

LSPN 1309

Deed of Undertaking

Between



and

The Commonwealth of Australia

This deed

is made between the following parties:

1. [REDACTED]
of
[REDACTED]

(the Provider);
2. **The Commonwealth of Australia**
(the Commonwealth) as represented by
the Department of Health and Ageing
(the Department)
ABN 83 605 426 759

Recitals

- A. The Diagnostic Imaging Services Table is made under the *Health Insurance Act 1973* and sets out those diagnostic imaging services which are eligible for Medicare benefits. The Diagnostic Imaging Services Table may be amended or remade from time to time.
- B. On 1 May 2012, the Diagnostic Imaging Services Table will be amended to create a definition of Eligible Equipment. Eligible Equipment must be located in a comprehensive practice and the person who provides the equipment to the practice must also enter into a Deed with the Commonwealth.
- C. Under these amendments, Magnetic Resonance Imaging services will only attract a Medicare benefit if amongst other things the service is performed using equipment that is Eligible Equipment on and from 1 May 2012.
- D. The Provider is the owner or lessee of such equipment and wishes to enter into this Deed with the Commonwealth. The purpose of this Deed is to identify the owner or lessee of the equipment that will be Eligible Equipment on and from 1 May 2012 and to provide the parties with a record of the location and specifications of the equipment.
- E. Where the Provider and Commonwealth have previously entered into an existing deed/agreement and a parent guarantee with the Provider's parent guarantor to operate equipment for the purposes of the Diagnostic Imaging Table, the Commonwealth, Provider and the Provider's parent guarantor will sign a separate deed terminating the existing deed/agreement and the parent guarantee.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this Deed, the following words have the following meanings:

Act means the *Health Insurance Act 1973*;

Business Day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned;

Deed means this deed and any schedules, attachments and annexures to it;

Diagnostic Imaging Services Table has the meaning set out in the Act;

Eligible Equipment has the meaning it will have in the Diagnostic Imaging Services Table on 1 May 2012 and the characteristics set out in the Schedule to this Deed as at the date of effect.

1.2 Interpretation

In this Deed, headings are for convenience of reference only and do not affect the interpretation of this Deed and, unless the context otherwise requires:

- (a) words importing a gender include any gender;
- (b) words importing the singular include the plural and vice versa;
- (c) headings and clause headings have been inserted for guidance only and shall not be deemed to form any part of the context of this Deed;
- (d) all references to clauses are to clauses of this Deed and includes such clauses as amended or replaced from time to time pursuant to this Deed;
- (e) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (f) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency.

1.3 Date of Effect

- (a) Where this Deed is signed by the last party to do so, on or before 1 May 2012, the date of effect of this Deed is 1 May 2012; or
 - (b) Where this Deed is signed by the last party to do so, after 1 May 2012, the date of effect of this Deed is the date the last party signs the Deed;
- or

- (c) Where this Deed is signed by the last party to do so, after 1 May 2012 and the Provider has signed or will sign a separate deed (Deed of Termination) with the Commonwealth and the Provider's parent guarantor terminating an existing deed/agreement and parent guarantee with the Commonwealth, this Deed will take effect the day after the Deed of Termination takes effect.

1.4 Counterparts

This Deed may be signed in counterparts each of which, once signed will be deemed to be an original. All such counterparts together will constitute one and the same instrument.

2. Termination

A party may, at any time by written notice to the other party, terminate this Deed. Such termination shall take effect on and from the date specified in the notice.

3. Location and other Details Regarding Provider's Eligible Equipment

3.1 For the purposes of this Deed, the Provider's Eligible Equipment is, as at the date of effect, as described in the Schedule to this Deed.

3.2 The Provider must notify the Commonwealth immediately of any changes, from time to time, to the Manufacturer and Scanner Model; Magnet Strength and the Serial Number of the Eligible Equipment.

3.3 The Provider's Eligible Equipment is located at the address set out in the Schedule to this Deed

3.4 The written approval of the Branch Manager of the area of the Department that administers this Deed must be obtained before changing the location of any Eligible Equipment.

3.5 The Provider's Eligible Equipment must at all times be located in a medical practice or in a radiology department of a hospital that offers a comprehensive range of diagnostic imaging procedures.

3.6 The Provider must within 10 Business Days prior to the occurrence of any change to its corporate and/or ownership structure, notify the Commonwealth under clause 8 of this Deed of any such change.

4. Waiver and Variation

Unless the contrary intention appears in this Deed, a provision of, or a right created under, this Deed may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

5. Governing Law and Jurisdiction

This Deed is governed by and is to be construed in accordance with the laws for the time being in force in the Australian Capital Territory and the parties unconditionally submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

6. Dispute Resolution

In the event of a dispute between the parties in relation to this Deed, the parties must attempt to settle the dispute by direct negotiation and if necessary, by mediation, before legal proceedings can be commenced by a party.

7. Assignment

(a) A party must not assign or deal with any right under this Deed without the prior written consent of the other party;

(b) Where there is to be a change of provider of the equipment which is the subject of this Deed, the Provider must notify the Commonwealth and the new provider must enter into a new deed with the Commonwealth that is the same in substance as this Deed for the equipment to remain Eligible Equipment;

(c) Where the Commonwealth enters into a deed with the new provider, the parties must terminate this Deed and;

(d) Any purported dealing in breach of this clause is of no effect.

8. Notices

8.1 (a) Any notice, request or other communication to be given or served in relation to this Deed must be in writing and addressed and forwarded to the attention of the Liaison Officer at the address indicated in clause 8.3 of this Deed or such other address as notified in writing; and

(b) Any such notice, request or other communication will be delivered by hand, sent by pre-paid post or transmitted electronically (facsimile or e-mail), to the address of the person to which it is sent.

8.2 (a) Any notice, request or other communication will be deemed to be received:

(i) if delivered personally – on the date of delivery;

(ii) if sent by prepaid ordinary post within Australia – upon the expiration of 3 Business Days after the date on which it was sent;

(iii) if sent by facsimile – on the Business Day next following the day of dispatch provided that the sender receives an “OK” code in respect of the transmission and is not notified by the recipient by close of business on the next Business Day following the day of dispatch, that the transmission was illegible; and

(iv) if sent by e-mail to the e-mail address of the recipient – when the e-mail message enters an information system accessible to the recipient.

8.3 (a) The Provider and Commonwealth's respective addresses and fax numbers for receiving notices are as follows (subject to any party notifying the other in writing of a change of Liaison Officer, address, fax number or e-mail address):

(i) The Commonwealth's Liaison Officer is the person holding, occupying or performing the duties of Director – MRI and Quality Section, Diagnostic Services Branch available at the following address:

Address: Sirius Building
23 Furzer Street
WODEN ACT 2606

Phone: (02) 6289 9100

Facsimile: (02) 6289 4028

E-mail: MRI@health.gov.au

(ii) The Provider's Liaison Officer:

Name: 

Address: 

Phone: 

E-mail: 

EXECUTED AS A DEED

Signed, Sealed and Delivered for and on behalf of the **Commonwealth of Australia** as represented by the **Department of Health and Ageing** ABN **83 605 426 759** in the presence of:

(Signature of Departmental Representative)
...../...../.....

(Signature of Witness)/...../.....

(Name of Departmental Representative)

(Name of Witness in full)

Signed, Sealed and Delivered by [REDACTED]
[REDACTED] in accordance with its Constitution:

(Signature of Director)
...../...../.....

(Signature of other Director/Secretary)
...../...../.....

(Name of Director in full)

(Name of other Director/Secretary)

SCHEDULE

Location Specific Practice Number (LSPN):

1309

Location of partial Eligible Equipment:



Manufacturer and Scanner Model:



Magnet Strength of PARTIAL Eligible Equipment :



Serial Number/s of PARTIAL Eligible Equipment :

