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| **ACCESS AGREEMENT**  **for the provision of private midwifery services by visiting endorsed midwives in NSW public hospitals**  **[INSERT NAME OF PUBLIC HEALTH ORGANISATION]**  (*PHO*)  **AND**  **THE ENDORSED MIDWIFE DESCRIBED IN ITEM 2** (*Licensee*) |
|  |

**THIS ACCESS AGREEMENT** is made on the date shown in Item 1 between:

**[Insert name of public health organisation]**, ABN [insert], a body corporate pursuant to the *Health Services Act 1997* (NSW), of [insert address] (the “PHO”), and

**[Insert name of the endorsed midwife set out in Item 2],** of the address shown in Item 3 (the “Licensee*”*)

**INTRODUCTION**

1. The PHO operates the public hospitals listed in Item 5 under the Health Services Act 1997 (NSW).
2. The Licensee is an endorsed midwife under section 96 of the Health Practitioner Regulation National Law (NSW)(“endorsed midwife”) who wishes to obtain access to designated areas of the public hospitals (“Access Area”) for the purpose of providing private midwifery services to private patients in accordance with Item 9 of the Schedule ("Approved Scope of Practice").
3. The parties agree that in consideration for payment of the Facility Fee, the PHO agrees to grant the Licensee a right of access to the public hospitals listed in Item 5 of the Schedule for the purpose of providing the Services.
4. The Licensee, in providing the Services, will operate as the Licensee's own business in accordance with the terms of this Access Agreement.

**IT IS AGREED**

# Right of Access

# The PHO grants the Licensee a licence to have non-exclusive access to, and use of, the Access Area from the date shown in Item 7 of the Schedule (“Commencement Date”) on the terms and conditions set out in this Access Agreement, for the period of time shown in Item 8 of the Schedule (“Term”), unless terminated earlier in accordance with this Access Agreement.

# Restrictions on Access

# The Licensee may use the Access Area only for the provision of the Services (the “Permitted Use”).

# PHO to Provide Certain Services

# The PHO must provide to the Licensee the services shown in Item 13 of the Schedule (the “Usual Services”).

# PHO may Provide Additional Services

# The PHO must also provide to the Licensee, in addition to the Usual Services, those additional services, if any, that are marked with a cross in Item 14 of the Schedule (“Optional Additional Services”).

# Suitability of Licensed Area

# The Licensee, relying on the Licensee’s own inspections and enquiries, is satisfied as to the suitability, commerciality, and condition of the Access Area and the equipment supplied with the Access Area (if any).

# No Tenancy

### The Licensee’s rights under this Access Agreement are personal to the Licensee.

### Nothing in this Access Agreement confers on the Licensee any rights as a tenant of the PHO, or creates the relationship of landlord and tenant between the parties.

### The Licensee acknowledges that the PHO, persons authorised by the PHO and other licensees may also have access to and use the Access Area.

# Prohibitions on Licensee

# The Licensee must not:

### sublicense or part with possession of any part of the Access Area (including any equipment supplied in the Access Area), or assign any rights under this Access Agreement;

### employ or subcontract any person for the purpose of providing the Services under this Access Agreement (this does not limit the right of the Licensee to enter into a collaborative arrangement or to enter into an arrangement with another endorsed midwife who has entered into an Access Agreement with the PHO on similar terms to this Access Agreement, and to whom care of a patient may be handed over in accordance with protocols agreed to by the PHO);

### make any change or structural alteration or addition to the Access Area;

### contravene any legislative requirement, notice or order affecting the Access Area;

### cause any contamination, pollution or environmental damage to the Access Area; or

### contravene any rules, regulations, policies, procedures, or codes of conduct of or binding on the PHO, affecting the Access Area or its use that has been notified to the Licensee or are displayed at the Access Area.

# Licensee’s Obligations

# The Licensee must comply with the following obligations at all times during the Term:

**Facility Fee**

(aa) the Licensee must pay the Facility Fee in accordance with, and as specified in, Item 15 of theSchedule;

**Professional**

### maintain current registration as a midwife under the *Health Practitioner Regulation National Law* (NSW), and provide the PHO with documentary evidence of current registration on each anniversary of the commencement of this Access Agreement;

### maintain notation on his or her registration as an endorsed midwife under section 38(2) of the *Health Practitioner Regulation National Law* (NSW) with documentary evidence of current notation on each anniversary of the commencement of this Access Agreement;

### maintain endorsement to administer, obtain, possess, prescribe, sell, supply or use a scheduled medicine or class of scheduled medicines as an endorsed midwife under section 94 of the *Health Practitioner Regulation National Law* (NSW) with documentary evidence of current endorsement on each anniversary of the commencement of this Access Agreement;

### immediately advise the PHO of:

### any change in the registration status of the Licensee including any conditions imposed on the Licensee’s registration, notation or endorsement in (a)-(c) above;

### any complaint made against the Licensee with, or being investigated by, the NSW Nursing or Midwifery Council or the Health Care Complaints Commission;

### the placing of the Licensee’s name on the NSW Health Service Check Register [PD2021\_017](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2021_017);

### maintain a Medicare provider number and a Pharmaceutical Benefits Scheme (PBS) prescriber number;

### undertake any further educational or training requirements as set in Item 12 oftheSchedule and within any timeframes specified in Item 12 of theSchedule.

### participate in multidisciplinary case review at least 3 times per year, either at facility or PHO level, which may include mortality and morbidity review meetings, incident reviews and other quality and safety meetings;

**Practice of midwifery**

### have a current collaborative arrangement in place with a medical practitioner who holds an appointment as a visiting practitioner or is employed as a staff specialist at the public hospital and whose clinical privileges include antenatal, intrapartum and postnatal care, a copy of which is annexed to this Access Agreement and marked “Appendix A”, or have a current collaborative arrangement with a PHO that employs or engages one or more obstetric specified medical practitioners”;

* + 1. submit and have approved by the PHO an agreed plan of care which includes:
       1. provision of back up support to the Licensee by another endorsed midwife with rights of access to the Access Area so as to ensure the Licensee complies with the NSW Health Guidelines on Fatigue - Preventing and Managing Work Related Fatigue: Guidelines for the NSW Public Health System [GL2007\_023](https://www1.health.nsw.gov.au/pds/pages/doc.aspx?dn=GL2007_023),
       2. provision of inpatient care,
       3. arrangements for anaesthetic (epidural) services,
       4. arrangements for neonatal/paediatric services, and
       5. arrangements in the event of a clinical emergency.

### provide the Services under this Access Agreement strictly in accordance with:

### the Approved Scope of Practice (as set out in Item 9 of theSchedule),

### the collaborative arrangement/s in place (as set out in Annexure A),

### any requirements under legislation of an endorsed midwife,

### the Agreed Plans (as set out in Item 10 of theSchedule),

### any conditions or other requirements imposed on the Licensee’s health practitioner registration,

### the Australian College of Midwives National Midwifery Guidelines for Consultation and Referral, as updated from time to time;

### without limiting clause 8(o) of this Access Agreement, any other policy, protocol or policy notified in writing to the Licensee by the PHO;

### the standards of best practice at all times (as reasonably determined, in the event of dispute, by the PHO);

### ensure that, where the Licensee requires assistance from another endorsed midwife, that midwife has also entered into an Access Agreement with the PHO;

### provide the PHO will a complete copy of the antenatal care health records of patients to whom the Licensee provides services under this Access Agreement in a form determined by or otherwise acceptable to the PHO;

### maintain accurate and contemporaneous records of care and treatment provide by the Licensee to patients of the Licensee at the hospital using the PHO’s health record system (paper and electronic) and in accordance with *Health Care Records – Documentation and Management* PD2012\_069;

### liaise with the MUM/team leader in the birthing unit regarding the woman’s progress as appropriate;

**Compliance with policies and directions**

### comply with all NSW Health or PHO policies or other requirements, including those listed in Item 11 of theSchedule

### ensure full participation in and co-operation with the PHO in respect of:

### any team or departmental meetings as reasonably required by the PHO and where the Licensee is able to attend, provided that it does not conflict with any of the Licensee's obligations to provide private midwifery services to his or her private patients;

### any incident investigations including but not limited to root cause analysis investigations; and

### any quality assurance, quality improvement or peer review procedures of the PHO;

### immediately notify the PHO of any incident or of any complaint, possible or potential claim, investigation, proceeding or action against the Licensee arising from the Services provided by the Licensee under this Access Agreement;

**Access Area obligations**

### comply with the PHO's directions regarding access to the Access Area (including PHO policies, procedures and signage regarding access to areas within the relevant hospital or health care facility);

### use the Access Area and any fixtures, fittings and installations in the Access Area in a safe and proper manner;

### use any equipment in the Access Area with due care and skill;

### keep the Access Area tidy and free from rubbish;

### ensure that neither the Licensee nor persons in the Access Area with the Licensee’s authority or permission does anything that annoys, offends, obstructs or interferes with the use of the Access Area or the public hospital by the PHO or others;

### advise the PHO of any property or equipment owned and used by the Licensee in the Access Area that is not supplied by the PHO, and ensure that it is insured for its full insurable value on a replacement and reinstatement basis;

### not do anything to prejudice its or the PHO’s insurances, or increase the risk of fire;

**Other**

### ensure that the Licensee complies with the requirements from time to time of the PHO in relation to the reporting of criminal and serious sex, violence and other offences including pursuant to the [*Children and Young Persons (Care and Protection) Act 1998*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1998-157)

### ensure that the Licensee complies with all applicable legislation, and any regulations, by laws, ordinances, or orders made under such legislation;

### wear attire deemed appropriate by the PHO and appropriate identification when providing the Services in the Access Area;

### inform (including in writing) all patients to whom the Licensee provides the Services that the Services are being provided to the patient by the Licensee privately and not by or on behalf of NSW Health or the PHO;

### undertake all billing and other arrangements associated with the Services and the business and administration of the Licensee's practice; and

### only bill the Licensee's private patient for the Services performed under this Access Agreement in accordance with all applicable legislation. Applicable legislation includes the *Health Insurance Act* 1973 (Cth) and the *National Health Act* 1953 (Cth), as well as all regulations and determinations made under that legislation.

# Licensee’s warranties

# The Licensee warrants that the Licensee will:

### maintain during the Term the status of a participating midwife for the purposes of the *Health Insurance Act 1973* (Cth);

### maintain during the Term the status of an authorised midwife for the purposes of the *Health Insurance Act 1973* (Cth);

### maintain a collaborative arrangement in place, and in the event the collaborative arrangement is varied or if the Licensee enters in a new collaborative arrangement, immediately provide the PHO with a copy of the varied or new collaborative arrangement;

### ensure compliance with the requirements of all applicable legislation, including the *Health Insurance Act 1973* (Cth), the *National Health Act 1953* (Cth)including all regulations and determinations made under that legislation;

### ensure compliance with all applicable privacy legislation, including the *Privacy Act* 1988 (Cth) and the *Health Records and Information Privacy Act* 2002 (NSW).

# Practice and Access Review

### The Approved Scope of Practice of the Licensee may be varied by the PHO at any time at the PHO’s discretion and communicated to the Licensee in writing.

### The PHO may at any time and for any reason undertake a review or audit of the Licensee’s provision of the Services under this Access Agreement, or the Licensee's compliance with obligations under this Access Agreement.

### The Licensee agrees to fully co-operate with any such review including providing any documentation or information requested as part of the review.

### The parties agree that, without limiting (a), the PHO shall review the Licensee’s provision of the Services or compliance under this Access Agreement following twelve months from the Commencement Date, and following each twelve-month period thereafter.

# Indemnity

### The Licensee agrees to indemnify and keep indemnified the Minister, the PHO and the State of New South Wales and their officers, employees and agents (“those indemnified”) against any liability or loss (including reasonable legal costs and expenses), incurred or suffered by any of those indemnified where such liability or loss is incurred by reason of or in connection with any act or omission of the Licensee in connection with the provision of the Services, the use and occupation of the Access Area by the Licensee, or breach of the Licensee’s obligations under this Access Agreement.

### The Licensee’s liability to indemnify those indemnified under this Access Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss in clause 11(a) above.

### The indemnity contained in this clause (Clause 11) is a continuing obligation of the Licensee separate and independent of any other responsibility of the Licensee and will continue beyond the period of this Access Agreement*.*

# Release

# The Licensee releases and holds harmless the Minister, the PHO, the State of New South Wales and their officers, employees and agents in the absence of any default or neglect on their part to the full extent permitted by law from all actions, proceedings, claims and demands of any kind resulting from or in connection with, or in relation to:

### the provision of the Services;

### the use and occupation of the Access Area by the Licensee;

### an act, error or omission of the Licensee;

### a breach by the Licensee of this Access Agreement; or

### a suspension of the Licensee’s rights under this Access Agreement under clause 17 of this Access Agreement.

# Insurances

### The Licensee must at all times during the Term maintain a contract of insurance with an endorsed insurer that provides midwife professional indemnity cover, under which the limit of the endorsed insurer’s liability in relation to each claim against the Licensee, equals or exceeds the Level 2 claim threshold.

### The Licensee must:

#### on each annual anniversary of the commencement of this Access Agreement; and

#### at any time upon request by the PHO;

provide a certificate of currency proving that a contract of insurance required by clause 13(a) has been effected and is current. A certificate of currency provided under this section must be issued by the endorsed insurer providing insurance and must contain all details reasonably requested by the PHO, including a summary of all risks covered and any exclusion.

### Following the expiration or termination of this Access Agreement, the Licensee must either:

#### maintain the contract of insurance required under clause 13 (a) above, or

#### maintain midwife professional indemnity run-off cover with an endorsed insurer,

for a period totalling at least 21 years from the date of expiration or termination of the Access Agreement.

### The Licensee must at all times during the Term hold and maintain a workers' compensation insurance policy in relation to their private practice and the provision of the Services, as required by law.

### Without limiting clause 13 (b), the Licensee will, within 7 days of a request to do so from the PHO, provide evidence to the satisfaction of the PHO of the insurances effected and maintained for the purposes of this clause.

### The Licensee’s obligations in this clause survive the expiration or termination of the Access Agreement.

# Termination of this Access Agreement

Either party may, at any time, terminate this Access Agreement for any reason, by giving thirty (30) days’ notice in writing to the other party, such termination being effective upon expiry of this thirty (30) day period. The right to terminate in accordance with this clause exists notwithstanding any guideline, policy, code or any other document that may, in any way, relate to, or be connected with Licensee's provision of the Services.

# Termination for Breach

# The PHO may, by notice in writing to the Licensee, immediately terminate this Access Agreement if the Licensee:

### commits a material breach of this Access Agreement which, in the PHO’s opinion*,* is not capable of being remedied;

### fails or refuses to comply with any lawful direction by the PHO;

### commits any act of malicious, reckless or negligent conduct in the Permitted Use;

### is convicted of an offence punishable by imprisonment;

### fails to remedy a material breach of this Access Agreement which, in the PHO’s opinion is capable of being remedied, within seven (7) days of receiving notice in writing from the PHO requiring it to remedy that breach; or

### is declared bankrupt or has bankruptcy proceedings commenced against him or her.

# Termination without prejudice

# Any termination of this Access Agreement under clauses 14 or 15 is without prejudice to any accrued rights or remedies of either party.

# Suspension

### Without limiting clause 15, at any time during the Term, the PHO may by notice in writing suspend Licensee's rights under this Access Agreement with immediate effect for such period as the PHO considers appropriate if:

### the Licensee fails to observe, comply with or fulfil any of the Licensee's obligations under or arising out of this Access Agreement;

### the Licensee has failed to comply with the collaborative arrangement; or

### the PHO reasonably forms the opinion that the Services provided by the Licensee involve an unacceptable risk to the health or life of any person.

### Upon suspension of this Access Agreement, the Licensee must:

### immediately cease providing the Services from the Access Area; and

### comply with the reasonable directions of the PHO regarding the care of patients, including any necessary transfer of patients from the Licensee to another care provider.

### Resumption of this Access Agreement following any suspension is at the PHO's absolute discretion. If the PHO determines not to resume this Access Agreement, then this Access Agreement may be terminated by the PHO in writing to the Licensee.

# Confidential information

### The Licensee may only disclose Confidential Information in the following circumstances:

### with the prior written consent of the PHO; or

### if and to the extent that the Licensee is legally compelled to disclose the Confidential information.

### The Licensee must do everything reasonably practicable to preserve the confidentiality of the Confidential Information.

### The Licensee must notify the PHO promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Access Agreement or with the authority of the PHO.

### The Licensee must, if required by the PHO, deliver to the PHO or destroy any documents containing the Confidential Information.

# Resolution of Disputes

1. If a dispute or difference arises between the parties in respect of this Access Agreement, and one party requires it to be resolved, then that party must promptly give to the other a written notice identifying adequately and giving details of the dispute or difference.
2. The parties must use reasonable endeavours to resolve the dispute or difference, and to agree on a mechanism for resolving it if they are unable to do so themselves.
3. If within 14 days of giving notice of the dispute or difference the dispute or difference has not been resolved, and the parties have not agreed on a mechanism for resolving it, or if despite agreeing on such mechanism the dispute or difference is still not resolved within 2 calendar months of the parties’ agreeing on such mechanism, the parties agree that the dispute or difference may be resolved by PHO’s Director of Clinical Services.
4. The PHO’s Director of Clinical Services shall act as an expert and not as an arbitrator, and his or her decision shall be final, binding and conclusive as between the parties.
5. Nothing in this clause precludes either party from seeking urgent interlocutory relief.

# Notices

The contact details and addresses of the parties for the purposes of giving any notice shall be as set out in Item 3 and Item 4 of the Schedule, or otherwise as may from time to time be specified in writing between the parties.

# Whole Agreement and Variation

This Access Agreement comprises the whole agreement between the parties as to the subject matter hereof and can only be varied by a written agreement executed by both parties.

# Survival

Clauses 11, 12, 13, and 18 survive termination or expiration of this Access Agreement.

# Relationship between the parties

# The Licensee acknowledges and agrees that the Licensee, in respect of the provision of the Services pursuant to the Licensee’s rights under this Access Agreement:

### is not entitled to indemnification from the PHO and/or the State of New South Wales in respect of any claim; and

### is not, and will not hold him or herself out to be, an officer, employee, agent and/or partner or joint venturer of NSW Health or the PHO while providing the Services.

# Applicable law

This Licence is governed by, and construed in accordance with, the laws of the State of New South Wales, and the parties submit to the jurisdiction of the courts of that State.

# Definitions

The following definitions apply in this document.

**Access Area** means the areas set out in Item 6 of the public hospitals listed in Item 5 of the Schedule.

**Access Agreement** means this Agreement and the Schedule and any annexures thereto.

**Agreed Plans** means the documented arrangements the Licensee has in place, the details of which are set out in Item 10 of the Schedule.

**Approved Scope of Practice** means the scope of practice of midwifery practice that may be undertaken by the Licensee under this Access Agreement, having regard to the level of the facility, and set out in Item 9 of the Schedule.

**collaborative arrangement** has the same meaning as in the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020 (Cth)* and the *National Health (Collaborative arrangements for midwives) Determination* 2010 (Cth).

**Confidential Information** means information disclosed by or on behalf of the Minister, the Ministry of Health or PHO that:

1. is confidential by its nature or by the circumstance in which it is disclosed; or
2. designated by the Minister, the Ministry of Health or PHO as confidential or identified as being confidential,

but does not include this Access Agreement or information which is or becomes public knowledge other than by a breach of the Licensee of an obligation of confidentiality under this Access Agreement.

**endorsed insurer** has the same meaning as in:

1. section 5 of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act* 2010 (Cth); and
2. rule 6 of the *Midwife Professional Indemnity (Commonwealth Contribution) Rules 2020* (Cth).

**Facility Fee** means the fee specified in Item 15 of the Schedule payable by the Licensee to the PHO.

**Level 2 claim threshold** has the same meaning as in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act* 2010 (Cth).

**midwife professional indemnity cover** has the same meaning as in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act* 2010 (Cth).

**midwife professional indemnity run-off cover** has the same meaning as in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act* 2010 (Cth).

**Minister** means the NSW Minister for Health.

**private patient** means a patient who has elected to be admitted as a private patient pursuant to NSW Health guideline *Admitted Patient Election Processes for NSW Public Hospitals* PD2021\_008.

**public hospital** means a hospital listed at item 5.

# Interpretation

Headings have been inserted for convenience only and do not affect the interpretation of this Licence, and in this Licence unless the context otherwise requires,

### a reference to an Item is to an Item in the Schedule ;

### a singular word includes the plural, and vice versa;

### a word which suggests one gender includes the other genders;

### if a word is defined, another part of speech has a corresponding meaning;

### if an example is given of anything, such as by saying it includes something else, the example does not limit the scope of that thing; and

### a reference to a position held in an organisation includes a reference to an equivalent or approximately equivalent position in that organisation, however described.

**SCHEDULE**

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| **Item 1** | **Date of signing Access Agreement**:  *[Insert date]* |
| **Item 2** | **Licensee**  Name:  *[Insert details]* |
| **Item 3** | **Licensee’s address and contact details:**  *[Insert details]* |
| **Item 4** | **PHO’s address and contact details:**  *[Insert details]* |
| **Item 5** | **Name of public hospital/s to which the Licensee has access:**  *[Insert names]* |
| **Item 6** | **Access Area:**  *[Describe areas or departments of applicable hospitals to which the Licensee has access under this Access Agreement]*  The Access Area includes any general use amenities within the hospital in which the Access Area is located, such as toilets, lunch facilities and common rooms.  *[car space if appropriate]* |
| **Item 7:** | **Commencement Date of Access Agreement:** |
| **Item 8** | **Term:** *[note the Term is not to exceed 3 years]* |
| **Item 9** | **Approved Scope of Practice**  *[Insert details]* |
| **Item 10** | **Agreed Plans**  *[Include details of arrangements for:*   * *back up for the endorsed midwife,* * *provision of inpatient care,* * *arrangements for anaesthetic (epidural) services,* * *arrangements for neonatal/paediatric services]*   *[attach copies of documents if appropriate]* |
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| **Item 12** | **Further educational requirements to be undertaken by the Licensee:**  *[E.g. upskilling in perineal repair, IV cannulation, perinatal safety program, etc.]*  *[specify any applicable timeframes]* |
| **Item 13** | **Usual Services:**  **Optional services**  Access to IT/security pass, library, medical records and PHO policies and procedures  Power  Light  Fuel  Telephone  Facsimile  Computer  Email  Cleaning and maintenance  Consumables *[specify]*  Equipment *[specify]* |
| **Item 14** | **Optional Additional Services:**  *[cross boxes that apply and insert details as appropriate]*  *[note that those that apply are included in the Licence Fee unless otherwise specified]*  □ Billing facilities (in the name of the Licensee)  □ Other *[specify]* |

**Item 15 Facility Fee**

A Facility Fee of 5% of revenue earned by the Licensee in providing the Services is payable by the Licensee to the PHO.

*[Further detail may be included regarding the proposed billing arrangements between the PHO and the Licensee for payment ]*

**EXECUTED** as an Agreement.

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| Executed on behalf of **[name of public health organisation],** by the person whose name appears opposite, but not so as to incur any personal liability, in the presence of the person whose name appears below: |  |  |
|  |  | Signature |
|  |  |  |
| Signature of witness |  | Name and title of signatory |
|  |  |  |
| Name and title of witness |  |  |
|  |  |  |
| **\*\*** Executed by the Licensee in the presence of: |  |  |
|  |  | Signature of individual Licensee |
| Signature of witness |  |  |
| Name and address of witness |  |  |
| **\*\*** Executed by **PTY LIMITED** in accordance with Section 127 of the Corporations Act 2001 by: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |

\*\* Delete whichever is inapplicable

**ATTACHMENT A**

Collaborative arrangement of the Licensee