**COVID-19 VACCINATION ENHANCEMENT FUNDING AGREEMENT**

**AGREEMENT** made on day of 2022

**BETWEEN:**

**MINISTER FOR HEALTH AND WELLBEING**, a body corporate pursuant to the *Administrative Arrangements Act 1994* of 1 Hindmarsh Square, Adelaide SA 5000 (“**Government Party**”)

**AND:**

**THE PARTY NAMED IN ITEM 1 OF ATTACHMENT 1** (“**Recipient**”)

**IT IS AGREED**

1. The Government Party has agreed to provide funding in the form of a payment for each Eligible COVID-19 Vaccination administered by the Recipient in every seven day period during the Funding Period (**Vaccination Enhancement Funding**). The Vaccination Enhancement Funding is payable in a lump sum following the expiry of the Funding Period and on provision by the Recipient of evidence that it has administered Eligible COVID-19 Vaccinations.
2. The Parties acknowledge that the purpose of this Agreement is to maximise the capacity of the Recipient to administer the Eligible COVID-19 Vaccination program during the Funding Period as a primary care provider already authorised to administer Eligible COVID-19 Vaccinations.
3. The Government Party and Recipient agree that the Vaccination Enhancement Funding will be provided on the terms and conditions of this Agreement.
4. This Agreement comprises this Execution Page, the Agreement Details (Attachment 1) and the Standard Terms and Conditions (Attachment 2).

**EXECUTED AS AN AGREEMENT**

**Attachment 1 - Agreement Details**

|  |  |  |
| --- | --- | --- |
|  | **Recipient** | <insert name>  <insert address> |
|  | **Commencement Date** | The date on which the last Party executes this Agreement |
|  | **Expiry Date** | The earlier of the date on which the Government Party pays the Vaccination Enhancement Funding to the Recipient or 31 May 2022. |
|  | **Recipient’s ABN** | Recipient has an ABN: <Yes/No>  <insert ABN >  Registered for GST: <Yes/No> |
|  | **Contact Persons** | Government Party:  <insert contact details>  Recipient: <insert contact details> |
|  | **Reports and Meetings** | Reports:  Progress Report on total number of Eligible COVID-19 Vaccinations administered by the Recipient as reasonably requested by the Government Party from time to time during the Funding Period. |
|  | **Eligible COVID-19 Vaccination** | **Eligible COVID-19 Vaccination** means each dose of an Approved COVID-19 Vaccination administered in excess of the Baseline by the Recipient at a Site in a Measurement Period, and calculated on a pro rata basis for any period less than seven days.  **Approved COVID-19 Vaccination** means one of the following authorised/approved COVID-19 vaccinations:   * SPIKEVAX (elasomeran) (Moderna) * COMIRNATY (tozinameran) (Pfizer)   **Baseline** means the number of Approved COVID-19 Vaccinations administered by the Recipient at a Site during the period from 8 January 2022 to 14 January 2022 (inclusive).  **Measurement Period** means each period of seven calendar days during the Funding Period, where the first Measurement Period commences on the first day of the Funding Period.  **Site** means a location in South Australia where Approved COVID-19 Vaccinations are administered by the Recipient’s personnel.  If the Recipient administers Eligible COVID-19 Vaccinations at more than one Site, its entitlement to Vaccination Enhancement Funding will be calculated by reference to the number of relevant doses administered at an individual Site (both Baseline and Eligible COVID-19 Vaccinations), unless agreed otherwise in writing with the Government Party. |
|  | **Vaccination Enhancement Funding Amount** | $<insert> per Eligible COVID-19 Vaccination  GST inclusive  GST exclusive  no GST payable  Payable in accordance with clause 5 of Attachment 2. |
|  | **Funding Period** | The period commencing on 31 January 2022 and ending on 28 February 2022 |
|  | **Tax Invoice Issuing Party** | Government Party  Recipient |
|  | **Insurances**  Public Liability Insurance  Professional Indemnity Insurance | Not less than $1,000,000  Not less than $1,000,000 |
|  | **Notice Period for Termination for Convenience** | 14 days |

**Attachment 2 - Standard Terms & Conditions**

# AGREED TERMS

# Purpose

## The Parties acknowledge that the purpose of this Agreement is to maximise the capacity of the Recipient to administer Approved COVID-19 Vaccinations during the Funding Period.

# Term

## This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 2.2.

## This Agreement and/or the Funding Period may be extended by mutual agreement of the Parties in writing prior to the Expiry Date.

# contact persons

The persons named in Attachment 1 as the Contact Persons are the first point of contact between the Parties and are responsible for overseeing the effective administration of the Agreement including variations and extensions.

# Vaccination Enhancement Funding

## The Recipient may only make a claim for Vaccination Enhancement Funding for Eligible COVID-19 Vaccinations administered during the Funding Period.

## The Recipient acknowledges that Vaccination Enhancement Funding represents a contribution by the Government Party towards the purpose set out in clause 1 of this Agreement and the Government Party is under no obligation to pay any additional or subsequent funding to the Recipient.

## The Recipient acknowledges the Government Party will not be liable to reimburse the Recipient for any losses or cost over runs that may result from the operation of this Agreement or the carrying out of the Recipient’s Eligible COVID-19 Vaccination activities, including but not limited to issues relating to the supply of Approved COVID-19 Vaccinations.

# funding AND invoicing

## To claim the Vaccination Enhancement Funding, the Recipient must provide to the Government Party within 30 days after the expiry of the Funding Period an invoice of the total number of Eligible COVID-19 Vaccinations provided per Measurement Period during the Funding Period, including:

### the details of the type of each Eligible COVID-19 Vaccination administered;

### the day that each Eligible COVID-19 Vaccination was administered;

### the Baseline;

### the total Vaccination Enhancement Funding amount sought;

### Site at which each Eligible COVID-19 Vaccination was administered;

### vaccination provider number;

### a written certification from the Recipient’s Contact Person that the Vaccination Enhancement Funding claim relates only to Eligible COVID-19 Vaccinations in accordance with this Agreement; and

### if the Recipient administers Eligible COVID-19 Vaccinations at more than one Site, the invoice must be broken down on a Site basis.

## Subject to clauses 5, 7.3 and 7.4, the Government Party will pay the Vaccination Enhancement Funding within 30 days of receipt of the Recipient’s invoice.

## The Recipient acknowledges that the Government Party is entitled to verify the Vaccination Enhancement Funding claim against information available to the Government Party and will only be liable to pay that portion of the Vaccination Enhancement Funding claim that the Government Party is satisfied relates to Eligible COVID-19 Vaccinations, acting reasonably.

## If the Government Party determines that the requested Vaccination Enhancement Funding relates to a vaccination which is not an Eligible COVID-19 Vaccination or is otherwise not in accordance with this Agreement, then the Government Party will notify the Recipient of this determination.

# GST

## The parties acknowledge that compliance with obligations or the grant of rights under this Agreement by the Recipient may be a Taxable Supply as defined in the GST Law and the Recipient may be liable to pay GST on the Taxable Supply.

## In the event that the compliance with obligations or the grant of rights under this Agreement is a Taxable Supply, the Government Party will pay in addition to the Vaccination Enhancement Funding an amount (the “**GST payment**”) calculated by multiplying the Vaccination Enhancement Funding amount by the rate at which GST is levied at the time of this Agreement.

## The Government Party is not liable to pay the GST payment or any instalment of the GST payment unless the Recipient has delivered to the Government Party a valid Tax Invoice under GST Law, with respect to the Vaccination Enhancement Funding and associated GST payment.

## The Recipient represents that:

### the ABN shown in Attachment 1 is the Recipient’s ABN; and

### it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth).

## For the purposes of this Agreement:

### “**GST**” means the tax imposed by the GST Law;

### “**GST Law**” has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

# Provision of Information and record keeping

## During the Term the Recipient must keep all records necessary to provide a complete, detailed, up-to-date and accurate record and explanation of Eligible COVID-19 Vaccinations administered during the Funding Period.

## The Recipient must provide those reports and other documents as specified in Item 6 of Attachment 1.

## The Minister may request additional information from the Recipient in connection with the Agreement, including but not limited to in relation to any claim for Vaccination Enhancement Funding made under clause 5.

## The Recipient must provide the Minister with any information requested under clause 7.3 within 7 calendar days of the request.

# Inspection

## The Recipient must allow any officer or person authorised by the Government Party on the giving of reasonable notice, to enter the premises of and to inspect the operations of the Recipient (including equipment, premises, accounting records, documents and information) and interview the Recipient’s Personnel on matters pertaining to the operations and reporting obligations of the Recipient under this Agreement.

# Entitlement to Administer Approved COVID-19 Vaccinations

## The Recipient represents and warrants that it is entitled to lawfully administer Approved COVID-19 Vaccinations in South Australia, including but not limited to holding all relevant accreditations, authorisations and approvals under:

### any law of the State of South Australia, including the *Controlled Substances Act 1984* and the regulations and codes made under that Act; and

### any COVID-19 vaccination policies and programs administered by the Commonwealth or the State of South Australia.

## The Recipient must promptly notify the Government Party if it becomes aware of any circumstance, event or fact that may affect the Recipient’s eligibility to lawfully administer Approved COVID-19 Vaccinations.

## Without limiting clause 9.2, if the Recipient is a pharmacy, it must promptly notify the Government Party if it becomes aware of any circumstance, event or fact that may affect the Recipient’s eligibility to participate in the Commonwealth’s COVID-19 Vaccination in the Community Pharmacy (CVCP) Program.

# CONFIDENTIAL INFORMATION

## Subject to this clause 10, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.

## A Party may disclose Confidential Information belonging to the other Party:

### to an employee, agent or adviser of that Party, on a “need to know” and confidential basis;

### as required by law or a court order;

### in accordance with any Parliamentary or constitutional convention;

### for the purposes of prosecuting or defending proceedings.

## The Parties may mutually agree to disclose Confidential Information.

## For the purposes of this Agreement, “**Confidential Information**”means information which is identified as confidential information by a Party, but does not include this Agreement.

# privacy

## The Recipient must comply with the *Privacy Act 1988* (Cth) (“**Privacy Act**”) and the Australian Privacy Principles established under that Act in undertaking its obligations under this Agreement including in relation to all Personal Information received created or held by it for the purposes of this Agreement.

## The Recipient must promptly notify the Government Party if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.

## For the purposes of this special condition, “**Personal Information**” has the same meaning as in the Privacy Act.

# publicity

## The Recipient will acknowledge the Vaccination Enhancement Funding by the Government Party in any advertising, publicity or promotional material relating to this Agreement in the manner specified in Attachment 1.

# INSURANCE

## The Recipient must effect and maintain the insurance specified in Attachment 1 for not less than the amount specified in Attachment 1 during the Funding Period.

## If no details are inserted in Attachment 1, the Recipient warrants and agrees that it will effect and maintain insurance of a kind and minimum level of cover required in the ordinary course of the Recipient’s business for the duration of the Funding Period.

# dispute resolution

## Subject to clause 14.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.

## Either Party may give the other a notice in writing (“**dispute notice**”) setting out the details of the dispute.

## Within seven days or such other period as may be agreed by the Parties, the Contact Persons must meet and use reasonable endeavours to resolve the dispute.

## A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.

# default and termination

## If the Recipient fails to comply with this Agreement at any time, the Government Party may upon giving written notice to the Recipient:

### require the Recipient to repay either the whole or a portion of the Vaccination Enhancement Funding (whether expended or not) within 30 days of a written demand from the Government Party;

### withhold funds not already paid;

### withhold future funding from the Recipient; and/or

### terminate this Agreement.

## Notwithstanding clause 15.1, the Government Party may terminate this Agreement immediately by notice in writing to the Recipient if:

### Where the Recipient is a pharmacy, the Recipient ceases to be an approved service provider in the Commonwealth’s COVID-19 Vaccination in the Community Pharmacy (CVCP) Program; or

### The Recipient ceases to be entitled to lawfully administer an Approved COVID-19 Vaccination in South Australia, including but not limited to the withdrawal, expiry or cancellation of any relevant accreditation, authorisation or approval referred to in clause 9.1.

## Either Party may terminate this Agreement without cause by giving the other Party the period of notice specified in Attachment 1 (“**Notice Period for Termination for Convenience**”).

# EFFECT OF ending THIS agreement

## If the Government Party terminates this Agreement under clause 15.2 or 15.3, the Recipient may issue an invoice for the purposes of clause 5.1 as though the Funding Period had come to an end and is entitled to make a Vaccination Enhancement Funding claim for the number of Eligible COVID-19 Vaccinations administered during the Funding Period up to the date of the written notice of termination.

## Any termination of this Agreement does not affect any accrued right of either Party.

## Despite termination or expiry of this Agreement, this clause 16 and clauses 7, 8, 10, 11 will survive.

# contract disclosure

## The Government Party may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form, and either generally to the public or to a particular person as a result of a specific request.

## Nothing in this clause derogates from:

### the Recipient’s obligations under any provisions of this Agreement; or

### the provisions of the *Freedom of Information Act 1991* (SA).

# Compliance with Laws AND policies

## The Recipient must comply with the laws in force in the State of South Australia in performing its obligations connected to this Agreement, including but not limited to any conditions imposed on the Recipient through the accreditations, authorisations and approvals referred to in clause 9.1.

## The Recipient must comply with any policies notified by the Government Party in writing at the Commencement Date.

# Governing Law and Jurisdiction

## This Agreement is governed by the laws in the State of South Australia.

## The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

# Entire Agreement

The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

# No Assignment

## The Recipient must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Government Party which approval shall not be unreasonably withheld.

## Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Government Party and all of the Government Party’s rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

# Modification

No addition to or modification of any provision of this Agreement will be binding upon the Parties unless agreed by the Parties in writing.

# Severance

## Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

## Severance of any part of this Agreement will not affect any other part of this Agreement.

# COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.

# INTERPRETATION

## In this Agreement (unless the context requires otherwise):

### a reference to any legislation includes:

#### all legislation, regulations and other forms of statutory instrument issued under that legislation; and

#### any modification, consolidation, amendment, re-enactment or substitution of that legislation;

### a word in the singular includes the plural and a word in the plural includes the singular;

### a reference to two or more persons is a reference to those persons jointly and severally;

### a reference to dollars is to Australian dollars;

### a reference to a Party includes that party’s administrators, successors and permitted assigns;

### terms used in Attachment 1 carry the meaning described in that Attachment.