, procedures, manuals, files, information, data, computer programs, computer disks and records of any kind stored by any means;
- 1.10 “**Emergency Department**” means a designated area within a health facility specifically resourced to provide emergency care;
- 1.11 “**Expiry Date**” means the date specified in Item 8 of Schedule 1;
- 1.12 “**Force Majeure**” means any cause not reasonably within the control of the party claiming force majeure including, but not limited to, accident, illness, fires, flood, storms, and other damage caused by the elements, strikes, riots, explosions, governmental action (other than that related to health purchasing), acts of God, insurrection and war and does not include the financial circumstances of a party;
- 1.13 “**General Practitioner**” means a medical practitioner who is
- 1.13.1 registered by the Medical Board of South Australia; and
 - 1.13.2 credentialed for South Australian Country Public Health facilities in the domain of GP Medicine or a GP Procedure or GP Registrar;
- 1.14 “**GST**” has the meaning attributed in the GST Law;
- 1.15 “**GST Law**” has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- 1.16 “**Hospital**” means the health care facility or facilities named in Item 6 of Schedule 1;
- 1.17 “**Intellectual Property Rights**” means any patent, copyright, trademark, trade name, design, trade secret, know how, semi conductor, circuit layout, or other form of intellectual property right whether arising before or after the execution of this Agreement and the right to registration and renewal of those rights;
- 1.18 “**Medical Records**” means all of the records and information held or retained by CHSA in any way arising out of or in connection with any Public Patient who has consulted the Contracting Medical Practitioner or a Nominated Medical Practitioner at the Hospital;
- 1.19 “**Medical Services**” means the medical services to be provided to Public Patients at the Hospital by the Contracting Medical Practitioner as described in Schedule 2;
- 1.20 “**Nominated Medical Practitioner**” means a natural person who is a medical practitioner nominated in writing by the Contracting Medical Practitioner to perform Services under this Agreement as specified in Schedule 1;
- 1.21 “**Public Patient**” means an eligible person who receives free of charge to them a public hospital service and includes an involuntary patient detained in authorised portions of the Hospital;
- 1.22 “**Roster**” means the roster created and amended from time to time in accordance with the procedures set out in Schedule 2;

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- 1.23 "**SARMER**" means the South Australian Rural Medical Engagement Responsibilities document, as amended from time to time and shown at Annexure A;
- 1.24 "**SARMFA**" means the South Australian Rural Medical Fee Agreement document, as amended from time to time and shown at Annexure B;
- 1.25 "**Scope of Clinical Practice**" means the Scope of Clinical Practice (formerly known as Admitting Privileges) as defined and granted through the process detailed in the "Credentialing & Defining Scope of Clinical Practice for Country Health SA Health Service for Medical and Dental Practitioners" 2009 document and shown at Annexure C;
- 1.26 "**Services**" means Medical Services and Additional Services;
- 1.27 "**Taxable Supply**" has the meaning attributed in the GST Law; and
- 1.28 "**Term**" means the period specified in clause 3.1.
- 1.29 **Construction**
- In this Agreement unless a contrary intention is evident:
- 1.29.1 any word importing the plural includes the singular and vice versa;
- 1.29.2 any word importing a gender includes all other genders;
- 1.29.3 a reference to a body corporate includes a reference to natural persons or other forms of associations and vice versa;
- 1.29.4 a reference to a recital, party, clause, Schedule or Attachment is a reference to a recital, party, clause, Schedule or Attachment of this Agreement;
- 1.29.5 the captions, headings, section numbers and clause numbers appearing in this Agreement are inserted only as a matter of convenience and in no way affect the construction of this Agreement; and
- 1.29.6 a reference to a statute includes all statutes amending, consolidating or replacing the statute.
- 1.30 **Documents comprising this Agreement**
- 1.30.1 This Agreement incorporates any schedules and annexure attached to it.
- 1.30.2 In resolving inconsistencies in this Agreement:
- (a) this Agreement (excluding its Schedules and annexures);
 - (b) its Schedules;
 - (c) its annexures,
- have priority, in that order.

2. BASIS OF AGREEMENT

2.1 The objects of this Agreement are:

- 2.1.1 to clearly define the roles of the parties in the provision of health services;
- 2.1.2 to enable CHSA and the Contracting Medical Practitioner to be dynamic, productive and responsive to the service needs of government, the public and consumers of health care services;
- 2.1.3 to sustain South Australia's Strategic Plan, the South Australian Health Care Plan and the Strategy for Planning Country Health Services in South Australia; and
- 2.1.4 to provide a process of engagement that recognises the importance of the relationship between medical practitioners and the SA Health System in the provision of effective and efficient health care for country South Australians.

2.2 Commitment of parties.

In making and applying this Agreement, the parties are committed to:

- 2.2.1 engage in discussion about clinical change and workforce reform initiatives designed to achieve ongoing health service improvements consistent with the objectives underpinning this Agreement
- 2.2.2 the continued evolution of CHSA as a dynamic, productive and health consumer responsive entity;
- 2.2.3 recognising that initiatives will continue to be introduced subject to the agreement of both parties to improve the efficiency and effectiveness of health care service delivery and to enable the provision of quality services to government, the public and consumers of health care services;
- 2.2.4 the development and implementation of approved CHSA and health unit based reform and change programmes based on:
 - (a) improving the quality and safety of services;
 - (b) greater opportunities for inclusion and community participation;
 - (c) strengthening and reorienting services towards prevention and primary health care;
 - (d) developing service integration and coordination;
 - (e) whole of government approaches to advance and improve health status;

- (f) sustainability in delivery through ensuring efficiency and evaluation.
- (g) an understanding of health and well-being, which includes a social health perspective;
- (h) equity of access to health services;
- (i) equality of health outcomes;
- (j) consultation in developing an understanding of issues and strategies for resolution;
- (k) honesty as to what the health system can reasonably provide;
- (l) respecting the dignity and autonomy of health service users;
- (m) providing research, teaching and training opportunities;
- (n) respectful communication; and
- (o) quality leadership that recognises and enhances the skills of staff and contractors.

2.2.5 achieving the following particular strategic outcomes:

- (a) strengthening primary health care;
- (b) enhancing hospital care;
- (c) reforming mental health care;
- (d) improving the health of Aboriginal people;
- (e) workforce reform initiatives; and
- (f) the development of integrated state-wide services.

3. ENGAGEMENT OF CONTRACTING MEDICAL PRACTITIONER

3.1 Term

This Agreement commences on the Commencement Date and expires on the Expiry Date, inclusive of both dates, unless terminated earlier in accordance with the provisions of this Agreement. CHSA may extend the Term as set out in clause 3.11.

3.2 Engagement

CHSA engages the Contracting Medical Practitioner to provide, and the Contracting Medical Practitioner agrees to provide, Services for the Term on the terms and conditions set out in this Agreement.

3.3 Relationship

The parties agree and acknowledge that nothing in this Agreement constitutes a fiduciary relationship, or a relationship of employer and employee, principal and agent, or partnership between the parties or between CHSA and a Nominated Medical Practitioner. The Contracting Medical Practitioner is an independent contractor and not an employee of CHSA.

3.4 Neither party has any authority to bind the other party.

3.5 The Nominated Medical Practitioner has no entitlement from CHSA for any employee benefits including for leave, workers compensation or superannuation payments (unless otherwise agreed in writing by CHSA).

3.6 The Contracting Medical Practitioner must pay all remuneration claims and other entitlements (including the superannuation support) payable to any Nominated Medical Practitioners under the *Superannuation Guarantee Administration Act* (“**SGAA**”) (if any). For the avoidance of doubt, if the Contracting Medical Practitioner is required to provide a minimum level of superannuation support to a Nominated Medical Practitioner under the SGAA, the payment by CHSA to the Contracting Medical Practitioner under clause 4.1 shall be deemed to be inclusive of the minimum superannuation support calculated in accordance with Australian Taxation Office Advice and the minimum superannuation support will be paid by the Contracting Medical Practitioner into the Nominated Medical Practitioner’s nominated complying Superannuation Fund in accordance with the SGAA.

3.7 The Contracting Medical Practitioner is responsible for complying with the requirements of the *Income Tax Assessment Act 1997 (Cth)* in respect of its employees and any Nominated Medical Practitioners and acknowledges that CHSA is not required to make PAYG deductions from the fees.

3.8 Non Exclusive

The engagement of the Contracting Medical Practitioner to provide Services is not an exclusive arrangement. CHSA may only engage other Medical Practitioners to provide the same or similar medical services as the Contracting Medical Practitioner provided that any such engagement does not affect contractual obligations of either party under this Agreement. Nothing in this Agreement in any way affects a Contracting Medical Practitioner’s right of private practice elsewhere provided that any such practice does not affect contractual obligations under this Agreement.

3.9 Registration of Contracting Medical Practitioner

The Contracting Medical Practitioner, or where relevant, the Nominated Medical Practitioner, must during the Term be registered with the Medical Board of South Australia and agree to produce evidence of that registration to a nominated officer of CHSA within one (1) month of each annual re-registration or on demand. If the Contracting Medical Practitioner is removed from the register or allows such registration to lapse, this Agreement will immediately end by virtue of that fact without affecting accrued rights.

3.10 Variations

3.10.1 A party may at any time give written notice to the other party proposing a variation to this Agreement (“**Contract Variation Proposal**”).

- 3.10.2 A party who receives a Contract Variation Proposal must respond within ten (10) business days notifying the other party whether or not it accepts the Contract Variation Proposal.
- 3.10.3 If a party who receives a Contract Variation Proposal does not agree to the proposed variation, then the parties must negotiate in good faith.
- 3.10.4 If the parties cannot agree to the proposed variation, then the parties will follow the dispute resolution procedure set out in clause 13 of this Agreement;
- 3.10.5 If the party who receives a Contract Variation Proposal accepts a variation by written notice, the terms and conditions of this Agreement will be varied as agreed.

3.11 Decision by CHSA to re-engage at expiry of the Term

Where the Contracting Medical Practitioner:

- 3.11.1 is to be offered re-engagement on the same terms and conditions to this Agreement, CHSA shall give the Contracting Medical Practitioner at least three (3) months notice in writing prior to the expiry of the Term; or
- 3.11.2 is to be offered re-engagement on different terms and conditions to this Agreement, the CHSA shall give the Contracting Medical Practitioner at least six (6) months notice in writing prior to the expiry of the Term; or
- 3.11.3 is not to be offered re-engagement at the expiry of the Term, the CHSA shall give the Contracting Medical Practitioner at least six (6) months notice in writing prior to the expiry of the Term.

3.12 No restriction of trade

- 3.12.1 The Contracting Medical Practitioner warrants that with effect from the Commencement Date, it will not contractually restrict the Nominated Medical Practitioner from providing services similar to the Services to CHSA or any other agency or instrumentality of the Crown in right of the State of South Australia.
- 3.12.2 The Contracting Medical Practitioner hereby irrevocably consents to the Nominated Medical Practitioner providing services similar to the Services to CHSA or any other agency or instrumentality of the Crown in right of the State of South Australia, and irrevocably waives any prior contractual rights that the Contracting Medical Practitioner may have with the Nominated Medical Practitioner to restrict the Nominated Medical Practitioner from providing services similar to the Services to CHSA or any other agency or instrumentality of the Crown in right of the State of South Australia.

4. OBLIGATIONS OF CHSA

4.1 Payment For Medical Services

CHSA will pay the Contracting Medical Practitioner for all Services rendered and the Contracting Medical Practitioner will be responsible for paying any Nominated Medical Practitioners any fees agreed between the Contracting Medical Practitioner and a Nominated Medical Practitioner.

4.2 Payment Terms and Conditions

CHSA will pay fees to the Contracting Medical Practitioner in accordance with the terms and conditions contained within the current South Australian Rural Medical Fee Agreement. CHSA will also pay any applicable GST to the Contracting Medical Practitioner at the same time and in the same manner that it pays those fees.

4.3 ABN, GST Registration

4.3.1 The Contracting Medical Practitioner represents that it:

- (a) is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth), and the ABN shown in Item 1 of Schedule 1 is the Contracted Medical Practitioner's ABN;
- (b) will be registered under the GST Law if it is required to be registered under the GST Law; and
- (c) will give CHSA a tax invoice for Services if the supply of those Services is a Taxable Supply.

4.3.2 The fees referred to in this Agreement are GST exclusive, unless expressly stated otherwise.

4.3.3 The Contracting Medical Practitioner acknowledges that should the representation in 4.3.1(a) be or become incorrect, CHSA may be obliged under the *Taxation Administration Act 1953* (Cth) to deduct a withholding from the fees payable under this Agreement and will not be obliged to gross up those fees or make any other compensation to the Contracting Medical Practitioner.

4.4 Payment Rate

Irrespective of when an invoice is either raised by the Contracting Medical Practitioner or actually received by CHSA, the rate of payment will only be that applicable at the time the service or services were rendered.

4.5 Resources provided by CHSA

CHSA will provide resources reasonably necessary for the treatment of Public Patients at the Hospital where the Medical Service is provided, including consumables, beds, equipment, theatre time, IT resources, nursing and allied health services and other staff. All resources provided by CHSA must be in a safe and proper working order and suitable for the purpose used. CHSA must provide a safe working environment for the Contracting Medical Practitioner and Nominated Medical Practitioner, so far as is reasonably practicable.

4.6 Admissions or Treatment Not Guaranteed

The admission of any person to or treatment of any person at a Hospital depends on clinical need and the Hospital's role, capacity and available resources at any given time.

4.7 Theatre Availability

CHSA will determine theatre availability from time to time having regard to clinical need, the availability of other resources and the competing requirements of Medical Practitioners at the Hospital. The Contracting Medical Practitioner will be informed of theatre availability as soon as practicable and three (3) months prior notice will be given if a theatre is to be electively closed or access reduced.

4.8 Hospital Codes, Policies etc.

The Hospital will provide copies of codes, policies, procedures, protocols and standards, either in policy manuals placed in Hospital wards, on staff notice boards, through official newsletters, flyers or bulletins, delivered to any mail box at the Hospital designated for use by the Contracting Medical practitioner, or electronically. The Hospital will also provide reasonable access to full copies of any such codes, policies, procedures, protocols and standards on demand by the Contracting Medical Practitioner whether by hard or electronic copies.

4.9 Obligations to Notify

CHSA must notify the Contracting Medical Practitioner in accordance with Hospital procedures (or in the absence of such procedures within a reasonable period of time) of:

- 4.9.1 any complaint against the Contracting Medical Practitioner; or
- 4.9.2 any other matter of which CHSA is aware concerning the Contracting Medical Practitioner and about which a reasonable person in the position of CHSA would notify the Contracting Medical Practitioner.

5. OBLIGATIONS OF CONTRACTING MEDICAL PRACTITIONER

5.1 Provision of Services

Subject to this Agreement, the Contracting Medical Practitioner agrees:

- 5.1.1 to provide the Medical Services to Public Patients at the Hospital in accordance with Schedule 2 and the SARMER (attached at Annexure A);
- 5.1.2 engage as many Nominated Medical Practitioners as are required to provide the Medical Services during times specified in Schedule 3 at the Hospital to the standards specified in this clause.
- 5.1.3 participate in the Roster in accordance with the description of the Medical Services specified in Schedule 2;
- 5.1.4 ensure that the Medical Services are provided personally by a Nominated Medical Practitioner at the Hospital (unless otherwise agreed by CHSA);
- 5.1.5 provide the Medical Services:
 - (a) in the manner; and
 - (b) in accordance with the on call criteria described in the SARMFA (Annexure B),
as determined by CHSA in consultation with the Contracting Medical Practitioner;
- 5.1.6 to be available at the times specified in Schedule 3; and
- 5.1.7 to provide any Additional Services as specified in Schedule 4.

5.2 Compliance with Scope of Clinical Practice for Country Health SA Health Service

The Contracting Medical Practitioner agrees to use best endeavours to ensure all Nominated Medical Practitioners comply with the Scope of Clinical Practice.

5.3 Compliance with Policies etc.

The Contracting Medical Practitioner agrees to comply with all codes, policies, procedures, protocols and standards relevant to the Contracting Medical Practitioner which have been made available to the Contracting Medical Practitioner under clause 4.8. In the event of inconsistency between these codes, policies, procedures, protocols and standards and this Agreement, this Agreement shall prevail.

5.4 On Call Rosters

The Contracting Medical Practitioner agrees to:

- 5.4.1 negotiate and assist in the development and implementation of on call Rosters that provide 24/7 cover taking into account appropriate factors and the role and level of the Hospital (having regard to rostering principles set by CHSA); and
- 5.4.2 ensure that Nominated Medical Practitioners participate in those Rosters in accordance with their Scope of Clinical Practice.

5.5 Obligations to Notify

Subject to clause 5.6, the Contracting Medical Practitioner agrees to notify CHSA in accordance with Hospital procedures, or in the absence of such procedures within a reasonable period of time, of any matter of which the Contracting Medical Practitioner is aware and about which a prudent medical practitioner should reasonably believe CHSA should be notified.

This includes:

5.5.1 **the Contracting Medical Practitioner or a Nominated Medical Practitioner being involved in:**

- (a) referrals to the Medical Board of South Australia or any such similar bodies in other jurisdictions;
- (b) fines imposed or reprimands given by the Medical Board, undertakings given to the Medical Board as to good behaviour, or registration as a medical practitioner being made conditional, suspended, removed or lapsing;
- (c) charges with or convictions of any criminal offence involving dishonesty or punishable by imprisonment;
- (d) actual or potential conflicts of interest in relation to the provision of the Services; or
- (e) actual or anticipated inability or non-availability to provide Services; and

5.5.2 **a Hospital patient of the Contracting Medical Practitioner or a Nominated Medical Practitioner being involved in:**

- (a) adverse incidents;
- (b) verbal or written complaints received;
- (c) requests by the Coroner for medical reports;

- (d) threats of legal action or any writ, subpoena or summons received;
- (e) referrals to the Health and Community Services Complaints Commissioner; or
- (f) matters of which the Contracting Medical Practitioner or a Nominated Medical Practitioner is obliged to inform their medical defence organisation, indemnity fund or insurer.

5.6 **Obligation to Co-operate**

5.6.1 Subject always to clause 5.6.2:

- (a) if requested by CHSA, the Contracting Medical Practitioner must provide as soon as reasonably practicable all relevant details of any matters of which CHSA is notified under clause 5.5 or otherwise becomes aware; and
- (b) the Contracting Medical Practitioner must take all reasonable steps to assist CHSA in inquiring into and resolving any complaint, dispute or other difficulty arising under or in connection with this Agreement.

5.6.2 Nothing in clauses 5.5 or 5.6.1 requires the Contracting Medical Practitioner or a Nominated Medical Practitioner to disclose information to CHSA where to do so would cause the Contracting Medical Practitioner or that Nominated Medical Practitioner to be in breach of their respective obligations to any medical defence organisation, indemnity fund or insurer, or which may significantly prejudice any claim by the Contracting Medical Practitioner or that Nominated Medical Practitioner under their respective medical indemnity membership, cover or insurance. In any such circumstances the Contracting Medical Practitioner must use, and must cause any Nominated Medical Practitioner to use, their respective best endeavours to obtain the approval of their respective medical defence organisation, indemnity fund or insurer to disclosure of the information required by CHSA, and must disclose, and must cause any Nominated Medical Practitioner to disclose, the information to CHSA in accordance with any approval given.

5.7 **Resources supplied by Contracting Medical Practitioner**

5.7.1 The Contracting Medical Practitioner may utilise the Contracting Medical Practitioner's own resources (including consumables, equipment, nursing and allied health services and other staff) in providing the Services with the consent of CHSA and in accordance with Hospital policies.

5.7.2 The Contracting Medical Practitioner warrants that any of the Contracting Medical Practitioner's consumables or equipment utilised by the Contracting Medical Practitioner are in safe and proper working order and suitable for the purpose, and all equipment is adequately and appropriately insured.

- 5.7.3 If any person (other than officers, employees or agents of CHSA) supplied by the Contracting Medical Practitioner assists the Contracting Medical Practitioner or a Nominated Medical Practitioner in providing Services, the Contracting Medical Practitioner must ensure that anyone providing Services for the Contracting Medical Practitioner is suitably skilled, trained, qualified and competent.

6. NOMINATED MEDICAL PRACTITIONERS AND SCOPE OF CLINICAL PRACTICE

6.1 Provision of Medical Services by Nominated Medical Practitioners

Services may only be provided through Nominated Medical Practitioners acting within their Scope of Clinical Practice or otherwise in an emergency.

6.2 Nomination for Scope of Clinical Practice

The Contracting Medical Practitioner must nominate for Clinical Privileges at least one Medical Practitioner to perform Services under this Agreement.

6.3 Nominations may be rejected

Subject to the conditions detailed in the Scope of Clinical Practice in South Australian Public Health Services, CHSA may approve or reject applications for Scope of Clinical Practice.

6.4 Withdrawal of Nomination of Medical Practitioner

The Contracting Medical Practitioner may, at any time by notice in writing to CHSA, withdraw the nomination of any Nominated Medical Practitioner and that Medical Practitioner shall on receipt of the notice by CHSA cease to be a Nominated Medical Practitioner for the purpose of this Agreement.

6.5 Variation of Scope of Clinical Practice

- 6.5.1 The Contracting Medical Practitioner acknowledges and agrees CHSA may restrict, make conditional, vary, suspend or terminate the Scope of Clinical Practice of a Nominated Medical Practitioner in accordance with the Scope of Clinical Practice process.
- 6.5.2 Any disagreement between the parties regarding clinical practice will be resolved as outlined in the Scope of Clinical Practice.

6.6 Procedural requirements of the Scope of Clinical Practice in South Australian Public Health Services

The parties acknowledge and agree that, without limiting a party's other rights and remedies, a failure by a party to comply with a non-material procedural requirement of the Scope of Clinical Practice in South Australian Public Health Services does not of itself give rise to a claim for damages by the other party.

6.7 Responsibility of the Contracting Medical Practitioner

Subject to clause 7.5.2, the Contracting Medical Practitioner remains responsible for the provision of the Services notwithstanding that the Contracting Medical Practitioner has sub-contracted the performance of any part of the Services to a Nominated Medical Practitioner.

7. SUSPENSION OR TERMINATION OF AGREEMENT

7.1 Notice of Force Majeure

If by Force Majeure a party is unable (wholly or in part) to carry out its obligations under this Agreement, or is delayed in doing so, that party agrees to give prompt notice of the event of Force Majeure to the other party stating the date of the occurrence of the event of Force Majeure and its nature.

7.2 Reasonable Efforts

The party claiming Force Majeure agrees to use all reasonable efforts to remove the cause of it, except that no party is obliged to settle any strike, lockout or other industrial dispute on terms not acceptable to it, and from time to time as is reasonable in the circumstances give notice to the other party of those efforts and the likely timetable for resumption of its obligations under this Agreement.

7.3 Suspension of Obligations

If either party is unable (wholly or in part) by Force Majeure to carry out its obligations under this Agreement (other than an obligation to pay an amount of money) and it has given notice of the Force Majeure as required by this clause 7, then the obligations of the affected party in so far as they are subject to Force Majeure shall be suspended during but no longer than the continuance of the Force Majeure and for such further period as shall be reasonable in the circumstances.

7.4 Termination following Force Majeure

If a party is unable to resume its obligations under this Agreement within six (6) months of the occurrence of an event of Force Majeure either party by written notice to the other may terminate or seek to vary this Agreement.

7.5 Termination by notice

7.5.1 The Contracting Medical Practitioner may terminate this Agreement by giving CHSA at least three (3) months notice of intent to terminate this Agreement.

7.5.2 The Contracting Medical Practitioner may terminate this Agreement so far as it relates to a Nominated Medical Practitioner immediately by notice to CHSA if, through personal ill health or ill health of family members, or exceptional circumstances on compassionate grounds acceptable to CHSA, the Nominated Medical Practitioner is unable to continue to provide the Services. If there is only one Nominated Medical Practitioner, then notice under this clause 7.5.2 terminates this Agreement.

8. CHSA'S CONFIDENTIAL INFORMATION

If CHSA discloses Confidential Information to the Contracting Medical Practitioner the following provisions apply:

8.1 The Contracting Medical Practitioner must not use the Confidential Information except for the performance of its obligations under this Agreement or any other

purpose as the Hospital or CHSA notifies from time to time in respect of any item of Confidential Information.

8.2 The Contracting Medical Practitioner may only disclose the Confidential Information in the following circumstances:

8.2.1 with the prior written consent of the Hospital or CHSA;

8.2.2 to a Nominated Medical Practitioner if:

(a) the Nominated Medical Practitioner needs the Confidential Information for the performance of the Contracting Medical Practitioner's obligations under this Agreement; and

(b) the Nominated Medical Practitioner is aware of the confidentiality of the Confidential Information and is obliged to use it only for the performance of the Contracting Medical Practitioner obligations under this Agreement.

8.2.3 if and to the extent that the Contracting Medical Practitioner is legally compelled to disclose the Confidential Information.

8.3 When the Contracting Medical Practitioner is aware of any steps being taken or considered to legally compel the Contracting Medical Practitioner or a Nominated Medical Practitioner to disclose the Confidential Information, it must:

8.3.1 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;

8.3.2 promptly notify the Hospital or CHSA; and

8.3.3 do anything reasonably required by the Hospital or CHSA, including the institution and conduct of legal proceedings at the Hospital or CHSA's direction and expense, to oppose or restrict that disclosure.

8.4 The Contracting Medical Practitioner must do everything reasonably possible to preserve the confidentiality of the Confidential Information.

8.5 The Contracting Medical Practitioner must notify the Hospital or CHSA promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Agreement or with the authority of the Hospital or CHSA.

8.6 The Contracting Medical Practitioner must comply with any reasonable direction of the Hospital or CHSA in relation to documents containing the Confidential Information and must for that purpose so direct Nominated Medical Practitioners as reasonably required.

9. DOCUMENTS

9.1 CHSA owns the Documents, including Medical Records, prepared by or for the Contracting Medical Practitioner or a Nominated Medical Practitioner arising out of or in connection with provision of Services to Public Patients under this Agreement.

- 9.2 Upon termination and at any other time on demand by CHSA, the Contracting Medical Practitioner must deliver to CHSA all Documents, including Medical Records, provided by or originating from CHSA and all Documents, including Medical Records, produced by or for the Contracting Medical Practitioner in the course of providing Services to Public Patients under this Agreement.
- 9.3 Notwithstanding clauses 9.1 and 9.2, the Contracting Medical Practitioner will be entitled to access all Documents, including Medical Records, and make copies of and use those Documents, in order to comply with their statutory, legal or contractual obligations, or the preparation for or conduct of proceedings before any court or tribunal or implementation of the orders of a court or tribunal. For the avoidance of doubt, it is agreed that the Contracting Medical Practitioner shall under no circumstances remove any originals of any Documents from any Hospital relating to Public Patients (unless otherwise agreed by CHSA).

10. INDEMNITY

The Contracting Medical Practitioner agrees to keep the Hospital and CHSA, their staff and agents ("the indemnified") indemnified against a loss or liability that has been incurred by the indemnified as a result of a claim made by a third party to the extent that the loss or liability is caused by or arises from:

- 10.1 any negligence, wrongful act or omission or breach of duty of or by the Contracting Medical Practitioner or the Nominated Medical Practitioner;
- 10.2 any obligation or compulsion for CHSA to pay any employee benefits to a Nominated Medical Practitioner including leave, workers compensation or superannuation payments (except to the extent that CHSA has previously agreed in writing to pay the relevant Nominated Medical Practitioner such benefits);
- 10.3 medical services provided by the Contracting Medical Practitioner to private patients pursuant to clause 16; or
- 10.4 any breach by the Contracting Medical Practitioner of any of the provisions of this Agreement,

and such indemnity shall be limited to the extent that any such loss or liability is caused by or arises from:

- 10.5 any negligence, wrongful act or omission or breach of duty of or by the indemnified or any of the indemnified; or
- 10.6 any breach by the indemnified or any of the indemnified of any of the provisions of this Agreement.

11. INSURANCE

11.1 Insurances

The Contracting Medical Practitioner must:

- 11.1.1 effect and maintain public liability insurance; and

11.1.2 must effect and maintain (and ensure that the Nominated Medical Practitioner effects and maintains) professional indemnity insurance in the name of the Contracting Medical Practitioner (or where relevant, the Nominated Medical Practitioner) for any claim arising from, or related to, the provision of the Services pursuant to this Agreement.

11.2 Workers Compensation Insurance

The Contracting Medical Practitioner is responsible for complying with any requirements in relation to workers' compensation legislation in relation to Nominated Medical Practitioners.

11.3 Disclaimer

CHSA accepts no liability for the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability. The Contracting Medical Practitioner acknowledges and agrees that it is the Contracting Medical Practitioner's responsibility to assess and consider the risks and scope of insurances required under this Agreement.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 CHSA owns or has rights to use all Intellectual Property Rights in all Documents, Medical Records and other proprietary information of CHSA in existence at or prior to the date of this Agreement and any modifications or enhancements made to them after the date of this Agreement ("**CHSA Intellectual Property**").
- 12.2 Intellectual Property Rights in all Documents become CHSA Intellectual Property on their creation by the Contracted Medical Practitioner or a Nominated Medical Practitioner.
- 12.3 CHSA gives the Contracting Medical Practitioner a non-exclusive licence to use the CHSA Intellectual Property for providing Services under this Agreement. That licence may not be sub-licensed or transferred, except to a Nominated Medical Practitioner.
- 12.4 The Contracting Medical Practitioner must not infringe the Intellectual Property Rights of any person in performing its obligations under this Agreement.
- 12.5 The Contracting Medical Practitioner must indemnify and keep indemnified CHSA against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim that the Contracting Medical Practitioner has infringed the Intellectual Property Rights of any person, except to the extent that the claim relates to an infringement by CHSA in relation to CHSA Intellectual Property or Intellectual Property referred to in clause 12.1.
- 12.6 The Contracting Medical Practitioner must not copy assign, license or otherwise convey or deal with any part of CHSA's Intellectual Property without first obtaining the written consent of CHSA, which consent may be given or withheld in CHSA's absolute and unfettered discretion.

13. DISPUTE RESOLUTION PROCESS

- 13.1 Disputes in relation to this Agreement must be resolved in accordance with this clause.
- 13.2 Either party may, in a case of genuine urgency, seek immediate interlocutory relief or an interim remedy.
- 13.3 Subject to sub-clauses 13.2, 13.6 and 13.7, all disputes must be resolved as follows:
- 13.3.1 the local CHSA Cluster Director and the Contracting Medical Practitioner will attempt to settle by negotiation any dispute in relation to this Agreement ("**Negotiators**");
 - 13.3.2 if the Negotiators cannot resolve the dispute within ten (10) Business Days of its reference to them, each Negotiator must prepare a written summary of his or her attempts to resolve the dispute and immediately refer that summary to the Chief Operating Officer, CHSA;
 - 13.3.3 if the Chief Operating Officer cannot resolve the dispute, in negotiation with the parties, within ten (10) Business Days of its reference to him or her, then the parties must refer the dispute to the Chief Medical Officer, CHSA or his or her nominee for negotiation with the Contracting Medical Practitioner or nominee ("**the Executive Negotiators**").
 - 13.3.4 If the dispute is not settled by the Executive Negotiators within ten (10) Business Days of its reference to them the dispute may be the subject of court proceedings or may be submitted to some other alternative dispute resolution mechanism as may be agreed in writing between the parties.
- 13.4 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.
- 13.5 This clause survives any expiry or termination of this Agreement.
- 13.6 **Clinical Matters**
- Any dispute in connection with a Nominated Medical Practitioner's Clinical Privileges or clinical conduct must not be dealt with under this clause 13, but will be subject to and dealt with in accordance with the procedures in respect to Scope of Clinical Practice, conduct and governance referred to in the Credentialing and Defining Scope of Clinical Practice for Country SA Health Services for Medical & Dental Practitioners.
- 13.7 **Fee related matters**
- Any dispute in connection with fees relating to service provided by a Nominated Medical Practitioner or the Contracting Medical Practitioner must not be dealt with under this clause, but will be subject to and dealt with in accordance with the procedure in respect to dispute over payment of fees referred to in SARMFA.

14. NOTICES

A notice, approval, consent or other communication in connection with this Agreement:

- 14.1 must be in writing
- 14.2 must clearly identify the purpose of the communication;
- 14.3 in the case of a notice to CHSA, including clause 5.5, must be addressed to Chief Executive Officer and marked for the attention of the Cluster Director;
- 14.4 must be either:
 - 14.4.1 left at the address of the addressee; or
 - 14.4.2 within Australia, sent by prepaid ordinary post to the address of the addressee; or
 - 14.4.3 sent by facsimile to the addressee's facsimile number;
- 14.5 takes effect from the time it is received unless a later time is specified in it; and is taken to be received:
 - 14.5.1 if left at the address of the addressee, the day it is left;
 - 14.5.2 if sent by post within Australia, on the third day after posting;
 - 14.5.3 if sent by facsimile, on production of a transmission report by the sending machine indicating the facsimile was sent in its entirety to the facsimile number of the recipient..

15. MISCELLANEOUS

15.1 Costs

Each party agrees to bear their own legal and other costs in connection with the preparation, execution and completion of this Agreement and of other related documentation.

15.2 Disclosure Of Contract

- 15.2.1 CHSA may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form and either generally to public or to a particular person as a result of a specific request.
- 15.2.2 Nothing in this clause derogates from:
 - (a) The Contracting Medical Practitioner's obligations under any provisions of this Agreement; or
 - (b) the provisions of the *Freedom of Information Act 1991* (SA).

15.3 Assignment

The Contracting Medical Practitioner must not:

- 15.3.1 assign, encumber or otherwise transfer any of its rights or obligations under this Agreement; or
- 15.3.2 subject to clause 6, sub-contract the performance of any of its obligations under this Agreement, without CHSA's prior written consent, and
- 15.3.3 CHSA must not outsource or assign rights and obligations under this Agreement to another party without giving 6 months written notice to medical practitioners.
- 15.3.4 Notwithstanding the preceding sub-clause it is acknowledged that the rights and liabilities of instrumentalities of the Crown in right of the State of South Australia may be transferred by operation of law.

15.4 Waiver and Variation

A provision of or a right created under this Agreement may not be:

- 15.4.1 waived, except in writing signed by the party granting the waiver; or
- 15.4.2 varied, except in writing signed by the parties.

15.5 Consents

A party may give (conditionally or unconditionally) or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

15.6 Rights, Powers and Remedies

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

15.7 Governing Law

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in South Australia and each party irrevocably and unconditionally submits to the jurisdiction of the courts of South Australia.

15.8 Entire Agreement

This Agreement, the Scope of Clinical Practice in South Australian Public Health Services, the SARMFA and the SARMER constitute the entire agreement between the parties for the provision of Services by the Contracting Medical Practitioner at the Hospital and supersedes any prior arrangements, agreements, representations or undertakings.

15.9 Inconsistency

In the event of any inconsistency between the Scope of Clinical Practice in South Australian Public Health Services 2009 and this Agreement relating to scope of clinical practice, conduct and governance, the processes in the Scope of Clinical Practice in South Australian Public Health Services 2009, in relation to these matters, shall prevail to the extent only of the inconsistency.

15.10 Survival

The clauses of this Agreement relating to professional indemnity insurance, access to documents and confidentiality survive the expiry or termination of this Agreement. In relation to Confidential Information, the obligations continue to apply unless CHSA notifies the Contracting Medical Practitioner of its release from those obligations.

15.11 AUDITOR GENERAL

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

15.12 Nature of Contracting Medical Practitioner

15.12.1 If the Contracting Medical Practitioner is a party to this Agreement in his, her, or its capacity as a trustee for a trust, the Contracting Medical Practitioner warrants to the Minister that as of the Commencement Date, it have:

- (a) entered into this Agreement in his, her, or its capacity as a trustee of trust described in Item 1 of Schedule 1; and
- (b) the power to enter into this Agreement in his, her, or its capacity as a trustee of the trust described in Item 1 of Schedule 1 pursuant to the trust deed establishing that trust.

15.12.2 If the Contracting Medical Practitioner is a party to this Agreement in his, her, or its capacity as a partner of a partnership, the Contracting Medical Practitioner warrants to the Minister that as of the Commencement Date, it has:

- (a) entered into this Agreement in his, her, or its capacity as a partner of the partnership described in Item 1 of Schedule 1;
- (b) the power to enter into this Agreement in his, her, or its capacity as a partner of the partnership described in Item 1 of Schedule 1 pursuant to the partnership deed establishing that partnership; and
- (c) the power to bind all other partners of the partnership described in Item 1 of Schedule 1 to this Agreement.

16. PRIVATE PATIENTS

- 16.1 CHSA agrees to allow the Contracting Medical Practitioner and Nominated Medical Practitioners access to the Hospitals to enable the them to provide medical services to private patients, however CHSA is under no binding obligation to provide such facilities.
- 16.2 CHSA agrees:
- 16.2.1 to routinely provide the Contracting Medical Practitioner with a copy of the Emergency Department Medical Record for medical services provided by the Medical Practitioner to private patients; and
 - 16.2.2 to provide the Contracting Medical Practitioner with access to copies of any Medical Records for medical services provided by the Medical Practitioner to private patients.
- 16.3 The Contracting Medical Practitioner agrees:
- 16.3.1 medical services to private patients must be provided within the Scope of Clinical Practice;
 - 16.3.2 any medical records created by the Contracting Medical Practitioner or a Nominated Medical Practitioner for medical services provided by the Contracting Medical Practitioner to private patients within a CHSA facility ("**Private Medical Records**") shall remain the property of the Contracting Medical Practitioner;
 - 16.3.3 to provide CHSA with access to copies of any Private Medical Records as soon as reasonably practicable after a request for the purpose of providing medical services to the public or responding to any claim..
 - 16.3.4 the Contracting Medical Practitioner is responsible for rendering accounts for private practice and collecting payment for same; and
 - 16.3.5 CHSA assumes no legal liability for any medical services provided by the Contracting Medical Practitioner to private patients except to the extent that any such liability arises from:
 - (a) any negligence, wrongful act or omission or breach of duty of or by CHSA; and
 - (b) any breach by CHSA of any of the provisions of this Agreement.

17. PROVISION OF PERSONAL INFORMATION

- 17.1 Prior to the Commencement Date, the Contracting Medical Practitioner must provide CHSA with:
- 17.1.1 the Contracting Medical Practitioner's contact details including a business address, facsimile number, office phone number, email address and mobile phone number (if any);
 - 17.1.2 all of the Nominated Medical Practitioners contact details including a home address, facsimile number, email address and phone number (if any).
- 17.2 During the Term, the Contracting Medical Practitioner must promptly provide CHSA with details of any updates or new contact details as described in clause 17.1.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of)
COUNTRY HEALTH SA HOSPITAL INC)
by (insert name of authorised person))
who is duly authorised in that regard)
in the presence of:)

.....

Witness

.....

Print Name

IF THE CONTRACTING MEDICAL PRACTITIONER IS A SOLE TRADER

SIGNED by the (insert Contracting)
Medical Practitioner full name))
in the presence of:)

.....

Witness

[print name:]

[OR IF THE CONTRACTING MEDICAL PRACTITIONER IS A BODY CORPORATE]

This Agreement is Executed by)
.....)
(ACN)
in accordance with Section 127 of)
The *Corporations Act 2001* (Cth) and its)
Constitution)
)

.....

Director

[Print Name]

.....

Director / Secretary

[Print Name]

[OR IF THE CONTRACTING MEDICAL PRACTITIONER IS PARTNER IN A PARTNERSHIP - repeat for each partner - see advice]

This Agreement is executed by)
[insert name])
as a partner in the partnership trading as)
[insert partnership trading name])
[insert partner's name]

in the presence of:

.....

Witness

Name:

[OR IF THE CONTRACTING MEDICAL PRACTITIONER IS NATURAL PERSON ACTING AS TRUSTEE FOR A TRUST - see advice]

This Agreement is executed by)
[insert name])
acting as a trustee for)
[insert trust name])
[insert trustee's name]

in the presence of:

.....

Witness

Name:

[OR IF THE CONTRACTING MEDICAL PRACTITIONER IS A BODY CORPORATE ACTING AS TRUSTEE FOR A TRUST - see advice]

This Agreement is Executed by)
.....)
(ACN) acting as trustee for)
[insert trust name] in accordance with)
Section 127 of the *Corporations Act 2001*)
(Cth), the relevant trust deed and)
its Constitution)

.....
Director
[Print Name]

.....
Director / Secretary
[Print Name]

SCHEDULE 1
GENERAL INFORMATION

ITEM 1 Contracting Medical Practitioner

Name

ACN
(If applicable)

ABN

Address

.....

Facsimile

Telephone

Email

ITEM 2 Contracting Medical Practitioner’s Medical Board Registration Number

.....

ITEM 3 Nominated Medical Practitioner

Name

Address

.....

ITEM 4 Nominated Medical Practitioner’s Medical Board Registration Number

.....

ITEM 5 General Manager’s Details

Name

Address

.....

Facsimile

Telephone

Email

ITEM 6 Hospital(s)

.....

.....

ITEM 7 Commencement Date

.....

ITEM 8 Expiry Date

.....

SCHEDULE 2
MEDICAL SERVICES

The Contracting Medical Practitioner agrees to provide to Public Patients at the Hospital the following type of medical services:

[Details to be specified and agreed by CHSA and the Contracting Medical Practitioner]

SCHEDULE 3
AVAILABILITY

Details to be specified and agreed by CHSA and the Contracting Medical Practitioner]

(eg On call for clinical emergencies in the Emergency Department and Health Service generally)

SCHEDULE 4
ADDITIONAL SERVICES

[Details to be specified and agreed by CHSA and the Contracting Medical Practitioner]

(eg Undertaking of the Principal Medical Officer)

ANNEXURE A
SOUTH AUSTRALIAN RURAL MEDICAL ENGAGEMENT RESPONSIBILITIES

ANNEXURE B
SOUTH AUSTRALIAN RURAL MEDICAL FEE AGREEMENT

ANNEXURE C

**CREDENTIALING & DEFINING SCOPE OF CLINICAL PRACTICE FOR COUNTRY
HEALTH SA HEALTH SERVICE FOR MEDICAL & DENTAL PRACTITIONERS,
JULY 2009**