SHAREHOLDERS AND UNITHOLDERS AGREEMENT

|  |  |
| --- | --- |
| **Parties** |  |
|  | 1. Deakin Medical Services Pty Ltd ACN 669 215 856 as trustee for the Medical Service Trust c/o Storr & Co Suite 1 91 Frederick Street Merewether NSW 2291 (Trustee) 2. Robert S Schmidli Pty Limited ACN 092 948 617 as trustee for The Schmidli Family Trust c/o Storr & Co Suite 1 91 Frederick Street Merewether NSW 2291 (Schmidli) 3. GAAN Pty Limited ACN 668 513 933 as trustee for The Gaan Family Trust (Gaan) 4. Robert Scott Schmidli of 27 Custance Street, Farrer, ACT 2607 5. Geoffrey David Peters of 34 Walker Crescent, Griffith ACT 2603 |
| **Background** |  |
|  |
|  | The parties own 100% of the issued units of the Trust and 100% of the issued share capital in the Trustee, in the Respective Proportions. |
|  | The Parties wish to record their agreement on the way the Trustee will carry on the Business and manage the affairs of the Trust. |
|  |  |

# **Operative Part**

## Definitions

## In this Agreement:

## **Board** means the board of Directors of the Trustee from time to time.

## **Business** means providing the services to Doctors to operate a Medical Service being known as Deakin Medical Centre and such other business as the Parties agree from time to time.

## **Business Plan** means a business plan for the carrying on of the Business during a Financial Year which will include a profit budget and a cash flow budget.

## **Claim** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

## **Confidential Information** means information concerning:

## the operations and dealings of the Business or a Party;

## the organisation, finance, customers, markets, suppliers, intellectual property or know-how of the Trustee or a Party or of a related corporation of the Trustee or a Party; and

## those operations and transactions of a Party concerning the Business or that Party's shareholding in the Trustee, which is not in the public domain, except by the failure of a Party to perform and observe its covenants and obligations under this Agreement.

## **Constitution** means the constitution of the Trustee.

## **Director** means a director of the Trustee.

## **Encumber** means to mortgage, pledge, charge, assign as security or otherwise encumber and ‘encumbrance’ has a corresponding meaning.

## **Financial Year** means a period of 12 consecutive calendar months ending on 30 June.

## **Incapacity** means incapacity by reason of ill health to reasonably undertake the duties and tasks of a Director which has been confirmed as such in writing by a qualified medical practitioner.

## **Independent Valuer** means an independent expert agreed by the Parties or, in the absence of agreement, at the request of any Party, appointed by the President or his nominee from time to time of the Australian Institute of Chartered Accountants or its successor.

## **Insolvency Event** means:

## a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);

## a Party enters into any arrangement with creditors;

## a Party becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 including having a receiver or administrator appointed over all or any part of its assets; or

## anything analogous or having a substantially similar effect to the events specified in (a) to (c) above occurs in relation to a Party.

**Intellectual Property Rights** means all intellectual property rights at any time protected by statute or common law, including:

## patents, copyright and any registered intellectual property rights (including rights in circuit layouts under the Circuit Layouts Act 1989 Cth) and similar rights in other countries in circuit layouts), registered designs, business names, trademarks and goodwill;

## any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and

## confidential information as may be applicable to a Party and to any advertising and promotional material or any technical materials and user manuals associated with any item referred to in (a) or (b) above.

## **Interest Rate** means the rate that is two per cent (2%) above the Cash Rate Target as set and published by the Reserve Bank of Australia from time to time.

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

## **Nominee** means the medical practitioner nominated by the Unit Holder to work as a medical practitioner in the Business.

## **Outgoing Party** means a Party in respect of whom a Trigger Event occurs.

## **Parties** means Party 1, Party 2, Party 3 and Party 4.

## **Remaining Party** means, if a Trigger Event occurs, all Parties other than the Outgoing Party.

## **Respective Proportions** means:

## in respect of the units:

Schmidli – 50%

Gaan- 50%

in respect of shares:

Schmidli - 50%

Gaan- 50%

**Shares** means shares in the Trustee.

**Term** means the period commencing on the date of this Agreement and ending on the date on which this Agreement is terminated.

**Trigger Event** means any of the following events in relation to a Party:

## if a Unit Holders Nominee being individual, dies or suffers total and permanent disability;

## that Party attempts to sell, transfer or dispose of any part of its respective proportion without complying with **clause 7**.

## this Agreement is terminated as if applies to that Party in accordance with **clause 18**.

## undergoes an Insolvency Event; or

## if a corporation, undergoes a change in shareholding, unitholding or other controlling interest without the consent of the other parties to this Agreement

**Trust** means the Medical Service Trust.

**Trust Deed** means the trust deed of the Trust.

**Trust Fund** means the fund established under the Trust Deed.

**Units** means units in the Trust.

**Unit Holder Nominee** means in respect of Schmidli, Dr Robert Schmidli, and in respect of Gaan, Dr Geoffrey Peters.

**Working Capital** means the difference between current assets and current liabilities.

## Interpretation

In this Agreement unless the context otherwise requires:

### (a) (**headings**) headings and underlinings are for convenience only and do not affect interpretation;

### (b) (**singular**) the singular includes the plural and vice versa;

### (c) (**corresponding meanings**) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

### (d) (**consistency**) if any provision of this Agreement is inconsistent with any provision of the Constitution or the Trust Deed, the provisions of this Agreement will prevail to the extent of the inconsistency; and

### (e) (**including**) references to “include”, “includes” or “including” do not limit what may be included.

# **Management of the Trustee**

## **Appointment of Directors**

As long as each Party holds Shares, each will be entitled to appoint and replace from time to time, 1 Director by notice in writing to the Trustee. Each Director will be entitled to 1 vote at a Director’s meeting.

## **Meetings** **of** **the** **Board**

* + 1. Meetings of the Board will take place at such place as agreed from time to time between the Parties or, in the absence of agreement, at the registered office of the Trustee, at least monthly. Meetings of the Board are convened and held under the Constitution.
    2. A quorum at meetings of Directors will be constituted by the attendance (in person or by his/her representative) of a Director appointed by each Party under **clause 2.1** (if any Director is so appointed).
    3. The Board may use any technology to allow Directors to reasonably participate in a Meeting from two or more venues.

## **Notice of Meetings**

* + 1. A Board Meeting will require at least seven (7) Business Days’ prior written notice to be given to all Directors unless otherwise agreed in writing by the Directors.
    2. That notice must include a proposed agenda and, unless all Directors otherwise agree, a Board Meeting may only resolve matters specifically referred to in that agenda.

## **Decisions of the Board – Simple Majority**

Subject to **clause 2.6**, decisions of the Board will be by simple majority vote.

## **Decisions** **of** **the** **Board** **-** **Unanimous** **Approval**

Decisions on the following matters must be by unanimous approval by all the Directors:

### the allotment of Shares and Units, convertible notes, options or other securities;

### the acquisition by the Trustee of any interest in any business or any other trustee;

### the transfer by the Trustee of an asset or assets of the Trustee or the Trust having an aggregate book or market value (whichever is the greater) in excess of 10% of the aggregate book value of all the Trustee’s or the Trust’s assets;

### the grant of any Encumbrance over any assets of the Trustee or the Trust;

### the Trustee entering into any commitment or liability which is not in the ordinary course of the Business;

### the delegation of any powers from the Board;

### the adoption of a dividend policy, the declaration of any dividends and payment of any dividend, whether declared or not;

### the appointment or removal of a Director not appointed under the provisions of **clause 2.1**;

### capital or leasing expenditure in excess of $5,000.00 for each transaction;

### the remuneration or benefits payable to Directors or any spouse, brother, sister, lineal ancestor and lineal descendant of a Director (relative) or any trust, partnership or trustee in which a director or a relative of a Director has a beneficial Respective Proportion;

### any significant issues regarding the tax and accounting policies to be applied in respect of the Trustee or the Trust;

### material change in, or the discontinuance of, the Business;

### approval of the registration of any transfer of Shares or Units;

### any alteration to the Constitution;

### any alteration to the Trust Deed;

### any alteration to the capital of the Trustee whether by increase, decrease, division, consolidation, conversion, subdivision, cancellation or otherwise;

### any alteration to the rights, privileges or liabilities attached to any class of Shares or Units;

### appointment of a receiver or administrator or liquidation of the Trustee or winding up of the Trust;

### the contribution of any loan funds in accordance with **clause 4.1**; and

### the provision of personal guarantees by any Director in respect of contracts to which the Trustee is a party.

### any change in auditor appointed to the Trustee;

### the admission of the Trustee to, or the listing of its shares on, any stock exchange;

## **Day** **to** **Day** **Operations**

The Parties agree that, subject to the preceding paragraphs of this **clause 2**, Robert and Geoff (**General Manager**) will be responsible for the day to day management and operation of the affairs of the Trustee with respect to the Business.

The General Manager will be required to report to the Board on a monthly basis (within 15 days from each month’s end) on the following matters and in the following format:

(a) Detailed Profit and Loss for the month and YTD and variance analysis to budget;

(b) Balance Sheet;

(c) Cash flow for the forthcoming 3 months;

(d) Aged debtors;

(e) Aged creditors;

(f) Work in progress;

## //*anything else here?*//.

## **Stalemate**

# In the event the directors are unable to reach a decision on a matter relating to the Business or management of the Trustee, any Party may by written notice to the other Parties declare that the Trustee is in deadlock and require the convening of a general meeting of shareholders (Meeting) for the sole purpose of considering the matter the subject of the deadlock.

## If the Parties attend and vote at the Meeting but fail to pass a resolution (by the required majority) in terms expressed to resolve the deadlock issue, they must appoint an independent mediator to assist in the resolution of the deadlock issue.

# **Business**

## The Parties must ensure:

### the Board considers and adopts a Business Plan for each Financial Year or part Financial Year during the Term;

### the Trustee operates the Business in accordance with each Business Plan adopted under **clause 3.1(a)**;

### the Trustee establishes and documents authorisation procedures for executing documents, cheques and contracts on its behalf and as trustee for the Trust on such terms as agreed from time to time by the Parties; and

### the Constitution is consistent with this Agreement and to the extent of any inconsistency the Parties will procure the procedural steps required to amend the Constitution are taken as soon as reasonably practicable.

# **Funding**

## The Parties must ensure the Trust has sufficient Working Capital in the Trust Fund to enable the Trustee to conduct the Business either from:

* + 1. loans in monetary or other form, by the Parties, to the Trust; or
    2. borrowings by the Trust from the Parties.

## A decision of the Trustee to meet funding requirements by any means must be by unanimous resolution of the Parties.

## Loans made in accordance with clause 4.1(b) will be made on commercial terms and conditions (including terms and conditions concerning time for repayment of Principal and Respective Proportion and the rate of Respective Proportion) as agreed by the Parties.

## If guarantees are required to be given or security is required to be provided by, or on behalf of, the Parties in respect of external borrowings then they will only be provided by the Parties in their Respective Proportions.

## Nothing in this Agreement obliges any Party to provide any guarantee or other security.

# **4A. Trust Distributions**

## The parties will be paid calendar monthly or at such other intervals agreed upon from time to time reasonable estimates during each quarterly period on account of trust distributions but if, upon calculating the amount due to that party for trust distributions during such quarterly period it is found that the money paid on account exceeds the trust distributions due then such party or parties will forthwith repay to the Trustee any excess paid.

# **Party Obligations**

## Each Party must:

* + 1. cooperate and use their best endeavours to ensure the Trustee successfully conducts the Business;
    2. not use Confidential Information, whether directly or indirectly, in a way which does or is reasonably likely to damage the Trustee, the Business or another Party;
    3. not unreasonably delay any action, approval, direction, determination or decision which is required of the Party;
    4. make approvals or decisions required of the Party in good faith and in the best interests of the Trustee and the conduct of the Business
    5. ensure that the shareholding in the Trustee and the unitholding in the Trust are held by the Parties in their Respective Proportions;

## not in anyway, without the consent of each of the other Parties Encumber their Respective Proportion or any part of it; and

* + 1. be just and faithful in the Party’s activities and dealings with the Trustee and the other Parties.

# **Capital Calls**

## *Not used*

# **Shares and Units**

## The Parties must ensure:

* + 1. Shares and Units are only allotted or transferred in accordance with this Agreement;
    2. Shares and Units are only allotted with the consent of all Parties;
    3. the Parties hold Shares and Units in their Respective Proportions; and
    4. the transfer of shares and units in accordance with the succeeding clauses are interdependent and that a transfer of units is effected simultaneously with the transfer of shares and vice versa.

## Subject to any other provision in this Agreement, a Party (**Transferor**) who wishes to transfer a Share or Shares or Unit or Units (**Specified Interest**) must first offer that Specified Interest to the remaining Parties by notifying the remaining Parties in writing of:

* + 1. intention to transfer the Specified Interest (**Offer**);
    2. the nominated price at which the Transferor is willing to transfer the Specified Interest (Nominated Price); and
    3. the date, which must not be less than 10 business days after the date on which the notice setting out the Offer is issued, by which the Offer must be accepted.

## The Parties agree that those Parties who wish to accept the Offer (**Transferees**), unless otherwise agreed, will do so in the percentages that their Respective Proportions bear to the aggregate of all of the Transferees Respective Proportions.

## If the Transferees accept the Offer:

* + 1. and the Nominated Price, the Specified Interest must be transferred to the Transferees for the Nominated Price; or

## but rejects the Nominated Price, an Independent Valuer, whose decision is binding on the Parties, will, subject to **clause 7.5**, determine a fair price for the Specified Interest (**Valuer’s Price**) and the Specified Interest must be transferred to the Transferees for the Valuer’s Price.

## In determining the Valuer’s Price in accordance with **clause 7.4**, the Independent Valuer will:

## assess the market value of the Specified Interest as at the date of the event which gave rise to the transfer;

## not take into account the value of any of the life policies listed in the Schedule;

## act as an expert and not as an arbitrator;

## be entitled to call for and receive all information and documents in the possession of any Party to this Agreement which he or she considers necessary;

## be entitled to engage valuers of land and buildings, plant and equipment as he or she sees fit;

## If the Transferees do not accept the Offer, the Transferor may only offer the Specified Interest to a third party if that offer is at the Nominated Price and on the same terms and conditions as the Offer (**Third Party Offer**). Subject to **clauses 7.1(b)** and 7.8, if the third party accepts the Third Party Offer, the Specified Interest must be transferred to the third party.

## *//Do we want an ability for a transferor to withdraw the notice if he or she is unhappy with the valuer’s price?*//

## The Directors must not register any transfer of Shares or Units unless satisfied the transferee:

### has replaced or will replace the unsecured loan funds advanced to the Trustee by the transferor which must be repaid to the Transferor on the transfer of the Shares or Units;

### is reputable and financially sound and can continue to perform the obligations of the Transferor under this Agreement; and

### executes a deed of accession in the form set out in the Schedule 1.

## In the event that the Independent Valuer is required to be engaged in accordance with this clause, the parties agree that the costs of the Independent Valuer will be shared equally between the parties involved in the transaction to which the engagement relates.

# **Majority Sale**

## If at any time a written offer (the “External Offer”) is made by a person (the “Offeror”) other than a Shareholder or an associate of a Shareholder to purchase all of the Shares in the Trustee *at a price that is equal to or in excess of the Current Market Value* and on terms and conditions which are acceptable to a majority of the Shareholders (the “Majority”) (determined at a meeting of Shareholders with votes cast according to voting rights of Shareholders), the Shareholders not in favour of accepting the External Offer (the “Minority”) have an option (the “Purchase Option”) to purchase the Shares held by the Majority at the same price and on the same terms and conditions as contained in the External Offer.

## Each Shareholder must notify the other Shareholders in writing of its acceptance or rejection of the External Offer within 21 days of receipt by that Shareholder of a copy of the External Offer. If a Shareholder has not provided written notification of acceptance or rejection to the other Shareholders within such period, then that Shareholder will be taken to have rejected the External Offer.

## A Purchase Option may be exercised by notice in writing to the Majority at any time prior to 21 days from the expiration of the period referred to in **subclause** 8.2.

## If a Purchase Option is exercised, completion of the sale will take place in accordance with the terms and conditions set out in the External Offer or on such other terms and conditions as all Shareholders may agree in writing. In such event, the Shareholders representing the Majority will transfer their Shares in the Trustee at a price and on the terms set out in the External Offer to or at the direction of the Minority.

## If a Purchase Option is not exercised by the date for exercise referred to in **subclause 8.3**, the Minority must at the written request of the Majority sell their Shares to the Offeror at the price and on the terms set out in the External Offer provided that the Majority sells their Shares to the Offeror in the same manner.

# **Option - Trigger Event**

## If a Trigger Event occurs, the Remaining Parties will be entitled to an option to either:

# buy the whole of the Outgoing Party’s Respective Proportion (**Buy Option**); or

# require the whole of the Outgoing Party’s Respective Proportion to be transferred to a person nominated by the Remaining Parties (**First Transfer Option**);

in accordance with this Agreement.

## In the event the Remaining Parties exercise the Buy Option, the Outgoing Party (or its personal legal representative) must sell its Respective Proportion to the Remaining Parties at the Valuer’s Price unless otherwise agreed between the Parties.

## In the event the Remaining Parties exercise the First Transfer Option, the Outgoing Party (or its personal legal representative) must, subject to **clause** 7.8, sell its Respective Proportion to the person or persons nominated by the Remaining Parties at the Valuer’s Price.

## If a Trigger Event occurs and the Remaining Parties do not exercise any of the options referred to in **clause** 9.1, then the Outgoing Party will be entitled to transfer their Respective Proportion in accordance with **clause** 7 above.

## If a trigger event occurs by reason of death or TPD of a Party, the outgoing party or her legal personal representative will be entitled to an option to sell to and compel the remaining partners to purchase the whole of the outgoing party’s Respective Proportion (Sell Option) in accordance with this Agreement.

## In the event that the outgoing party or her legal personal representative exercises the Sell Option the remaining parties must purchase the outgoing party’s Respective Proportion at the Valuer’s Price unless otherwise agreed between the parties.

## Notwithstanding **clause** 2.1in the event that a Trigger Event occurs with respect to a Party, the Remaining Parties will be entitled to vote to remove the Director appointed that Outgoing Party by unanimous decision of the Remaining Parties at a general meeting. That decision will bind the Outgoing Party and its nominated director.

# **Option Exercise**

## The Remaining Parties will have a period of six months from the first Trigger Event to exercise any of the options referred to in **clause** 9 (**Remaining Party’s Option Period**).

## During the Remaining Party’s Option Period, the Outgoing Party will not be entitled to sell, dispose of or encumber its interests except in accordance with this Agreement (or otherwise with the unanimous agreement of all parties to this Agreement).

## Any option referred to in **clause 9** of this Agreement will be exercised by notice in writing, delivered in person or by post to the Outgoing Party, within the Remaining Parties’ Option Period.

## Unless otherwise agreed, any option exercisable by the Remaining Parties may be exercised by any one or all of the Remaining Parties entitled to exercise that option (Exercisors).

## Unless otherwise agreed, the Exercisors will exercise any option in the percentages that their Respective Proportions bear to the aggregate of all of the Exercisors’ Respective Proportions.

## If the Remaining Parties exercise an option then any liability to pay money under this Agreement to the Outgoing Party will be several and in the proportions so determined under **clause 10.5**.

## Any amount payable under this Agreement in respect of the Buy Option or First Transfer Option will be paid within 2 months of the exercise of that option or such other time as the parties agree upon and confirm in writing.

## in the event of death or TPD of Robert or Geoff, the Outgoing Party or her personal legal representative must exercise the sell option referred to in **clause 9.5** no later than:

# 60 days following the event of death or TPD; or

# in the event of an illness causing the total and permanent disability of the outgoing party within sixty (60) days of service of a written notice to the Remaining Parties that the outgoing party is totally and permanently disabled attaching a certificate from a registered medical practitioner certifying that the outgoing party is totally and permanently disabled within the meaning of that phrase as defined in this Agreement.(TPD Notice). *(Outgoing party’s option period)*

## The Sell Option will be exercised by notice in writing to the Remaining Parties within the relevant Outgoing Party’s option period specified in **clause 10.8**.

## The amount payable under this Agreement in respect of the Sell Option will be paid within two months of the exercise of that option or such other time as the parties agree upon and confirm in writing.

# **Purchase price where monies payable under insurance policies**

* + 1. Not used

# **Interest payable on default**

If any Party defaults in the payment of any amount payable under this Agreement it will pay interest on such amounts as are owing at the Interest Rate.

# **Transfer**

## On payment of the price payable under this Agreement in respect of the transfer of a Party’s Shares or Units, as the case may be, the Outgoing Party will execute all documents, do all things and exercise all powers to give effect to the sale and this Agreement and will resign all offices it holds in the Trustee.

## A transfer of Shares or Units in accordance with this Agreement will result in a corresponding adjustment of the Parties’ Respective Proportions.

# **Discharge of debts, securities and guarantees**

## If, at the time of the valid transfer or disposal of a Party’s whole Respective Proportion:

* + 1. monies are due and owing by the Trustee to that Party, the Trustee will pay all monies owing to the Outgoing Party at the same time as the purchase price is payable (if one is payable) or within 30 days of the disposal, whichever occurs first;
    2. that Party has Encumbered or given up any of its property to secure past, present or future borrowings of the Trustee, the Trustee will forthwith cause such property to be released from any such security;
    3. that Party has executed any guarantee for the payment of any liability by the Trustee, the Trustee and the Remaining Parties will use their best endeavours to cause that Party to be released from such guarantee. Pending such a release the Trustee and the Remaining Party will jointly and severally indemnify the Outgoing Party in respect of any liability arising out of such guarantee;
    4. monies are due and owing by that Party to the Trustee, the Outgoing Party authorises the Remaining Parties to apply such part of any purchase price payable to that Party as is required to discharge the debt; or
    5. monies are owing by that Party to the Trustee, that Party authorises the Remaining Parties to collect, on behalf of that Party such part of the proceeds of any of the life insurance policies in the name of or for the benefit of that Party listed in the Schedule as is required to discharge the debt.

# **Irrevocable Power of Attorney**

## Each Party appoints the other Parties as its attorney under irrevocable Power of Attorney granted for valuable consideration with authority limited to the following circumstances:

* + 1. where a Buy Option or First Transfer Option is exercised and the Outgoing Party (whether through default or a Trigger Event occurring in relation to that Party within a reasonable time, fails to execute any document or do any act to give effect to this Agreement; then
    2. the Remaining Parties or any one of them may execute any document and do any act in the name of the Outgoing Party to give effect to this Agreement save that no authority is given to vary the provisions of this Agreement, or make any agreement under any clause of this Agreement requiring agreement between the Parties.

# **Payment to Outgoing Party in certain circumstances**

## If a Trigger Event has occurred and any of the Options in this Agreement are exercised by the Remaining Parties, and:

* + 1. no legal personal representative of the Outgoing Party has been appointed, or there is any doubt as to the identity of the Outgoing Party’s legal personal representative or whereabouts of the Outgoing Party; and
    2. monies are payable to the Outgoing Party as a result of the exercise of the options,

the Remaining Parties may cause the purchase price payable to be paid to an accountant or solicitor nominated by the Remaining Parties to be held on trust for the Outgoing Party. The provisions of this clause will not affect or diminish the appointment of the Remaining Parties as the attorney of the Outgoing Party as set out in **clause** 15 of this Agreement.

# **Outgoing Party competing with the Trustee**

## *Not used.*

# **Default**

## A Party will be in default under this Agreement if:

* + 1. that Party transfers all or any of its Shares or Units except in accordance with this Agreement;
    2. that Party commits an irremediable breach of this Agreement;
    3. that Party continues to breach any obligation under this Agreement (other than an irremediable breach) for 30 days after receiving notice from another Party of that breach;
    4. if that Party is a corporation, it becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth); or
    5. if that Party is an individual, that Party becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the Bankruptcy Act, 1966.

## If a Party is in default of its obligations under this Agreement as described in clause 18.1, then that Party is deemed to have offered to transfer all Shares and Units held by that Party to the other Party, on the date on which the relevant event occurred, in accordance with clause 7 and the other Party may treat the offer in accordance with clause 7.

## If a Party has to, or elects to, make a payment to the Trustee as a result of another Party not performing an obligation under this Agreement, then that payment will be treated as a loan to the Trustee and be governed by the provisions of **clause** 4.3.

# **Termination**

## This Agreement will be terminated:

* + 1. on the date mutually agreed in writing by the Parties;
    2. on the date when the Trustee or the Trust is wound up by an order from a court;
    3. for a Party, when it ceases to hold Shares or Units; or
    4. when one Party holds all of the Shares and Units.

## Termination of this Agreement will not prejudice any accrued rights or liabilities of a Party.

# **Indemnity**

## Each Party (**Indemnifying Party**) must indemnify, and keep indemnified at all times, the other (**Indemnified Party**) against any Claim incurred by the Indemnified Party arising directly or indirectly from:

* + 1. any breach of this Agreement by the Indemnifying Party;
    2. any willful, unlawful or negligent act or omission of the Indemnifying Party, its officers or employees; or
    3. any claim by any officer, employee, agent or contractor of the Indemnifying Party which is made on the basis of the relationship of employer and employee.

## The Indemnifying Party’s liability under clause 20.1 is reduced to the extent an act or omission of the Indemnified Party, its officers, employees, agents or contractors may have contributed to the injury, damage or loss.

## Clauses 20.1 and 20.2 survive expiry or termination of this Agreement. The Parties must ensure the Trustee takes out and maintains during the Term, and for a period of 3 years following expiry of the Term, public liability insurance of $20 million per occurrence, and, on request, provide to the other Parties, the certificates of currency for those insurances.

# **Restrictions**

## The Parties must not use or divulge Confidential Information, whether directly or indirectly, to any third party unless:

* + 1. to the solicitor, auditor, accountant or other professional advisor of the Party;
    2. compelled to do so by law; or
    3. that Party has the prior written consent of the affected Party (if the Confidential Information relates to a Party or Parties) or each Party (if the Confidential Information relates to the Trustee),

## and the Parties must take all reasonable precautions necessary to maintain the secrecy and confidentiality and to prevent the disclosure of the Confidential Information.

## Any pre-existing Intellectual Property Rights owned by or vested in the Parties before the date of this Agreement, will remain vested in the respective Parties.

## Any Intellectual Property Rights either created by the Trustee, or by any of the Parties for use by the Trustee, will vest in and be owned by the Trustee.

## A Party may consent to the Trustee making use of its pre-existing Intellectual Property Rights on whatever conditions that Party thinks fit.

## The Parties must not compete with the Trustee in any way during the term.

# **Liability**

## The Parties agree:

* + 1. the rights, duties and obligations of the Parties under this Agreement are several and not joint or joint and several;
    2. nothing in this Agreement will constitute a Party as the partner, agent, employee or representative of another Party;
    3. a Party has no power to incur obligations on behalf of, or pledge the credit of, another Party in any manner whatever; and
    4. except as specifically provided in this Agreement, a Party has no authority to act for, or to create, or assume, any responsibility or obligation for, another Party or the Trustee.

## Any liability incurred by a Party as a result of:

* + 1. this Agreement;
    2. the transactions contemplated by this Agreement; or
    3. Action by the Trustee,

will be shared between the Parties in their Respective Proportions and each of the Parties irrevocably and unconditionally indemnifies, to the extent of that Party’s Respective Proportion, the other Parties against that liability.

# **Resolution of Disputes**

## A Party may not commence any court or arbitration proceedings relating to a dispute unless it complies with this clause except where the Party seeks urgent interlocutory relief.

## Party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other Parties to this contract specifying the nature of the dispute.

## On receipt of that notice by that other Party, the Parties must endeavor in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.

## If the Parties do not agree within 7 days of receipt of the notice (or further period agreed in writing by them) as to:

### the dispute resolution technique and procedures to be adopted;

### the timetable for all steps in those procedures; and

### the selection and compensation of the independent person required for such technique,

the Parties must settle the dispute by mediation by the Australian Commercial Dispute Centre.

## If the dispute is not resolved within 42 days after notice is given under clause 23.2 then any Party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.

## The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute concerned. No Party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute concerned.

# **General**

## Rights arising out of or under this Agreement may be assigned by a Party with the prior written consent of the other Parties, such consent not to be unreasonably withheld.

## This Agreement may only be amended or supplemented in writing, signed by the parties.

## All notices, consents, requests, demands and approvals given under this Agreement must be in writing and given by personal service, pre-paid postage or facsimile transmission at the addresses of the Parties set out in this Agreement or to the address designated by a Party by written notice. Any notice sent by post is deemed to have been received by the Party to whom it is addressed on the day which it would have been delivered in the normal course of post.

## This Agreement together with all schedules and annexures attached is the full and entire understanding and agreement between the Parties with respect to its subject matter and all matters arising in connection with it and supersedes all prior negotiations, commitments and understandings, verbal or written issued by any of the Parties.

## Each party must do, sign, execute and deliver and must ensure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

## Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

## This Agreement will be governed by the laws in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of that State and any courts competent to hear appeals from those courts.

**Schedule 1** Deed of Accession

**DATED**

**BY** of (**Acceding Party**).

**RECITALS**

This Deed is supplemental to a Unitholders and Shareholders Agreement between **//INSERT NAME OF PARTY//** and **//INSERT NAME OF PARTY//** dated //date// (**Unitholders and Shareholders Agreement**).

**IT IS AGREED**

1. The Acceding Party confirms it has been supplied with a copy of the Unitholders and Shareholders Agreement and covenants with all present Parties (whether original or by accession) to observe, perform and be bound by all the terms of the Unitholders and Shareholders Agreement to the intent and effect the Acceding Party will be deemed with effect from the date on which the Acceding Party is registered as a member of the Trustee and Unitholder of the Trust to be a party to the Unitholders and Shareholders Agreement.

2. The Acceding Party represents and warrants to the Parties that it is a Trustee duly incorporated and validly existing under the laws of the country of its incorporation/natural person of full capacity and has all requisite powers to own property and has the necessary power to bind itself in the manner contemplated by this Deed and to execute, deliver and perform this Deed and to become bound thereby.

3. The address of the Acceding Party Agreement is as follows:

4. This Deed is governed and construed in accordance with the laws of the State of New South Wales.

**EXECUTED** as a Deed.

**EXECUTED BY** )

)

Name of Acceding Party )

in the presence of: )

Signature of Acceding Party

Witness

Print Name

**EXECUTED** as an Agreement.

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by Deakin Medical Services Pty Ltd ACN 669 215 856 as trustee for the Medical Service Trust by its authorised officers pursuant to Section 127 of the *Corporations Act* 2001 | )  )  ) |  |
| Director/Secretary |  | Director |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by Robert S Schmidli Pty Limited ACN 092 948 617 as trustee for The Schmidli Family Trust by its authorised officers pursuant to Section 127 of the *Corporations Act* 2001 | )  )  ) |  |
| Director/Secretary |  | Director |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by GAAN Pty Limited ACN 668 513 933 as trustee for The Gaan Family Trust by its authorised officers pursuant to Section 127 of the *Corporations Act* 2001 | )  )  ) |  |
| Director/Secretary |  | Director |

|  |  |  |
| --- | --- | --- |
| Signed by **Robert Scott Schmidli** in the presence of: |  |  |
| Signature of witness |  | Signature of **Robert Scott Schmidli** |
| Name of witness (print) |  |  |

|  |  |  |
| --- | --- | --- |
| Signed by **Geoffrey David Peters** in the presence of: |  |  |
| Signature of witness |  | Signature of **Geoffrey David Peters** |
| Name of witness (print) |  |  |