

[REDACTED]

**Insert Access Point Name**

Dear Sir/Madam,

### **NDSS Access Point Agreement**

The Commonwealth of Australia (“**Commonwealth**”) established the National Diabetes Services Scheme (“**Scheme**”) in 1987.

Diabetes Australia administers the Scheme under an agreement with the Commonwealth for the period 1 July 2011 to 30 June 2016.

Under the NDSS Head Agreement, the terminology for pharmacies and other health service organisations appointed for Scheme purposes has been changed from Sub Agents to Access Points.

Diabetes Australia has appointed **Insert Agent Name** (“**us, we, our**”) as the State/Territory Agent to perform certain functions in relation to the Scheme.

We are pleased to engage **Insert Access Point Name** (“**you, your**”) on a non-exclusive basis as an NDSS Access Point to perform the Scheme Functions described below at the Location on the following terms.

<b>1. Duration</b>	This agreement commences from the date of execution and expires on <u>30 June 2016</u> .
<b>2. Location</b>	[REDACTED]. Scheme Functions are not permitted to be performed other than at this Location without our prior written consent.
<b>3. Scheme Functions</b>	<p>You must comply with, and ensure your employees, officers, subcontractors and agents comply with:</p> <ul style="list-style-type: none"><li>• the terms set out in the annexures to this letter;</li><li>• the Access Point Guidelines;</li><li>• the obligations set out in Annexure 5 of this agreement;</li><li>• the Procedure Manuals, and any other processes and documents relating to procedures as notified and reasonably requested by us or Diabetes Australia; and</li><li>• all our reasonable requests relating to the Scheme and the Scheme Functions.</li></ul> <p>You must also:</p> <ul style="list-style-type: none"><li>• <b>relationship:</b> participate in, and co-operate to achieve, effective and efficient relationships to provide high quality and professional services to Registrants;</li><li>• <b>Scheme promotion:</b> participate in national programs for promotion of the Scheme run by us or Diabetes Australia; and</li><li>• <b>reputation:</b> not act adversely to affect the reputation of us, Diabetes Australia, the Commonwealth or the Scheme.</li></ul>

<b>3A. Assistance with Scheme</b>	<p>You will be invited to OR will be given opportunity to participate in:</p> <ul style="list-style-type: none"> <li>• <b>Scheme evaluations:</b> participate in Scheme evaluations by us or Diabetes Australia;</li> <li>• <b>reviews:</b> provide information and access relevant to your Access Point as reasonably requested for us or Diabetes Australia to undertake Reviews conducted within the Scheme, and assist us to implement any recommendation arising from a Review; and</li> <li>• <b>meetings:</b> attend meetings if reasonably requested by us or Diabetes Australia.</li> </ul> <p>It is not anticipated that these obligations will require regular or onerous participation by you.</p>
<b>4. Our obligations</b>	<p>We will comply with, and ensure our employees, officers, subcontractors and agents comply with:</p> <ul style="list-style-type: none"> <li>• the terms set out in the annexures to this letter;</li> <li>• the Access Point Guidelines; and</li> <li>• the obligations set out in item 1.5 of Annexure 5 of this agreement.</li> </ul>
<b>5. Insurance</b>	<p>You warrant that you have taken out, and will maintain for the duration of this agreement (and, for 'claims made' insurance, for 7 years after the end of this agreement) professional indemnity, public liability, workers compensation as required by law and property insurance in relation to your obligations under this agreement. You must, on request, promptly provide to us any relevant insurance policies or certificates of currency for inspection. This obligation survives termination or expiry of this agreement.</p>
<b>6. Remuneration</b>	<p>No remuneration will be received for performance of the Scheme Functions under this agreement or otherwise.</p>
<b>7. Additional terms</b>	<p>You acknowledge by signing this letter that you are the Owner or Proprietor of the Access Point and have the authority to bind the Access Point to the terms set out in this letter and its annexures.</p>
<b>8. Governing law</b>	<p>[Insert relevant State or Territory]</p>

If these terms are acceptable, please return:

- a signed copy of this letter;
- a signed copy of the attached Privacy Obligation Declaration;
- a copy of your Business Registration; and
- evidence of your approved Pharmaceutical Benefits Scheme supplier status including PBS Approval number and location

If you have any queries, please do not hesitate to contact [REDACTED].

Yours sincerely

[REDACTED]

**EXECUTED** as an agreement by [Access Point]

on:

[Date of agreement]

by:

[Name of owner/proprietor]

[Signature of owner/proprietor]

[Business Name]

[ABN]

[Trading Name (if different)]

Phone number:

Fax number:

Email:

## Annexure 1 - Privacy Obligation Declaration



### PRIVACY OBLIGATION DECLARATION

Acknowledgment of the National Diabetes Services Scheme (**NDSS**) database confidentiality and privacy obligations. To be signed by the Access Point Owner or Proprietor.

#### Privacy Obligation Declaration

I .....acknowledge that during the course of my duties:

- (a) I will have access to the National Diabetes Services Scheme database (NDSS database); and
- (b) the NDSS database contains registrant private medical records and other personal information.

I undertake to:

- (c) protect the contents of the NDSS database and the confidentiality of my user name and password;
- (d) observe the National Privacy Principles as set out in the Privacy Act 1988 (Cth);
- (e) not do an act or engage in a practice that would breach an Information Privacy Principle if done or engaged in by an agency; and
- (f) ensure that all of my employees with access to the NDSS database comply with clauses (c), (d) and (e) above.

I understand that these obligations will apply both during the course of my Access Point relationship, and after the cessation of my Access Point relationship with the relevant Agent organisation.

Access Point Code:

Access Point Name:

Obligations outlined to Access Point personnel:  please tick

Access Point Owner/Proprietor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Annexure 2 - Terms for Access Points

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### 1 No Agency

- (a) You are not our agent, or the agent of Diabetes Australia or the Commonwealth.
- (b) You must not, and you must ensure your employees, agents, partners and contractors do not, act or purport to act as our agent or the agent of, Diabetes Australia or the Commonwealth.

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### 2 NDSS Materials, Brands and other documentation

#### 2.1 Ownership and use of NDSS Materials

Ownership of NDSS Materials and all rights in relation to them remains with us, Diabetes Australia or the Commonwealth, as appropriate.

#### 2.2 Signage and other display materials

- (a) The NDSS Material we provide you may include signage and other display materials, which you must use exclusively to promote the Scheme.
- (b) You must display and promote the Scheme in a manner that complies with the Scheme Brand Usage and Style Guidelines.
- (c) The material may include the Scheme Brand, the Diabetes Australia Brand and Agent Brands ("**Brands**"). We grant you a non-exclusive, royalty-free, non-transferable sub-licence to use the Brands at the Location, in relation to the provision of Scheme goods and services.
- (d) You must ensure that you, your officers, employee's subcontractors and agents, comply with all reasonable directions from us or Diabetes Australia in relation to use of the Brands.
- (e) If Diabetes Australia proposes to change the Brand at any time, we will give no less than 40 Business Days written notice to you providing details of the trade marks comprising the new brand. With effect from the end of the 40 Business Day period:
  - (i) you must use the new brand instead of the old brand for the purposes of clause 2.2; and
  - (ii) the new marks will be taken to have replaced the old marks in **Annexure 3**.
- (f) In the event that you receive a written notice under clause 2.2(e) of Annexure 2, Diabetes Australia may provide you with NDSS Materials displaying the new brand to replace any NDSS Materials displaying the old Brand.
- (g) This clause 2.2 survives the expiry or early termination of this agreement for a period of 7 years.

### **2.3 Intellectual property**

- (a) You must obtain all necessary or prudent copyright and other intellectual property rights permissions before using third party material as part of the Scheme.
- (b) You warrant that anything done or omitted by you in the course of the Scheme Functions will not infringe the intellectual property rights or moral rights of any person.
- (c) You must ensure that all NDSS Material is used in accordance with any conditions or restrictions specified by us.
- (d) On termination or expiry of this agreement, you must promptly deliver a complete copy of the NDSS Material to us, or deal with it as otherwise directed by us promptly on receipt of such a direction from us.

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### **3 Application of terms in the Head Agreement**

Clause 28 (Freedom of Information) in the Head Agreement apply with all the necessary changes as between us and you.

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### **4 Confidentiality**

#### **4.1 Confidentiality**

- (a) Subject to clause 4.1(b) you must not disclose any Confidential Information without prior approval in writing from us.
- (b) Subject to your privacy obligations (including under clause 5) you may disclose Confidential Information to a person who has a need to know the information for the purposes of you performing your obligations under this agreement.
- (c) We may impose any conditions we consider appropriate when giving our approval under clause 4.1(a) and you agree to comply with those conditions.
- (d) We may at any time by notice in writing to you require you to give, and to arrange for your employees to give, written undertakings, in a form required by us, relating to the non-disclosure of Confidential Information.
- (e) If you receive a request under clause 4.1(d), you must promptly arrange for all such undertakings to be given.
- (f) The obligations on you under this clause 4 will not be taken to have been breached where the information referred to is required by Law to be disclosed.
- (g) Subject to clause 4.1(b), we will use our best endeavours to ensure the confidentiality of your confidential information. You acknowledge that we may disclose any information relevant to this agreement, or this agreement itself, to any person:
  - (i) if the information is in the public domain;
  - (ii) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
  - (iii) if required in connection with legal proceedings; or

for public accountability reasons, including requests by the Commonwealth for information by Government Agencies, Parliament or a Parliamentary Committee or a Commonwealth Minister.

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## 5 Privacy

### 5.1 Statutory requirements

You must comply with the provisions of section 135A of the *National Health Act 1953* as if you were an “officer” as defined by that section, and as if the Scheme was a function exercised by you under that Act. Broadly, section 135A relates to the obligation to observe secrecy and prohibits the release of a person’s personal information without that person’s consent.

### 5.2 Undertakings

You must sign and return the Privacy Obligation Declaration set out in Annexure 1 and return it with this agreement.

### 5.3 Protection of Personal Information

This clause 5.3 applies only where you deal with Personal Information when, and for the purpose of, performing this agreement.

You acknowledge that you may be treated as a contracted service provider for the purposes of the *Privacy Act 1988* (Cth) and agree in respect of performing this agreement:

- (a) to use or disclose Personal Information obtained during the course of performing this agreement only for the purposes of this agreement;
- (b) not to do any act or engage in any practice which if done or engaged in by an agency would be a breach of an IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if you were an agency;
- (d) to notify individuals whose Personal Information you hold that complaints about your acts or practices may be investigated by the Information Commissioner, the Privacy Commissioner and the Freedom of Information Commissioner who have power to award compensation against you in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP or an APC, where that section, NPP or APC is applicable to you, unless:
  - (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, for the performance of this agreement; or
  - (ii) in the case of an NPP or an APC, the activity or practice is authorised by this agreement and engaged in for the purpose of performing this agreement, and the activity or practice is inconsistent with the NPP or APC;
- (f) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this agreement (if any) that are inconsistent with an NPP or an APC binding on a party);
- (g) to immediately notify us if you become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 5, whether by you or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Information Commissioner, the Privacy Commissioner and the Freedom of Information Commissioner to the extent that they are not inconsistent with the requirements of this clause 5; and
- (i) to ensure that any of your employees who are required to deal with Personal Information for the purposes of this agreement are made aware of your obligations as specified in this clause 5.

- 5.4 You must ensure that any subcontract entered into for the purpose of fulfilling your obligations under this agreement imposes on the subcontractor the same obligations as you have under this clause 5, including the requirement in relation to subcontracts.
- 5.5 We may at any time by notice in writing to you requiring you to give, and to arrange for your employees to give, undertakings in writing, in a form required by us but consistent with your obligations under this agreement, relating to the non-disclosure of Personal Information.
- 5.6 If you receive a request under clause 5.5, you must promptly arrange for all such undertakings to be given.
- 5.7 You indemnify us from and against all actions, claims, demands, loss, liability, damage, costs and expenses (including the costs of defending or settling any action, claim or demand) made, brought or prosecuted against, or sustained by, us which arise directly or indirectly from a breach of any of your obligations under this clause 5 or of a subcontractor. Your liability to indemnify us under this clause 5.7 will be reduced proportionately to the extent that any unlawful or negligent act or omission of us or Diabetes Australia (or ours or their officers, employees, agents or contractors) contributed to the relevant loss, liability, damage, cost or expense.
- 5.8 Notwithstanding any other provision in this clause 5, where you provide a health service to an individual you must:
- (a) comply with the NPPs in relation to the use and disclosure of health information about the individual; and
  - (b) transfer health information to another health service provider when directed to do so by us and where such transfer and disclosure is permitted by the NPPs.
- 5.9 You:
- (a) acknowledge that the Commonwealth's lawful functions necessarily include the prevention, detection, investigation and prosecution of fraud including fraud in relation to payments made pursuant to Medicare Australia's functions; and
  - (b) agree to co-operate to the maximum extent practicable with us and relevant Commonwealth officials in preventing, detecting, investigating and prosecuting, including use and disclosure of personal information as permitted by the Privacy Act generally and NPP 2.1(f) in particular.
- 5.10 Your obligations under this clause 5, are in addition to, and do not restrict, any obligations you may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to you but for the application of this clause 5.
- 5.11 In this clause 5, the terms:
- (a) agency;
  - (b) approved privacy code (APC);
  - (c) contracted service provider;
  - (d) Information Privacy Principles (IPPs);
  - (e) National Privacy Principles (NPPs);
  - (f) health service; and
  - (g) health information;
- have the same meaning as they have in section 6 of the Privacy Act and 'subcontract' and other grammatical forms of that word have the meaning given in subsection 95B(4) of that Act.

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**6 Access**

You must give us, Diabetes Australia and their authorised representatives (who may be representatives of the Commonwealth), within a reasonable time after we give you written notice, (except in the case of a request for access by the Commonwealth or by us where we suspect, acting reasonably, that you are in breach of this agreement. In either case prior notice will not be required) access to the premises and to the location where your records, NDSS Materials and other Materials associated with this agreement and any Products, are stored or work connected with the Scheme Functions is undertaken, to inspect and copy those records, NDSS Materials or other Materials, make available personnel to help locate and explain records.

We will use our best endeavours to ensure that when you provide access under this clause 6 we, Diabetes Australia and any authorised representatives will cause as little disruption and inconvenience to your business as is reasonably practicable in the circumstances.

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**7 GST**

The parties have entered into this agreement on the basis that no taxable supplies are made by either of them to the other under this agreement.

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**8 Indemnities****8.1 Proportionate liability**

To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against you under or in connection with this agreement.

**8.2 Indemnity**

You indemnify us, Diabetes Australia, the Commonwealth, its officers, employees and agents ('those indemnified') from and against all actions, claims, demands, loss, liability, damage, costs and expenses (including the costs of defending or settling any action, claim or demand) made, brought or prosecuted against, or sustained by, those indemnified in any manner based on any loss or damage to any person or loss or damage to property which may arise in connection with:

- (a) any act or omission by you or your employees that constitutes a breach of the professional duty owed by you or your employees, or subcontractor, or agent, in the course of providing services (including the provision of information and advice) which you are empowered to provide by virtue of your registration as a pharmacist; and
- (b) your occupancy of the business premises from which you perform the Scheme Functions.

Your liability to indemnify any of those indemnified under this clause 8.2 will be reduced proportionately to the extent that any unlawful or negligent act or omission of any of those indemnified any of those indemnified contributed to the relevant loss, liability, damage, cost or expense.

The right of any of those indemnified to be indemnified under this clause 8.2:

- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law;
- (b) does not entitle any of those indemnified to be compensated in excess of the amount of the relevant loss, liability, damage, cost or expense; and
- (c) does not apply to the extent that a third party claim arises from defective products supplied under the Scheme.

### 8.3 Agency

You agree that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of those indemnified from time to time, and may exercise rights under clause 8.2 for the benefit of those individuals.

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## 9 Assignment and novation

### 9.1 Assignment and novation by you

Except as provided for in clause 9, you must not assign, novate or otherwise deal with or attempt to assign, novate or otherwise dispose of or deal with this agreement or any right under it or in relation to the Scheme Functions generally without our prior written consent.

### 9.2 Assignment or novation by us

In the event that Diabetes Australia elects to take over our obligations under this agreement, you must continue to perform your obligations under this agreement and the Scheme Functions on the same terms as this agreement in favour of Diabetes Australia.

### 9.3 Change in Control

If you undergo a Change in Control, you must give us written notice within 10 Business Days of the Change of Control occurring.

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## 10 Termination

### 10.1 Termination

This agreement may be terminated in accordance with this clause 10 or following the process set out in the Access Point Guidelines.

### 10.2 When we may terminate this agreement

- (a) **Termination due to termination of the Head Agreement and/or the Agency Agreement:** this agreement immediately by written notice if the Head Agreement and/ or the Agency Agreement are or is terminated for any reason without incurring liability in respect of that termination (including if the Head Agreement or the Agency Agreement was terminated as a result of our default); or
- (b) **Termination for breach:** this agreement immediately by written notice to you if:
  - (i) you are or become Insolvent (or we reasonably believe you are likely to become Insolvent); or
  - (ii) you breach this agreement, or we reasonably believe you have breached this agreement, and you fail to remedy the breach within 9 Business Days of receiving a notice from us identifying the breach and requesting you to do so.

### 10.3 Termination for convenience

A party ("**terminating party**") may terminate this agreement at any time for any reason (whether or not the other party is in breach of this agreement) by giving the other party at least 60 Business Days written notice.

### 10.4 Costs of termination for convenience

If this agreement is terminated in accordance with clause 10.3, the terminating party must pay for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the other party which are directly attributable to the termination, which the other party must take all reasonable steps to minimise. Otherwise, the terminating party will incur no liability in respect of that termination.

## 10.5 Obligations on expiry or termination

On the expiry or termination of this agreement, you must:

- (a) stop performing Scheme Functions;
- (b) stop representing that you are performing Scheme Functions, or that you are associated with the Scheme, us, or Diabetes Australia;
- (c) stop using NDSS Materials, including the Scheme Brand, and the Agent Brand;
- (d) return to us all Materials related to the Scheme, including NDSS Materials and any copies of the Procedures Manuals; and
- (e) account for and promptly remit Registrant Contributions to us, in accordance with the Access Point Guidelines and Procedure Manuals and our directions.

## 10.6 Survival

Clauses 2, 3, 4, 5, 6 and 8 survive the expiration or termination of this agreement for any reason.

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## 11 General

### 11.1 Warranties

You represent, warrant and undertake to us that:

- (a) you are not aware of any matters relating to your commercial, technical or financial capacity including the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon you, being matters that could have material adverse effect on your ability to perform any of your obligations under this agreement;
- (b) you will promptly notify and fully disclose to us in writing any event or occurrence actual or threatened arising during the duration of this agreement which could have a material adverse effect on your ability to perform any of your obligations under this agreement;
- (c) you have full power and authority to enter into, perform and observe your obligations under this agreement;
- (d) the execution, delivery and performance of this agreement has been duly and validly authorised by you;
- (e) you will immediately notify and fully disclose to us in writing if you become insolvent;
- (f) the execution and delivery of, and compliance with your obligations under this agreement do not:
  - (i) contravene any law to which it or any of its property is subject or any order or directive from a government or governmental body, authority or agency binding on it or any of its property;
  - (ii) contravene your constituent documents;
  - (iii) contravene any agreement or instrument to which you are a party;
  - (iv) contravene any obligation of yours to any other person;
  - (v) require you to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery; or

- (vi) constitute a material default under any contract which relates in any way to the performance of the Scheme by which you or any of your assets are bound;
- (g) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against you which could have a material adverse effect upon either your capacity to perform your obligations under this agreement or your reputation;
- (h) unless otherwise disclosed in this agreement, you are not entering into this agreement as trustee of any trust or settlement;
- (i) you have not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
- (j) you have had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Commonwealth or any Government Agency;
- (k) you have, and will continue to have and to use, the skills, qualifications and experience, to perform the Scheme Functions to a standard that complies with this agreement;
- (l) you have and will continue to have the necessary resources, including financial resources, to perform the Scheme Functions and will use those resources to perform the Scheme Functions;
- (m) you are not named as non-compliant with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth); and
- (n) you will comply with all Laws.

#### **11.2 Conflicts**

If a Conflict arises, you must immediately notify us of the full details of the Conflict, and promptly take such steps as we require to resolve the Conflict.

#### **11.3 Governing law**

This agreement is governed by the law in force in the State or Territory referred to in Item 8 of the covering letter and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

#### **11.4 Reserve power**

You acknowledge that while ordinarily all of your dealings in relation to this agreement will be with us, from time to time, Diabetes Australia may require that you deal directly with it to assist it comply with any directions from the Commonwealth and with the terms of the Head Agreement. You must comply with any such requirement.

#### **11.5 Separate obligation**

Each indemnity under this agreement is a continuing and separate obligation that survives this agreement until satisfied in full.

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## 12 Interpretation

### 12.1 Definitions

In this agreement unless the contrary intention appears, all capitalised words have the same meaning as given under the Head Agreement.

These words have the following meanings in this agreement:

**Access Point Guidelines** are the guidelines developed, updated or issued to Access Points through the Agreement Period that govern the administration of Scheme Access Points

**Agency Agreement** means the agreement between Diabetes Australia and us to provide services under the Scheme.

**Agent Brand** means any Agent trade marks and brands specified as Agent trade marks, or any other trade marks and brand nominated by the Agent from time to time.

**Agent Trade Mark** means any Agent trade marks nominated by the Agent from time to time.

**Business Day** means a day other than a Saturday, Sunday or Public Holiday in the place set out in Item 8 of the covering letter to this agreement.

**Change in control** means a change of possession, directly or indirectly, of the power whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly to:

- (a) control more than 40% of the membership of the board of directors of that corporation; or
- (b) control more than 40% of its voting shares; or
- (c) direct or cause the direction of the management and policies of the corporation.

**Commonwealth Trade Mark** means Australian registered trade mark number 1108790.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) in the case of information provided by the Commonwealth, Diabetes Australia or us, is designated by the Commonwealth, Diabetes Australia or us as being confidential; or
- (c) you know or ought to know is confidential.

but does not include information which:

- (d) is or becomes public knowledge, other than by breach of this agreement;
- (e) is in your possession without restriction in relation to disclosure before the date of receipt from us or Diabetes Australia; or
- (f) has been independently developed or acquired by you.

**Diabetes Australia Brand** means the Diabetes Australia trade marks and brands specified in **Annexure 3** as Diabetes Australia trade marks, or any other trade marks and brands nominated by Diabetes Australia from time to time.

**Diabetes Australia Trade Mark** means the trade marks specified in **Annexure 3**, except for the Commonwealth Trade Mark.

**Head Agreement** means the agreement between the Commonwealth and Diabetes Australia dated 30 June 2011, as amended from time to time. The current version of the Head Agreement is available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/health-pbs-healthpro-supply-ndss.htm#2011-16>

**Insolvent** means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the Corporations Act), or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any assignment of its estate for the benefit of creditors, arrangement, or composition protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or becoming subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to the supervision of a court or regulatory authority either voluntarily or otherwise or suffering any execution against its assets having adverse effect on its ability to perform this agreement or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

**NDSS Material** means Commonwealth Material and Scheme Material (as defined in the Head Agreement).

**NDSS Trade Marks** means the Commonwealth Trade Mark and the Diabetes Australia Trade Marks.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Procedure Manuals** means the documents nominated by Diabetes Australia as the Procedure Manuals in relation to the Scheme, and as amended from time to time.

**Review** means any review in relation to the Scheme, notified by Diabetes Australia or us from time to time.

**Scheme Brand** means the Scheme-related trade marks and brands specified in **Annexure 3** as NDSS Trade Marks, or any other trade marks and brands nominated by Diabetes Australia from time to time.

**Scheme Materials** means all material approved by us, or Diabetes Australia or the Commonwealth brought into existence for the purpose of performing the Scheme, to be used in relation to the Scheme and which are provided to you under this agreement, including pamphlets, brochures, information or any other Material, but not including Products.

**Trade Marks** means Agent Trade Marks and NDSS Trade Marks.

## Annexure 3 - Agent Trade Marks

### Agent Trade Marks

Type of trade mark	Trade mark
	[To be completed by the Agent]

**NDSS Trade Marks**

Type of trade mark	Trade mark
Word Marks	national diabetes services scheme™
	
Device and Composite Marks	
Word Marks	DIABETES AUSTRALIA™
Device and Composite Marks	
	
	

## Annexure 4 - Sub-licence Terms

### 1.1 Permitted use and quality control

You agree:

- (a) that you will:
  - (i) only use the Brands in relation to the provision of Scheme-related goods and services at the Location and on the terms of the agreement and this sub-licence;
  - (ii) only use the Trade Marks for the purposes of the Scheme for the duration of this agreement or in respect of goods and services used in the Scheme on the terms of the agreement and this sub-licence;
  - (iii) comply with the Scheme Brand Usage and Style Guidelines and all standards and requirements provided by us from time to time;
  - (iv) comply with the Access Point Guidelines, Procedure Manuals, and any other direction or document reasonably provided by us or Diabetes Australia;
  - (v) not sub-licence or assign any of your rights in relation to the Trade Marks under the agreement or this sub-licence;
  - (vi) not apply the Trade Marks to any goods, fixtures (including, without limitation, shop fittings and awnings) or promotional material, without the prior written approval of Diabetes Australia which it may withhold at its absolute discretion; and
  - (vii) comply with all applicable laws, including all applicable safety, product liability and industry requirements; and
- (b) to do everything reasonable necessary to allow us or Diabetes Australia to inspect as required the goods or services in respect of which you are applying the Trade Marks; and
- (c) that the rights granted under this sub-licence are non-exclusive.

### 1.2 Ownership and Goodwill in Diabetes Australia Trade Marks

You recognise the value of the goodwill and reputation in the Diabetes Australia Trade Marks and acknowledge that:

- (a) the Diabetes Australia Trade Marks are owned by Diabetes Australia;
- (b) the benefit of all existing goodwill in the Diabetes Australia Trade Marks enures solely to Diabetes Australia;
- (c) the benefit of all goodwill in the Diabetes Australia Trade Marks resulting from use by you enures solely to Diabetes Australia;
- (d) your only rights in respect of the Diabetes Australia Trade Marks are those rights of use expressly given under the agreement and this sub-licence and you do not have any proprietary right, title or interest to the Diabetes Australia Trade Marks or the goodwill in them; and

Neither we, nor Diabetes Australia, grants to you any of the rights or powers set out in section 26(1) of the *Trade Marks Act 1995* (“**Act**”) except to the extent expressly set out in this sub-licence.

### **1.3 Ownership and Goodwill in Commonwealth Trade Marks**

You recognise the value of the goodwill and reputation in the Commonwealth Trade Marks and acknowledge that:

- (a) the Commonwealth Trade Marks are owned by the Commonwealth;
- (b) the benefit of all existing goodwill in the Commonwealth Trade Marks enures solely to the Commonwealth;
- (c) the benefit of all goodwill in the Commonwealth Trade Marks resulting from use by you enures solely to the Commonwealth;
- (d) your only rights in respect of the Commonwealth Trade Marks are those rights of use expressly given under the agreement and this sub-licence and you do not have any proprietary right, title or interest to the Commonwealth Trade Marks or the goodwill in them; and

Neither we, nor the Commonwealth, grants to you any of the rights or powers set out in section 26(1) of the *Trade Marks Act 1995* (“**Act**”) except to the extent expressly set out in this sub-licence.

### **1.4 Ownership and Goodwill in Agent Trade Marks**

You recognise the value of the goodwill and reputation in the Agent Trade Marks and acknowledge that:

- (a) the Agent Trade Marks are owned by the Agent;
- (b) the benefit of all existing goodwill in the Agent Trade Marks enures solely to the Agent;
- (c) the benefit of all goodwill in the Agent Trade Marks resulting from use by you enures solely to the Agent;
- (d) your only rights in respect of the Agent Trade Marks are those rights of use expressly given under the agreement and this sub-licence and you do not have any proprietary right, title or interest to the Agent Trade Marks or the goodwill in them; and

We do not grant to you any of the rights or powers set out in section 26(1) of the *Trade Marks Act 1995* (“**Act**”) except to the extent expressly set out in this sub-licence.

### **1.5 Protection**

You must not do, cause or authorise the doing of anything which may adversely affect the distinctiveness of the Trade Marks, the goodwill in or value of the Trade Marks, our rights to the Agent’s Trade Marks, Diabetes Australia’s rights in the Diabetes Australia Trade Marks, the Commonwealth’s rights in the Commonwealth Trade Marks, the validity of the registration of the registered Trade Marks or our, the Commonwealth and/or Diabetes Australia’s right to register any unregistered Trade Marks.

### **1.6 Registration of similar marks**

You must not apply, or become involved with any application by any other person, to register:

- (a) any Trade Mark; or
- (b) any sign (as defined in the Act) similar to or capable of being confused with any of the Trade Marks,

as a trade mark, business name, domain name or otherwise anywhere in the world.

#### **1.7 Use of similar marks**

Except as permitted by this sub-licence, you must not use:

- (a) any Trade Mark; or
- (b) any sign (as defined in the Act) similar to or capable of being confused with any of the Trade Marks,

as a trade mark, business name, domain name or otherwise anywhere in the world.

#### **1.8 Enforcement**

You:

- (a) must immediately notify Diabetes Australia or us, as appropriate, of any Infringement of which you become aware. (“**Infringement**” means any actual, suspected or threatened infringement of the Trade Marks or related passing off or breach of the Competition and Consumer Act 2010 (Cth) or any State or Territory Fair Trading legislation);
- (b) must at your own expense give all assistance reasonably required by Diabetes Australia or us, as appropriate, relating to any Infringement; and
- (c) acknowledge that Diabetes Australia and/or us, as appropriate, have absolute discretion regarding what enforcement action is taken in respect of any Infringement and the manner in which such action is taken. You must not take any enforcement action unless authorised by the Commonwealth or Diabetes Australia or us, as appropriate.

#### **1.9 Costs of enforcement action**

Subject to clause 1.6(b) of this sub-licence, the Commonwealth or Diabetes Australia or we, as appropriate, will bear all amounts incurred in or relating to any enforcement action taken by it in respect of any Infringement.

#### **1.10 Indemnity**

You indemnify the Commonwealth, Diabetes Australia and us from and against all actions, claims, demands, loss, liability, damage, costs and expenses (including the costs of defending or settling any action, claim or demand) made, brought or prosecuted against, or sustained by, it as a result of any breach by you of this Schedule 2.

#### **1.11 Termination or expiry of agreement**

On termination or expiry of this agreement, unless otherwise agreed, your rights to use the Trade Marks are terminated and you must cease using the Trade Mark (and any sign, as defined in the Act, similar to or capable of being confused with the Trade Mark).

#### **1.12 Rights and remedies**

The Parties agree that:

- (a) the rights and remedies provided in the sub-licence in this Schedule 2 are in addition to other rights and remedies given by law independently of this sub-licence; and
- (b) anything which you must do under the sub-licence must be done at your cost unless otherwise specified in this agreement.

**1.13 Contact for branding enquiries and notifications**

Any enquiries about use of the Trade Marks should be directed to State & Territory Agent contact officers in the first instance as listed within the Access Point Guidelines.

## Annexure 5 - Additional requirements for Access Points

### 1.1 Objective of the Scheme

The objective of the Scheme is to provide appropriate and equal access arrangements across Australia, and you must perform this agreement so as to help achieve that objective.

### 1.2 Stakeholder Meetings

Diabetes Australia will organise at least once per year a stakeholder reference group meeting between the Commonwealth, Diabetes Australia and a range of Access Point nominees to ensure ongoing stakeholder communication and engagement.

If reasonably required, you must attend these stakeholder meetings and participate in stakeholder meetings in good faith.

### 1.3 Ceasing to be an Access Point

Where you cease for whatever reason to be an Access Point, your organisation or a related body corporate or related entity (as those terms are defined in the Corporations Act 2001 (Cth)) is prohibited from becoming an Access Point within 12 months of the termination of this agreement, unless we agree in writing.

### 1.4 Exclusivity

You are not granted any exclusive right in any particular area and we may appoint other Access Points.

### 1.5 Role of the Agent in relation to Access Points

We will provide you with:

- (a) an induction into the Scheme, including comprehensive training, to be held within 20 Business Days after the commencement of this agreement;
- (b) Diabetes Australia's procedural documentation, software relevant to your role, access to Access Point Connectivity and associated training within 20 Business Days after the commencement of this agreement;
- (c) Scheme refresher training on request by you in the form of immediate online support or on site support within a reasonable timeframe after the receipt of the request. Online support will be operational by 1 January 2012;
- (d) an identification of other suitable training programs and/or updates for your staff on diabetes care and management with programs recognised or accredited by Diabetes Australia or as directed by the Commonwealth;
- (e) suitable Scheme material for you to provide to Registrants;
- (f) a contact officer for queries, advice and complaints;
- (g) suitable marketing information and signs to identify your outlet as an Access Point under the Scheme;
- (h) Product required by Registrants, in line with the timeframes detailed in the Access Point Guidelines approved by the Commonwealth; and
- (i) advice on local diabetes services and networks.

## 1.6 Role of Access Points

You will perform the following functions and responsibilities under the Scheme:

- (a) provide Registrants with the information material as required by the Access Point Guidelines;
- (b) provide access for Registrants to a person engaged or employed by you for the provision of information on diabetes and who is capable of responding to Registrants' questions. This person must be aware of other services to which the Registrant can be referred;
- (c) collect, properly account for, and remit Registrant Contributions to us, in accordance with the Access Point Guidelines;
- (d) comply as appropriate with administrative and reporting requirements to us as detailed in the Access Point Guidelines approved by the Commonwealth in order for the us to fulfil our obligations to Diabetes Australia;
- (e) participate as appropriate in effective and efficient relationships with us to provide high quality and professional services to Registrants; and
- (f) forward all Registrant applications to us within 10 Business Days.