



Australian Government

Department of Health and Aged Care

# Australian Government Hearing Services Program

Deed of Standing Offer



Hearing  
Services  
Program

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- D. The Supplier acknowledges that there is no guarantee that any Service Provider will place any order and that unless and until an order is placed no contractual relationship exists between the Supplier and any Service Provider.
- E. The Supplier agrees to provide the Supplies on the basis and subject to the terms and conditions of this Deed.

## The Parties Agree as Follows

# Part 1 – Interpretation

## 1 Interpretation

- 1.1 Unless a contrary intention is indicated, the terms used in this Deed are to be interpreted throughout in the same manner, and expressions will have the following meanings

**"Act"** means the *Hearing Services Administration Act 1997* and any amendments to that Act, including any instrument such as rules and determinations made under the Act

**"Category"** means the category for the relevant Device set out in the attachment to Schedule 1, as amended from time to time by the Department in accordance with clause 10.2

**"Category Price"** means the price for the Category set out in the attachment to Schedule 1, as amended from time to time by the Department in accordance with clause 10.2

**"Client"** means persons who have been declared by the Minister under section 13 of the Act to be a participant in the voucher system, described in the Act as a voucher-holder or who are the subject of a letter of authority

**"Conditions of Device Supply"** means the terms and conditions at Schedule 2

**"Confidential Information"** means information that

- (a) is by its nature confidential
- (b) is designated as confidential
- (c) the recipient knows or ought to know is confidential, and includes
- (d) information comprised in or relating to clinical records and
- (e) personal information under the Privacy Act 1988,

but does not include information which

- (f) is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligations or
- (g) has been independently developed or acquired by the recipient as established by



written evidence

**"Contract"** means a Contract created under clause 4 which contains relevant provisions of this Deed including the Conditions of Device Supply, for the provision of Supplies by the Supplier to a Service Provider

**"Deed"** means these terms and conditions including the Schedules and any attachments

**"Department"** means the Commonwealth of Australia as represented by the Department of Health or such other department or agency administering the Program from time to time

**"Device"** has the same meaning as given to it in Schedule 3, the Device Specifications

**"Device Schedule"** means the schedule of Devices referred to in Schedule 1

**"Device Specifications"** means the performance characteristics for Devices as set out in Schedule 3, as amended from time to time by the Department in accordance with clause 10.2

**"Main Schedule of Approved Devices"** means the schedule of approved Devices referred to in Schedule 1 for which the Price charged by the Supplier must not exceed the relevant Category Price

**"Order"** means an order placed by a Service Provider for the provision of Supplies for the purposes of the Program in accordance with this Deed.

**"Party"** means the Supplier or the Department

**"Price"** means the prices for Supplies specified or referred to in Schedule 1

**"Program"** means the Australian Government Hearing Services Program established under the Act for the provision of hearing rehabilitation services to Clients

**"Registration"** means the process by which Suppliers apply to the Department for approval to supply Devices. It involves a decision by the Department as to the suitability of the Supplier as an organisation (including financial viability and ethical standards) to supply Devices based on the documentation included by Suppliers in the Application for Registration. **"Register"** has a corresponding meaning

**"Service Provider"** means an accredited service provider who is a contracted service provider within the meaning of section 20 of the Act

**"Supplies"** means the approved Devices and associated services (or any part thereof) specified or referred to in Schedule 1, including the warranty and support services referred to in clauses 6 and 7 of the Conditions of Device Supply

**"Supplier"** means a Device manufacturer who is Registered and a signatory to this Deed to supply Devices under the Program

**"Top-Up Schedule of Approved Devices"** means the schedule of approved Devices referred to in Schedule 1 which have additional functionality over the Devices set out in the Main Schedule of Approved Devices and for which the Price charged by the Supplier is as agreed with the Service Provider

**"Top-Up"** and **"Top-Up Device"** have corresponding meanings and

**"Working Days"** means all days except Saturdays, Sundays and days declared as Public Holidays in the Australian Capital Territory.

1.2 In this Deed, unless the context otherwise requires

- (a) a reference to any act, regulation or specification includes a reference to that act, regulation or specification as amended or replaced by another act, regulation or specification
- (b) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time
- (c) a reference to any party to this Deed, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns
- (d) a reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including enquires which a reasonable person would be prompted to make by reason of knowledge of a fact
- (e) a word denoting an individual or person includes a corporation, firm, authority, government or governmental authority and vice versa
- (f) a reference to a recital, clause, schedule or attachment is to a recital, clause, schedule or attachment of or to this Deed

- (g) a reference to a "related corporation" of a body corporate is to a body corporate which is related to it under section 50 of the Corporations Law
- (h) a reference to "dollars" or "\$" is to an amount in Australian currency
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word has a corresponding meaning and
- (j) "includes" in any form is not a word of limitation.

1.3 In the event of inconsistency between the provisions of this Deed and

- (a) the Act - the Act shall prevail to the extent of the inconsistency and
- (b) the terms of a Contract - this Deed shall apply to the extent of the inconsistency.

## Part 2 – Standing Offer

### 2 Terms of this Deed

- 2.1 This Deed will commence on the date on which the last Party executes this Deed and will remain in force until it is terminated by either Party in accordance with clause 20 or 21. Any Contract formed prior to the termination of this Deed will continue in force until it terminates or expires notwithstanding that this Deed is no longer in force.

### 3 Acknowledgments and Reservations

- 3.1 The Supplier acknowledges and agrees that
- (a) it has examined and understands the Act, any regulations, instruments or specifications made under the Act applicable to the provision of Supplies and the arrangements set out in this Deed
  - (b) it understands that
    - (i) the Department is not responsible and has no obligation to assist in arranging Contracts with Service Providers and
    - (ii) Service Providers are not bound to place Orders for any Supplies with the Supplier.
- 3.2 The Department reserves the rights to
- (a) enter into similar arrangements to this Deed with other suppliers and
  - (b) enter into agreements with other Service Providers after execution of this Deed to enable them, in addition to existing Service Providers, to purchase Devices which are specified in or referred to in the Device Schedule and associated services under the Conditions of Device Supply or other terms and conditions from either the Supplier or another supplier.
- 3.3 The Supplier acknowledges and agrees that Service Providers will be informed by the Department, using its absolute discretion, of the terms and conditions of this Deed relevant to any Contract that may come into existence between the Supplier and the Service Providers and that such information will not be Confidential Information for the purposes of this clause.

## 4 Placement of Orders

- 4.1 Service Providers may place Orders with the Supplier for Supplies for the purposes of the Program setting out the quantity and type of Devices the Service Provider wishes to purchase.
- 4.2 When a Service Provider places an Order with a Supplier a separate Contract is formed between the Supplier and the Service Provider incorporating
- (a) the Conditions of Device Supply set out at Schedule 2
  - (b) the relevant Price as determined in accordance with clause 4.3
  - (c) the Order and
  - (d) any terms agreed in accordance with clause 4.4.
- 4.3 Where the Device is
- (a) on the Main Schedule of Approved Devices – the Price for the Supplies will be the relevant Category Price or such lower price as is agreed between the Supplier and the Service Provider or
  - (b) on the Top-Up Schedule of Approved Devices – the Price for the Supplies will be as agreed between the Supplier and the Service Provider.
- 4.4 The Supplier and the Service Provider may negotiate any other terms and conditions relating to the supply provided that they are no less favourable to the Service Provider than the terms set out in the Conditions of Device Supply.
- 4.5 The Supplier may not unreasonably refuse to provide to a particular Service Provider, Devices which appear on the Main Schedule of Approved Devices or Top-Up Schedule of Approved Devices.

## 5 Addition and Removal of Devices

- 5.1 The Supplier may submit to the Department Devices for inclusion on the Device Schedule and for approval under the Act. Devices offered for inclusion on the Device Schedule and approval under the Act must already be listed on the Australian Register of Therapeutic Goods Register if and where such registration is required under s 9A of the *Therapeutic Goods Act 1989*.
- 5.2 If a Device is approved under the Act, it shall be included in the Device Schedule and may be offered for supply to Service Providers from either the date it is included in

the Device Schedule or such later date specified in the Device Schedule, whichever is the later.

- 5.3 The Department may audit Devices which have been listed in the Device Schedule against the applicable Device Specifications. Any Device found not to meet the Device Specifications will be withdrawn from the Device Schedule in accordance with clause 5.4.
- 5.4 Either Party may by notice in writing to the other Party withdraw a Device from the Device Schedule. The notice must include the reasons for the withdrawal. The withdrawal will take place from the date in the notice and will not automatically terminate any Contracts for the purchase of the Device entered into prior to date of the withdrawal notice. The Parties may, but are not required to, consult with each other prior to withdrawing Devices.

## **6 Samples and Quality Assurance**

- 6.1 The Department may elect to conduct, or to have conducted, at any time during the term of this Deed, tests of samples of the Supplier's Devices for compliance with the Device Specifications.
- 6.2 The tests may be carried out by a person or organisation appointed by the Department.
- 6.3 The costs of freight and the costs of third party testing shall be borne by the Supplier and invoiced by the Department on completion of the testing.
- 6.4 If a Device is found not to comply with the Device Specifications, the Department may withdraw the Device in accordance with clause 5.4.
- 6.5 The Department may at any time require the Supplier to establish and maintain a certified quality system.

## Part 3 - Contract Administration

### 7 Liaison

- 7.1 The Supplier shall liaise with the Department as reasonably required by the Department during the period of this Deed.
- 7.2 The Supplier must nominate in writing an authorised representative who has authority to receive and sign notices and written communications for the Supplier under this Deed and accept any request or direction in relation to the Supplies provided under this Deed and may vary the nomination in writing from time to time.
- 7.3 The giving of any direction by the Department, or the provision of assistance in, or supervision of, the performance of any of the Supplier's obligations under this Deed, shall not in any way reduce, diminish or otherwise affect the Supplier's obligations under this Deed. Directions must be in accordance with the Deed and must be in writing.

### 8 Requests for Information

- 8.1 The Supplier shall on request by the Department provide the Department with
- (a) written reports relating to the Supplier's performance under this Deed in such form and containing such information as the Department reasonably requests from time to time and
  - (b) such information as the Department reasonably requests in relation to the Supplier's Supplies, including without limitation
    - (i) whether the Supplier's Devices are compatible with a remote control device/app
    - (ii) whether the Supplier's Devices are compatible with a rechargeable battery rather than disposable batteries and
    - (iii) what the fitting range is for the Supplier's Devices per frequency across 8 frequencies (250 Hz, 500 Hz, 750 Hz, 1000 Hz, 1500 Hz, 2000 Hz, 3000 Hz, and 4000 Hz).
- 8.2 The Supplier will be responsible for any costs associated with providing reports and information in accordance with clause 8.1.

## **9 Registration**

- 9.1 The Supplier acknowledges that it is a condition of it providing Supplies under the Program that it is and remains Registered by the Department for the term of this Deed.
- 9.2 The Supplier warrants that the information it supplied for the purposes of Registration was, is and, unless the Department is notified otherwise will remain, accurate.
- 9.3 The Supplier shall provide any further material requested by the Department in connection with its Registration.
- 9.4 If the Supplier was Registered or contracted to provide services on the basis of false and/or misleading information, the Department may terminate this Deed for default pursuant to clause 20. Termination of this Deed will not automatically terminate any Contracts entered into prior to the termination by the Department.

## **10 Variation of Deed and Device Specifications**

- 10.1 Subject to clause 10.2, a variation of this Deed is binding only if agreed in writing and signed by the Parties.
- 10.2 The Department may amend the Categories, Category Prices and Device Specifications at any time by written notice to the Supplier, subject to consultation in good faith with professional, industry or consumer groups that the Department reasonably considers would be materially affected by any such amendment. Any such amendment will also be notified by the Department to Service Providers and will not affect Contracts made prior to the date of the variation.



## Part 4 – Dealing with Information

### 11 Disclosure of Information

- 11.1 Subject to this clause, a Party shall not, without the prior written approval of the other Party, make public or disclose to any person other than the other Party, any Confidential Information. In giving written approval, a Party may impose such terms and conditions as in that Party's opinion are appropriate.
- 11.2 Each Party shall take all reasonable steps to ensure its employees, agents and subcontractors do not make public or disclose the other Party's Confidential Information.
- 11.3 Each Party may disclose Confidential Information to its legal advisers in order to obtain advice in relation to its rights under this Deed, but only to the extent necessary for that purpose.
- 11.4 Each Party may disclose Confidential Information
- (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first mentioned party or
  - (b) if required in connection with legal proceedings,
- but in each case, subject to the Party giving the other Party sufficient notice of any proposed disclosure to enable the other Party to seek a protective order or other remedy to prevent the disclosure.
- 11.5 The Department may also disclose the Supplier's Confidential Information in order to fulfil its governmental, Parliamentary reporting and accountability obligations. For avoidance of doubt, the Department must provide the Supplier's Confidential Information to Parliament or a Parliamentary Committee on request by that body.
- 11.6 The Supplier may also disclose the Department's Confidential Information to its related bodies corporate (as defined in section 50 of the *Corporations Act 2001*) for the purpose only of fulfilling its obligations under this Deed or a Contract unless
- (a) the Confidential Information includes any personal information as defined in the *Privacy Act 1988* or
  - (b) the Department notifies the Supplier that the particular information may not be

disclosed to such other bodies.

- 11.7 The Department reserves the right to disclose any information relating to or concerning this Deed to the Minister responsible for the Department and to Commonwealth departments and authorities or any body corporate established by Commonwealth legislation, if necessary.
- 11.8 Subject to clause 11.9, upon termination of this Deed, the Supplier shall
- (a) deliver to the Department (and not retain any copies) of all material forms of the Department's Confidential Information and
  - (b) deliver to the Department a statutory declaration made by an authorised officer of the Supplier declaring that to the best of that person's information and belief (after having made proper inquiries) none of the Supplier, its officers, employees, agents or contractors have retained any of the Department's Confidential Information.
- 11.9 The Supplier may, for a period of 7 years after the expiry or termination of this Deed, retain one file copy of any of the Department's Confidential Information that specifically relates to the Parties' communications in relation to the administration of the Deed so long as any such information retained does not include any personal information as defined in the *Privacy Act 1988*.
- 11.10 Nothing in this clause prevents the Supplier from supplying information required by the Department in relation to a Contract, particularly under clause 8.
- 11.11 This clause shall survive the expiration or termination of this Deed.

## 12 Compliance with Privacy Act

- 12.1 In addition to any obligations it has under the *Privacy Act 1988*, the Supplier shall in respect of this Deed, and with respect to all the Department's Confidential Information and any other Confidential Information that it obtains in relation to or in connection with the performance of this Deed or a Contract that comprises personal information as defined in the *Privacy Act 1988*
- (a) comply with the provisions of the *Privacy Act 1988* as if it were an agency
  - (b) co-operate with any reasonable demands or inquiries made by the Privacy Commissioner
  - (c) ensure that any person who has an access level which would enable that person

to obtain access to any information in respect of which the Department has obligations under the *Privacy Act 1988* is made aware of, and undertakes in writing, to observe the provisions referred to in clause 12.1(a) above

- (d) take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers of the Supplier have access to it
- (e) not transfer such information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department
- (f) immediately notify the Department when the Supplier becomes aware of a breach of any obligation concerning security, use and disclosure of personal information
- (g) notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy and
- (h) indemnify the Department in respect of any loss suffered or incurred by the Department arising out of or in connection with a breach of the obligations of the Supplier under this clause 12.1 or any misuse of information or disclosure in breach of an obligation under the *Privacy Act 1988* or otherwise, except to the extent that the loss, liability or expense is directly caused by a negligent or wrongful act or omission of the Department or any of its officers or employees.

12.2 The Supplier also undertakes to ensure that its officers, employees, subcontractors and agents will comply with the obligations specified in clause 12.1.

12.3 Subject to the Supplier complying with the requirements of the *Privacy Act 1988*, the Department approves for the purposes of clause 12.1(e) the Supplier transferring outside of Australia, and allowing parties outside Australia to access, the following personal information for the sole purpose of supplying a Device to a Service Provider for a Client

- (a) the Client's name
- (b) the Client's skin colour
- (c) the Client's hair colour
- (d) the Client's age range
- (e) the Client's date of birth
- (f) the order details for the Device to be supplied to the Client
- (g) the name and contact details of the practitioner who fitted the Device
- (h) the account name, number and address of the Service's Provider's account with

- the Supplier and and the Client's years of use with that account and
- (i) any other personal information that is required for the supply of a Device to a Service Provider for the Client.

12.4 This clause shall survive the expiration or termination of this Deed.

## 13 Freedom of Information

13.1 The *Freedom of Information Act 1982* (the "FOI Act") gives to members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of the Commonwealth Government, limited only by exceptions and exemptions necessary for the protection of essential public interests and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

13.2 The Department may publish information about this Deed, including on its website.

## Part 5 – Personnel

### 14 Occupational Health and Safety

- 14.1 The Supplier shall comply at all times with all relevant Australian, State and local government laws and regulations on occupational health and safety.

### 15 Affirmative Action

- 15.1 It is a Commonwealth Government policy requirement that the Commonwealth and Commonwealth Government authorities do not acquire goods or services from a supplier who does not comply with the *Workplace Gender Equality Act 2012*.
- 15.2 The Supplier shall not enter into a subcontract under this Deed with a subcontractor named by the Director of Workplace Gender Equality as an employer currently not complying with the Act.

### 16 Subcontracting

- 16.1 The Supplier shall not subcontract the supply of the Supplies without the written approval of the Department.
- 16.2 Any subcontracting shall not relieve the Supplier of its obligations under this Deed. The Supplier shall remain at all times fully responsible for ensuring the suitability of a subcontractor and for ensuring that the Supplies are performed in accordance with this Deed.

# Part 6 - Indemnity and Insurance

## 17 Indemnity

- 17.1 The Supplier shall at all times indemnify the Commonwealth of Australia, its officers, employees and agents ("**those indemnified**") from and against all loss, costs and expenses (including legal costs and expenses on a solicitor and own client basis) or liability whatsoever suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss, cost, expense or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Supplier, or its employees or subcontractors in providing the Supplies or otherwise in connection with this Deed.
- 17.2 The Supplier agrees that the Department may enforce the indemnity in favour of the persons specified in clause 17.1 for the benefit of each of such persons in the name of the Commonwealth of Australia or of such persons.
- 17.3 The Supplier's indemnity in this clause shall be reduced to the extent that the loss, cost, expense or liability is directly caused by the Department, its officers, employees or contractors (except the Supplier), as substantiated by the Supplier.
- 17.4 This indemnity shall survive the expiration or termination of this Deed.

## 18 Insurance

- 18.1 The Supplier shall, at its own expense, effect and maintain with a reputable insurance company from the commencement date specified in clause 2.1 until a date that is 12 months after the termination of this Deed or any Contract, whichever is the later
- (a) a combined public and product liability policy of insurance in a reasonable amount for the purposes of this Deed
  - (b) workers' compensation insurance in an unlimited amount and
  - (c) professional indemnity insurance in a reasonable amount to cover the Supplier's obligations under this Deed.
- 18.2 The Supplier shall, if requested by the Department, provide evidence that is acceptable to the Department of the insurance, the reasonableness of the cover and its currency.

## **19 Supplier Responsibility**

- 19.1 The Supplier shall take all reasonable steps to ensure that no injury or damage is caused to persons or to property arising out of or in connection with the performance of this Deed or a Contract by the Supplier.

## Part 7 – Termination

### 20 Termination for Default

- 20.1 Without prejudice to its rights at common law, the Department may, by notice in writing to the Supplier, terminate this Deed immediately in whole or in part if the Supplier
- (a) becomes bankrupt or insolvent
  - (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors
  - (c) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise
  - (d) suffers any execution against its assets having adverse effect on its ability to perform this Deed
  - (e) fails to take action to remedy a breach of an obligation under this Deed or a Contract, and does not commence to remedy the breach within 10 Working Days of being given notice by the Department requiring the Supplier to remedy the breach or fails to remedy the breach within 20 Working Days of being given that notice or
  - (f) assigns its rights under this Deed or a Contract otherwise than in accordance with the requirements of this Deed.
- 20.2 Any termination under this clause is without prejudice to any right of action that has accrued at the date of termination.

### 21 Termination without Default

- 21.1 Either Party may, at any time by written notice to the other, terminate this Deed, in whole or in part. Such termination shall take effect on and from the time specified in the notice.
- 21.2 Upon receipt of a notice of termination under clause 21.1, the Supplier shall not enter into any new Contracts and must comply with any other directions or requests included in the notice, in particular in relation to Commonwealth Confidential Information.



- 21.3 Neither Party is required to pay compensation or damages in respect of a termination or partial termination under this clause.
- 21.4 On each anniversary of the date on which the last Party executed this Deed, the Department may conduct a review of this Deed. Following this review, the Department may by written notice terminate this Deed under clause 21.1, providing at least 20 Working Days from the date of the notice before the termination shall take effect.

## **22 Continuation of Contracts**

- 22.1 The Department shall notify Service Providers if this Deed is terminated under either clause 20 or 21.
- 22.2 Notwithstanding the termination of this Deed under clause 20 or 21, any Contracts entered into prior to the termination continue in force. In particular, the Supplier must comply with its obligations under any existing Contracts to provide support and warranty services in relation to Devices supplied prior to termination.

## Part 8 – General

### 23 Negation of Employment Partnership and Agency

- 23.1 The Supplier shall not represent itself, and shall ensure that its employees do not represent themselves, as being employees, partners or agents of the Department.
- 23.2 The Supplier shall not by virtue of this Deed be, or for any purpose be deemed to be, an employee, partner or agent of the Department.

### 24 Assignment and Novation

- 24.1 The Supplier shall not assign or novate its rights under this Deed or a Contract without the prior consent in writing of the Department. The Supplier shall seek the Department's consent to assignment or novation at least 14 Working Days before the proposed date of effect of an assignment or novation.

### 25 Entire Agreement and Waiver

- 25.1 Subject to the Act, this Deed constitutes the entire agreement between the Parties and supersedes prior agreements and all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of this Deed.
- 25.2 Any Contracts entered into under a previous deed of standing offer with the Department will remain on foot until their expiry or earlier termination.
- 25.3 A waiver by a Party to this Deed in respect of a breach or a provision of this Deed by the other Party shall not be deemed to be a waiver in respect of any other breach, and the failure of a Party to enforce at any time any of the provisions of this Deed shall in no way be interpreted as a waiver of such provision.

### 26 Resolution of Disputes

- 26.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes that arise between them in connection with this Deed.
- 26.2 A Party may give the other party a notice of dispute ("**Dispute Notice**") in connection with this Deed. Following the giving of a Dispute Notice, the dispute must initially be

referred to a senior officer of the Department and a senior officer of the Supplier.

- 26.3 If the dispute is not resolved to the satisfaction of either party under the procedure in clause 26.2, then the dispute must be referred to a senior executive of the Commonwealth Department of Health and a senior executive of the Supplier, who must use reasonable endeavours to resolve the dispute.
- 26.4 If the Parties have not been able to resolve the dispute in accordance with clauses 26.2 and 26.3, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 26.5 In the event that the dispute, controversy or claim has not been resolved within 20 Working Days (or such other period as agreed between the Parties in writing) after the Parties have attempted to agree on a process under clause 26.4, or the appointment of the mediator or conciliator in accordance with clause 26.4, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 26.6 Nothing in this clause 26 prevents either Party from seeking urgent injunctive relief.

## **27 Applicable Law**

- 27.1 This Deed shall be governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
- 27.2 The Supplier shall ensure that the work done under any Contract complies with the laws from time to time in force in the State or Territory in which the Contract is performed.

## **28 Notices**

- 28.1 A notice required or permitted to be given by a Party to the other under this Deed must be in writing and
- (a) if it is hand-delivered or sent by mail, the notice must be addressed to that other Party's address as specified on page 5 of this Deed or

- (b) if sent by email, the notice must be sent to the email address as specified on page 5 of the Deed or, if superseded, the latest contact email address on the Hearing Services Online Portal.

28.2 A notice given to a Party in accordance with clause 28.1 is deemed to have been given and received

- (a) if it is hand-delivered, on the date that it is delivered
- (b) if it is sent by ordinary mail, on the third Working Day after it has been posted and
- (c) if via email, on the Working Day (or if not a Working Day, the next Working Day) it was sent but only if no notification has been received that the email could not be delivered or received.

## 29. Execution

29.1 The Parties agree that the first Party may

- (a) sign a copy of this Deed manually or by inserting a digital signature
- (b) scan it into an electronic format and
- (c) send it by email or other means of electronic transmission to the other Party.

29.2 The Parties further agree that

- (a) the last Party may sign the scanned copy of this Deed (previously signed and transmitted electronically by the first Party manually or with a digital signature) as if it were an original delivered by ordinary mail
- (b) the use of digital signatures by either Party on this Deed and transmitted electronically via email or other means of electronic transmission is consented to, as if it were an original signature and
- (c) when signed by the last Party, the scanned copy of this Deed is legally binding.

**Executed As A Deed**

**SIGNED, SEALED AND DELIVERED** for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Health, ABN 83 605 426 759, on

\_\_\_\_\_  
Date

by

\_\_\_\_\_  
*Name of signatory*  
Director, Hearing Program  
Management Section

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
**in the presence of**

\_\_\_\_\_  
*Name of witness*

\_\_\_\_\_  
*Signature of witness*

**SIGNED, SEALED AND DELIVERED** for and on behalf of **[name of Corporation]**  
**[ABN]** in accordance with section 127(1) of the *Corporations Act 2001*(Cth) on

\_\_\_\_\_  
Date

by

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director

and

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

# Schedule 1 – Device Schedule

## 1 Approved Devices

- 1.1 All approved Devices will appear on a Device Schedule published by the Department. The Device Schedule consists of the following
  - (a) Main Schedule of Approved Devices (published as the '*Fully Subsidised Device Schedule*') and
  - (b) Top-Up Schedule of Approved Devices (published as the '*Partially Subsidised Device Schedule*').
- 1.2 The Device Schedule is available at [www.hearingservices.gov.au](http://www.hearingservices.gov.au) and may be updated from time to time when a Device is approved and added, or removed.
- 1.3 The 'Prices for the Main Schedule of Approved Devices' are attached as an attachment to this Schedule 1.
- 1.4 Devices on the Main Schedule of Approved Devices are available to all Service Providers. They are free to Clients.
- 1.5 Suppliers must provide Devices on the Main Schedule of Approved Devices ordered by Service Providers for the purposes of the Program at no more than the Category Price.

## 2 Top-Up Devices

- 2.1 A Device that has been approved for inclusion on the Main Schedule of Approved Devices cannot be approved for the Top-Up Schedule of Approved Devices.
- 2.2 Top-Up Devices are available to all Service Providers. The Prices chargeable by the Supplier is as agreed between the Service Provider and the Supplier.
- 2.3 Hearing Devices on the Top-Up Schedule of Approved Devices are intended for Clients with clinical needs covered by hearing aids on the Main Schedule of Approved Devices, but have additional features with demonstrable Client benefit. These features would be over and above those required to achieve an acceptable standard of rehabilitation specified under the terms and conditions of the contract between the Service Provider and the Department. The Supplier shall not charge the Service

Provider extra for hearing Device features that are available for hearing Devices on the Main Schedule of Approved Devices.

- 2.4 All Devices must meet the performance characteristics of the Device Specifications as set out in Schedule 3.
- 2.5 The features additional to those specified under Schedule 3 (for free to client Devices) must be identified and the potential Client benefit supported by appropriate evidence. The evidence for additional Client benefit could, for example, take the form of field trial data, other test results, or validated research.

## Attachment to Schedule 1

### Prices for Main Schedule of Approved Devices

| Category   | Device Type   | Category Price *  |
|--|---|---|
| BTE<br>(OSPL90 $\geq$ 128<br>dBSPL)<br>IEC RTF 1600 Hz | High powered behind the ear (BTE) devices   | \$481.05  |
| BTE<br>(OSPL90<128<br>dBSPL)<br>IEC RTF 1600 Hz        | Behind the ear (BTE) devices  | \$455.10  |
| OTE  | Open ear/over the ear (OTE) devices   | \$455.10  |
| ITE<br>ITC<br>CIC                                      | In the ear (ITE) devices<br>In the canal (ITC) devices<br>Completely in the Canal (CIC) devices | \$417.90  |
| ALD  | Alternative listening devices (ALDs)  | Individual price to be negotiated <b>up to a maximum of \$414.45(exclusive of GST)</b>  |
| Other Devices  | Devices for Clients who have non-standard needs not covered by BTE, ITE, ITC or ALDs            | Individual price to be negotiated <b>up to a maximum of \$670.25 (exclusive of GST)</b> |

# Schedule 2 – Conditions of Device Supply

## Part 1 – Interpretation

### 1 Construction

- 1.1 In the Contract, unless the contrary intention appears
- (a) headings are for the purpose of convenient reference only and are not used in construction
  - (b) the singular includes the plural and vice-versa
  - (c) the word importing the gender imports every other gender
  - (d) a reference to a person includes a corporation
  - (e) where the last day of any period prescribed for an action falls on a day which is not a Working Day the action may be done on the first Working Day following that day
  - (f) a reference to an act is a reference to an act of the Commonwealth Parliament as amended from time to time and to any subordinate legislation made under the act
  - (g) a reference to a clause includes a subclause of the clause
  - (h) a reference to "dollars" or "\$" is to an amount in Australian currency and
  - (i) "includes" in any form is not a word of limitation.

### 2 Definitions

- 2.1 Unless a contrary intention is indicated, the terms used in the Contract are to be interpreted throughout in the same manner, and expressions will have the following meanings

**"Act"** means the *Hearing Services Administration Act 1997* and any amendments to that Act, including any instrument such as rules and determinations made under the Act

**"Client"** means any person to whom the Service Provider provides Supplies under the Program

**"Confidential Information"** means information that

- (a) is by its nature confidential
- (b) is designated as confidential or
- (c) the recipient knows or ought to know is confidential,



and includes

- (d) information comprised in or relating to clinical records
- (e) personal information under the *Privacy Act 1988* and
- (f) the terms of the Contract,

but does not include information which

- (g) is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligations or
- (h) has been independently developed or acquired by the recipient as established by written evidence

**"Contract"** has the meaning given in clause 3.1 of these Conditions of Device Supply

**"Deed"** means the Deed of standing offer entered into between the Supplier and the Commonwealth of Australia represented by the Department the relevant terms of which the Service Provider is aware

**"Department"** means the Commonwealth of Australia as represented by the Department of Health or such other department or agency administering the Program from time to time

**"Device"** has the same meaning as given to it in the Device Specifications

**"Device Specifications"** means the performance characteristics for Devices as set out in Schedule 3 to the Deed, as amended from time to time by the Department in accordance with clause 10.2 of the Deed

**"Order"** means the order for Supplies placed by the Service Provider in accordance with clause 4 of the Deed

**"Party"** means the Supplier or the Service Provider

**"Program"** means the Australian Government Hearing Services Program established under the Act for the provision of hearing rehabilitation services to Clients

**"Supplies"** means the Devices and associated services (or any part thereof) set out in the Order between the Supplier and the Service Provider, including the warranty and support services provided under clauses 6 and 7 of these conditions and

**"Working Days"** means all days except Saturdays, Sundays and days declared as Public Holidays in the State or Territory referred to in clause 17.

### 3 Terms of Contract

- 3.1 The **"Contract"** between the Parties comprises these terms and conditions, the Order and any other terms agreed between the Parties and is subject to any other relevant provisions of the Deed. In the event of inconsistency between the provisions of the Contract and
- (a) the Act - the Act shall prevail to the extent of the inconsistency and
  - (b) the Deed – the Deed shall prevail to the extent of the inconsistency.
- 3.2 In the event of any inconsistency amongst the terms of the Contract the following order of hierarchy applies
- (a) first - the terms and conditions set out in this document
  - (b) second - the Order and
  - (c) third - any other terms agreed between the Parties.
- 3.3 No variation to these terms and conditions will be binding unless it is in writing and signed by the Parties and approved by the Department.
- 3.4 The Service Provider acknowledges that it is aware of all of the terms and conditions of the Deed which are relevant to the Contract.

## Part 2 – Supplies

### 4 Provision of Supplies

- 4.1 The Supplier shall provide to the Service Provider the Supplies specified in the Contract at the times and in the manner specified in the Contract.
- 4.2 The Service Provider may reject any Supplies that do not comply with the Order or the Device Specifications set out or referred to in the Contract. The Supplier shall at no additional cost, remedy or replace the rejected Supplies as appropriate, and resubmit Supplies to the Service Provider that comply with the requirements of the Contract.
- 4.3 The Supplier shall take all reasonable steps to prevent or to minimise delay.
- 4.4 If the Supplier notifies the Service Provider within 3 Working Days of the placement of the Order that it will not be able to supply the Supplies within the timeframe specified in the Order for the delivery of the Supplies then the Parties will attempt to negotiate a substituted timeframe. If no agreement is reached within a further 7 Working Days then the Contract shall be deemed to have been terminated for convenience. No compensation is payable by either Party to the other in respect of the termination.
- 4.5 Subject to clause 4.4, if the Supplier is unable to comply with any time limit specified in the Contract, and is unable to negotiate a new time limit, the Service Provider may terminate the Contract for default in accordance with clause 13 and/ or seek damages from the Supplier.

### 5 Quality of Supplies

- 5.1 The Supplier shall ensure and warrants that
  - (a) the workmanship, quality and finish of materials in the Devices meet the requirements set out in the Contract and the Device Specifications
  - (b) the Devices
    - (i) are free from defects in design, materials and workmanship
    - (ii) are fit for their purpose and
    - (iii) are complete and
  - (c) the Devices and components are packed to commercial standards to ensure their receipt by the Service Provider in an undamaged state.

- 5.2 In respect of the services component of the Supplies, the Supplier shall ensure that it exercises skill, care and diligence to a high professional standard in providing the Supplies.
- 5.3 The Supplier shall take all reasonable steps to ensure that no injury or damage is caused to persons or to property arising out of or in connection with the provision of the Supplies.

## 6 Warranty Services

- 6.1 The Supplier warrants the Device as being free from defects in design, materials, and workmanship for a minimum period of 12 months commencing on the date of supply (the “**Warranty Period**”).
- 6.2 During the Warranty Period, the Supplier shall remedy defects in the Device due to faults attributable to design, workmanship, or component failure (in the opinion of the Supplier) at no additional cost. The Warranty does not cover damage, malfunction or failure resulting from accident, misuse, neglect, abuse, tampering by unauthorized persons, exposure to corrosive conditions, physical changes in the ear of the Client, or damage due to foreign objects or matter entering the Device.
- 6.3 If required to achieve a comfortable and accurate fit of the Device, the Supplier will remake the Device at no charge within 90 days of the date of supply.
- 6.4 Where a Device is repaired outside the Warranty Period, the Supplier will warrant the replaced components for a minimum period of 12 months and the workmanship for a period of 3 months commencing on the date of supply of the repaired Device.
- 6.5 Unless negotiated between the Supplier and Service Provider, the warranty services do not allow provision for credit return outside those conditions specified in this clause.

## 7 Support Services

- 7.1 The Supplier shall provide the following support services at no additional cost
- (a) any necessary cleaning instruments and materials for Devices
  - (b) initial supply of batteries, being a minimum of 3 cells per Device
  - (c) initial supply of replacement tubes and a range of different-sized domes for OTE devices
  - (d) instruction literature accompanying individual Devices which is suitable for Client

use. The literature must cover aspects such as user operated switches, cleaning and maintenance, battery changing and trouble shooting and shall be sufficient to enable normal use of the Device

- (e) unless otherwise agreed, turnaround of 5 Working Days for repairs from receipt of a Device from a Service Provider, for ITC and ITE Devices. Without limiting clauses 5 or 6, repairs must be adequate to restore a Device to its original physical condition with allowance for normal wear and tear (except where the damage is so extensive that it would not be reasonable to do so). Repairs must ensure that the electroacoustical characteristics and any other features prescribed by the Service Provider are matched to the original Device
- (f) Australian or New Zealand based capability for maintenance and repair
- (g) access to an Australian or New Zealand based capability for shell-making and assembly, for ITE and ITC Devices and
- (h) provision of an effective wax management system for custom devices at no additional cost.

7.2 The Supplier shall ensure that the Service Provider is provided with the following services at no additional cost

- (a) appropriate training and/or training materials to ensure that the Service Provider is able to properly and professionally fit, and undertake minor repairs and maintenance to Devices
- (b) necessary product and specification information including appropriate software and support and
- (c) verification protocols to ensure that the Service Provider is able to measure the output of the device in the real ear and compare against the required real ear gain.

7.3 The Supplier shall also provide the further support services specified in the Order at the price agreed between the Parties.

7.4 The Supplier must supply support services as specified in this clause, for up to five years following the removal of a Device from the Device Schedule.

## **8 Subcontracting**

8.1 The Supplier shall not subcontract the supply of the Supplies without the approval of the Service Provider.

- 8.2 Any subcontracting shall not relieve the Supplier of its obligations under the Contract. The Supplier shall remain at all times fully responsible for ensuring the suitability of a subcontractor and for ensuring that the Supplies are performed in accordance with the Contract.

## **Part 3 – Price and Payment**

### **9 Price**

- 9.1 The Supplier shall provide the Devices at the price determined in accordance with clause 4.3 of the Deed.
- 9.2 The Supplier shall provide other Supplies at the price agreed between the Parties at the time of the placement of the Order in accordance with clause 4.3 of the Deed.

### **10 Invoice and Payment**

- 10.1 The Supplier shall invoice the Service Provider for the Supplies at the time and in the manner agreed by the Parties.
- 10.2 The Service Provider shall pay the Supplier the amount stipulated in its invoice for the Supplies in accordance with the terms agreed between the Parties.

## **Part 4 – General**

### **11 Disclosure of Information**

- 11.1 Subject to this clause, a Party shall not, without the prior written approval of the other Party, make public or disclose to any person other than the other Party, any Confidential Information. In giving written approval, a Party may impose such terms and conditions as in that Party's opinion are appropriate.
- 11.2 Each Party shall take all reasonable steps to ensure its employees, agents and subcontractors do not make public or disclose the other Party's Confidential Information.
- 11.3 Each Party may disclose Confidential Information to its legal advisers in order to obtain advice in relation to its rights under the Contract, but only to the extent necessary for that purpose.
- 11.4 Each Party may disclose Confidential Information
  - (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first mentioned Party or
  - (b) if required in connection with legal proceedings,

but in each case, subject to the Party giving the other Party sufficient notice of any proposed disclosure to enable the other Party to seek a protective order or other remedy to prevent the disclosure.

11.5 Each Party may also disclose the other Party's Confidential Information to its related bodies corporate (as defined in section 50 of the *Corporations Act 2001*) for the purpose only of fulfilling its obligations under the Contract, or in the case of the Supplier the Deed, unless

- (a) the Confidential Information includes any personal information as defined in the *Privacy Act 1988* or
- (b) the other Party notifies it that the particular information may not be disclosed to such other bodies.

11.6 Upon termination of the Contract, each Party shall

- (a) deliver to the other Party (and not retain any copies) of all material forms of the other Party's Confidential Information and
- (b) deliver to the other Party a statutory declaration made by an authorised officer of the Party declaring that to the best of that person's information and belief (after having made proper enquiries) none of the Party, its officers, employees, agents or contractors have retained any of the other Party's Confidential Information.

11.7 Nothing in this clause prevents either Party from supplying information required by the Department in relation to the Contract.

11.8 This clause shall survive the expiration or termination of the Contract.

## **12 Compliance with Privacy Act**

12.1 In addition to any obligations under the *Privacy Act 1988*, the Service Provider shall in respect of the Contract, and with respect to all Confidential Information that comprises personal information as defined in the *Privacy Act 1988*

- (a) comply with those provisions of the *Privacy Act 1988* as if it were an agency
- (b) co-operate with any reasonable demands or inquiries made by the Privacy Commissioner
- (c) ensure that any person who has an access level which would enable that person to obtain access to any person information is made aware of, and undertakes in writing, to observe the provisions referred to in clause 12.1(a) above



- (d) take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers of the Service Provider have access to it
- (e) not transfer such information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department
- (f) immediately notify the Supplier and the Department when the Service Provider becomes aware of a breach of any obligation concerning security, use and disclosure of personal information
- (g) notify the Supplier and the Department, and co-operate with the Supplier and the Department in the resolution of, any complaint alleging an interference with privacy and
- (h) indemnify the Supplier and the Department in respect of any loss suffered or incurred by the Supplier or the Department arising out of or in connection with a breach of the obligations of the Service Provider under this clause 12.1 or any misuse of information or disclosure in breach of an obligation under the *Privacy Act 1988* or otherwise, except to the extent that the loss, liability or expense is directly caused by a negligent or wrongful act or omission of the Service Provider or any of its officers or employees.

12.2 The Service Provider also undertakes to ensure that its officers, employees, subcontractors and agents will comply with the obligations specified in clause 12.1.

12.3 Subject to the Service Provider complying with the requirements of the *Privacy Act 1988*, the Department approves for the purposes of clause 12.1(e) the Service Provider transferring outside of Australia, and allowing parties outside Australia to access, the following personal information for the sole purpose of facilitating the supply of a Device to a Client

- (a) the Client's name
- (b) the Client's skin colour
- (c) the Client's hair colour
- (d) the Client's age range
- (e) the Client's date of birth
- (f) the order details for the Device to be supplied to the Client
- (g) the name and contact details of the practitioner who fitted the Device
- (h) the account name, number and address of the Service Provider's account with the

- relevant Supplier and the Client's years of use with that account and
- (i) any other personal information that is required for the supply of a Device to the Client.

12.4 This clause shall survive the expiration or termination of the Contract.

## 13 Termination

13.1 Without prejudice to its rights at common law, the Supplier may terminate the Contract immediately in whole or in part for default if the Service Provider

- (a) becomes bankrupt or insolvent
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors
- (c) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise
- (d) suffers any execution against its assets having adverse effect on its ability to perform the Contract
- (e) fails to pay the agreed price in accordance with the Contract or
- (f) assigns its rights under the Contract otherwise than in accordance with the requirements of the Contract.

13.2 The Service Provider may terminate the Contract if

- (a) any of the events specified in clauses 13.1(a), (b), (c) or (d) occur in relation to the Supplier
- (b) the Supplier fails to supply Supplies in accordance with the Contract
- (c) the Supplier fails to take action to remedy a breach of an obligation under the Contract and does not commence to remedy the breach within 10 Working Days of being given notice by the other Party requiring the remedying of the breach or fails to remedy the breach within 20 Working Days of being given that notice
- (d) the Supplier assigns its rights under the Contract otherwise than in accordance with the requirements of the Contract or
- (e) the Deed expires, the Deed is terminated or a Device to be provided under the Contract is withdrawn by either the Supplier or the Department.

13.3 If the Contract is terminated under this clause

- (a) the Parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination
- (b) rights to recover damages will not be affected and
- (c) if the termination was by the Service Provider, the Supplier shall indemnify the Service Provider in respect of any loss it may incur in purchasing similar Supplies from other suppliers.

## 14 Assignment and Novation

14.1 Neither Party may assign or novate its rights under the Contract without the prior consent in writing of the other Party. Any assignment or novation

- (a) by the Service Provider – may only be to another accredited service provider who is a contracted service provider within the meaning of section 20 of the Act or
- (b) by the Supplier – may only be to another supplier who has been approved by the Department to supply Devices under the Program and has entered into a deed of standing offer with the Department.

## 15 Waiver

- 15.1 A waiver by a Party to the Contract in respect of a breach or a provision of the Contract by the other Party shall not be deemed to be a waiver in respect of any other breach, and the failure of a Party to enforce at any time any of the provisions of the Contract shall in no way be interpreted as a waiver of such provision.
- 15.2 The Service Provider shall not be liable for any additional work undertaken or expenditure incurred by the Supplier pursuant to a variation to the Contract unless such variation has been effected in accordance with the Contract and the additional expenditure has been agreed to by the Service Provider.

## 16 Resolution of Disputes

- 16.1 The parties undertake to use all reasonable efforts in good faith to resolve any disputes that arise between them in connection with the Contract.
- 16.2 A Party may give the other Party a notice of dispute ("**Dispute Notice**") in connection with the Contract. Following the giving of a Dispute Notice, the dispute must initially be referred to a senior officer of the Service Provider and a senior officer of the Supplier.

- 16.3 If the dispute is not resolved to the satisfaction of either Party under the procedure in clause 16.2, then the dispute must be referred to a senior executive of the Service Provider and a senior executive of the Supplier, who must use reasonable endeavours to resolve the dispute.
- 16.4 If the parties have not been able to resolve the dispute in accordance with clauses 16.2 and 16.3, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 16.5 In the event that the dispute, controversy or claim has not been resolved within 20 Working Days (or such other period as agreed between the parties in writing) after the Parties have attempted to agree on a process under clause 16.4, or the appointment of the mediator or conciliator in accordance with clause 16.4, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 16.6 Nothing in this clause 16 prevents either Party from seeking urgent injunctive relief.

## 17 Applicable Law

- 17.1 This Contract shall be governed by and construed in accordance with the law in force in the State or Territory in which the Order is issued.
- 17.2 The Supplier shall ensure that the work done under the Contract complies with the laws of the State or Territory referred to in clause 17.1.

## 18 Notices

- 18.1 A notice required or permitted to be given by one Party to another under the Contract must be in writing and is treated as being duly given if it is left at, sent by pre-paid mail to or transmitted by facsimile to that other Party's address as specified in the Order.
- 18.2 A notice given to a Party in accordance with clause 18.1 is treated as having been duly given and received
- (a) when delivered (if left at that Party's address)
  - (b) on the third Working Day after posting (if sent by pre-paid mail) or
  - (c) on the Working Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation has been received that the notice

had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

# Schedule 3 – Device Specifications

## 1 Introduction

### 1.1 Detailed specifications

- Minimum specifications – Earmoulds and shells
- Minimum specifications – Free-to-client devices
- Specifications – Top-Up devices
- Specifications – Non-standard devices

### 1.2 To add clarity to the documentation in this Schedule 3, the following definitions are provided

|        |  |
|--------|--|
| Device | An electronic instrument designed and manufactured to provide amplification to individuals with a hearing loss. May be a hearing aid or alternative listening device. This definition is an addendum to the definition of “Device” in other parts of the Deed. |
| Type   | A family of devices that have common physical characteristics (e.g. BTE, ITE, ITC).  |
| Model  | A group of devices within a particular type. These are usually defined and named by the manufacturer and may be further categorised on the basis of specific features.   |
| OTE    | An Open Ear Device or Over-The-Ear device. An OTE consists of hardware that allows the coupling of the device to the outer ear via capillary tubing and dome tip, or allows capillary tubing/dome tip and custom earmould to be interchanged.                  |

### 1.3 The following table describes the minimum requirements for each different device type to be listed on the Device Schedule.

**Table 1 – Free-To-Client Device Specifications**

| Device Type  | Specifications   |
|--|--|
| BTE (C1)<br>(OSPL90 $\geq$ 128 dBSPL)<br>IEC RTF 1600 Hz | Minimum specifications and <ul style="list-style-type: none"> <li>• Feedback cancellation</li> </ul>   |
| BTE (C2)<br>(OSPL90 < 128 dBSPL)<br>IEC RTF 1600 Hz      | Minimum specifications and <ul style="list-style-type: none"> <li>• Switchable or adaptive directional microphone</li> <li>• At least one form of adaptive noise reduction</li> <li>• Feedback cancellation</li> <li>• In addition to the above, at least one of the following <ul style="list-style-type: none"> <li>• Transient noise reduction</li> <li>• Autophone</li> <li>• Automatic or adaptive directional microphone</li> <li>• Automatic multi-memory</li> <li>• Automatic environmental adaptation</li> <li>• Wireless connectivity</li> </ul> </li> </ul>   |
| OTE (C2 open ear BTE)                                    | Minimum specifications and <ul style="list-style-type: none"> <li>• Capillary tube (or RITC) and dome option</li> <li>• At least one form of adaptive noise reduction</li> <li>• Feedback cancellation</li> <li>• Capacity for 0dB gain below 800Hz</li> <li>• Capacity for OSPL90 <math>\leq</math> 103dBSPL at or below 800Hz</li> <li>• In addition to the above, at least one of the following <ul style="list-style-type: none"> <li>• Transient noise reduction</li> <li>• Autophone</li> <li>• Automatic or adaptive directional microphone</li> <li>• Automatic multi-memory</li> <li>• Automatic environmental adaptation</li> <li>• Wireless connectivity</li> </ul> </li> </ul> |
| Custom (ITE, ITC, CIC)<br>(C3)                           | Minimum specifications and <ul style="list-style-type: none"> <li>• At least one form of adaptive noise reduction</li> <li>• Feedback cancellation</li> </ul>  |

## Notes

1. CIC is defined as a Completely-in-Canal style device whose faceplate sits at the ear canal entrance. This device may be listed as Free to Client or Top-up.

2. Noise suppression or equivalent processes may vary from device to device. The Department considers acceptable all processes supported by appropriate research evidence. The feature pool for C2 devices includes the option of including multiple noise suppression processes.

3. Datalogging is a feature considered beneficial for practitioners and therefore clients. Manufacturers are encouraged to introduce this feature throughout their entire product range during the course of this Deed.

Manufacturers may elect whether they wish an interchangeable OTE to be listed as a BTE or OTE. The device may not be listed in both categories and must meet the specifications for the category for which it is nominated.

Alternative technologies that provide comparable or improved client outcomes may be submitted to the Department of Hearing Services for consideration as an alternative to one or more additional features required for free-to-client BTE (OSPL90<128 dB SPL) with the provision of appropriate research evidence by the manufacturer.

Similarly, devices featuring alternative technologies that do not meet specifications or requirements, as set out in this Schedule, may be submitted for consideration to the Department of Hearing Services where the device provides comparable or improved client outcomes. This may apply where the device offers a design feature that invalidates a minimum specification or requirement, or a number of minimum specifications or requirements. The manufacturer is responsible for providing appropriate supporting research evidence.

1.4 The Department will assess the outcomes-based evidence and/or electroacoustic information with supporting rationale by manufacturers that explains client benefit.

Based upon the evidence and information submitted, the Department reserves the right to accept or reject devices.



## 2. The Process of Assessment of Devices

- 2.1 Where manufacturers consider that a device meets the specifications, they are invited to submit to the Department the device they wish to have included on the Device Schedule.
- 2.2 The manufacturer will be responsible for the assessment and evaluation of device submissions. After the manufacturer has deemed the device to have satisfied all device specifications it will submit specification sheets, promotional material and any research information (if warranted) along with a signed cover letter advising the device meets the specifications. Where there are special circumstances (as in Clause 1.4), manufacturers will need to provide any additional information requested by the Department.
- 2.3 The Department will decide
- (a) whether or not a device is to be listed
  - (b) if it is to be listed, whether it will be listed on the Main Schedule of Approved Devices or the Top-Up Schedule of Approved Devices and
  - (c) if it is to be listed, which Category it will be listed on.

This decision will be final subject to full consultation and to clause 2.4 below.

- 2.4 At its absolute discretion and without any obligation to do so, the Department may review an assessment and evaluation by a manufacturer to ensure that they are correct. The Department will consult with the manufacturer in such a review.

# Minimum Specifications for Earmoulds and Shells

## 1. Earmoulds and Shells

- 1.1 All standard devices (excluding OTEs) must include an earmould or ear shell. Custom devices must be manufactured from individual ear impressions supplied by Service Providers, or if non-custom devices, must provide comfort, retention and control of feedback that is equivalent to that which can be obtained from a custom device.
- 1.2 Earmoulds/shells must be fully cured with a smooth finish free of blemishes. Custom devices must be accurate to the ear impression supplied.
- 1.3 There must be provision for appropriate attachment of the earmould/shell to the remainder of the device in a secure way.
  - (a) For BTE devices, tubing must be securely fixed to the earmould
  - (b) For ITE, ITC and CIC devices, the shell must be firmly attached to the remainder of the device and must merge smoothly with the remainder of the device
- 1.4 The wall areas of the earmould shell shall be of sufficient thickness for ITEs and ITCs to prevent holes being worn in the shell through regular use and to allow for mould modifications.
- 1.5 Appropriate venting and plumbing options must be available.
- 1.6 A range of earmould styles and materials must be available to meet individual needs and particularly to overcome any allergic reactions a Client may have to a particular material.
- 1.7 Earmoulds and shells shall not be made of a material that changes size or shape significantly over time.
- 1.8 The earmould/shell shall be durable and able to withstand daily use by Clients.
- 1.9 Earmoulds for BTE devices shall be clear or of suitable skin coloured tint unless otherwise requested by the Client.
- 1.10 Capillary tubing and dome tips used for OTEs must be durable and able to withstand daily use by clients. Tubing must be easily replaceable.

# Minimum Specifications for Free-to-client Devices

## 1 Introduction

- 1.1 These specifications identify performance characteristics for free-to-client devices and devices approved by the Department where the Client is funding additional features. The specifications apply to all free-to-client and top-up devices.
- 1.2 In addition to the following specifications, free-to-client devices must include the features as set out in Table 1 of Schedule 3 Device Specifications. Alternative technologies that achieve equivalent benefit to clients may be submitted to the Department of Hearing Services for consideration.
- 1.3 All electroacoustic measurements referred to in this specification are to be made in a 2cc coupler conforming to Australian Standard AS1089-1971, or IEC Publication 126, but otherwise in accordance with the Australian Standard AS 1088 (equivalent to IEC 118).

## 2 Stability

- 2.1 Response peaks which are due to positive feedback must not deviate by more than 2 dB from a response obtained at lower gain settings which have no evidence of feedback, as measured in a standard (HA1 or HA 2) 2cc coupler.

## 3 Frequency Response

- 3.1 It must be possible to select the shape of the gain curve to enable the aid to be customised, by the fitter, for the individual Client.
- 3.2 There must be a minimum of 5 parameters with which the fitter can adjust the frequency response of a device (e.g. low/high channel gain, compression threshold, crossover frequency, compression ratio).
- 3.3 With all tone controls set for maximum gain, the peak to trough ratio for both the gain and MPO curves shall be less than 7 dB. Peak to trough is defined as the decibel difference between a trough and the straight line joining the two peaks immediately surrounding the trough.

## 4 OSPL90

- 4.1 Each device must have a means by which the fitter can adjust OSPL90 so that it produces adequate loudness sensation for Clients while avoiding loudness discomfort. The device design must be such that loudness discomfort can be avoided for any setting of the (manual or automatic) volume control. This will normally require that OSPL90 be unaffected by the volume control setting. (It is, however, permissible for the apparent OSPL90, measured with a 90 dB SPL input signal, to decrease when the volume control setting is reduced sufficiently to cause the output signal to be insufficient to saturate the device).
- 4.2 The preferred method of achieving control of OSPL90 is by output controlled compression limiting. For devices employing such compression limiting, the following sub-clauses apply.
- (a) The attack time of the compressor shall be in the range 1 to 10 ms.
  - (b) The release time of the compressor shall be less than 100 ms. Where an adaptive or dual release time is used, the shortest release time shall be less than 100 ms. Hearing aids with longer release times must utilise other forms of compression.
  - (c) The compression ratio of any compressor used to control OSPL90 shall be greater than or equal to 5.
- 4.3 Other methods for controlling OSPL90 that achieve the intent of clause 4.1, and meet the distortion requirements in clause 6, would be acceptable. Device configurations that could meet these requirements include
- (a) Input controlled compression schemes combined with peak clipping to control OSPL90.
  - (b) Compression schemes that result in very low FOG (less than 10 dB) for all input levels higher than 85 dB SPL.
- 4.4 Where a device has a single OSPL90 control, that control shall adjust all frequencies equally to within + 3 dB, at least when measured between 500 and 4000 Hz, with tone control(s) set to give the flattest frequency response.
- 4.5 The range of adjustment of any OSPL90 control, averaged over the range of frequencies that it is intended to control, shall be a minimum of 10 dB.

## 5 Gain/Compression

- 5.1 Devices must have compression that is independently adjustable in at least two channels.
- 5.2 There must be the capability to separately adjust, in each channel, the gain for low (50 dB SPL or lower) and high (80 dB SPL or higher) input levels (or equivalently, the compression ratio and overall gain) to produce compression in at least the range of 11 to 31.5.3. If not variable, the compression threshold and cross-over frequency must be clearly specified.

## 6 Distortion

- 6.1 Devices must meet the distortion requirements specified in the following clauses. Note that clause 4.3 will allow high-powered devices to meet this specification without the use of any sort of compression.
- 6.2 Total Harmonic Distortion shall not exceed the values in Table 1. When testing the device all controls shall be set to the position that leads to the flattest frequency response. Any gain preset shall be set to maximum and the V/C set so that the reference test gain is appropriate for the OSPL90 setting at frequency 1600 Hz (IEC 118-0).

**Table 1. Total Harmonic Distortion for devices.**

| Input Level (dB SPL) | Frequency (Hz) |      |     |
|----------------------|----------------|------|-----|
|                      | 800            | 1600 |     |
| 65                   | 5%             | 5%   | 5%  |
| 90                   | 20%            | 15%  | 10% |

- 6.3 The distortion figures in Table 1 are not to be exceeded for any setting of the OSPL90 control. When an OSPL90 control is set to give an OSPL90 greater than 112 dB SPL for an ITE or ITC device, or greater than 128 dB SPL for a BTE device, testing with a 90 dB SPL input level is not required for these

OSPL90 settings. Note however, that testing at 90 dB SPL is still required when the OSPL90 of these devices is reduced below these 112 and 128 dB SPL limits.

## 7 Noise

- 7.1 Equivalent Input Noise shall not exceed the values shown in Table 2. The measurements shall be made in accordance with IEC 118-0 paragraph 7.14.2 with the gain and OSPL90 set to maximum and the volume control set to a gain 10 dB below maximum. The values in column (a) apply to devices that have an OSPL90 in excess of 128 dB SPL, and the values in column (b) apply to all other devices.

**Table 2. Maximum 1/3 octave input referred noise.**

| Freq Hz | Noise (dB SPL) | Noise (dB SPL) |
|---------|----------------|----------------|
|         | (a)            | (b)            |
| 250     | 38             | 37.5           |
| 500     | 30             | 26.5           |
| 1000    | 20             | 17.5           |
| 2000    | 23             | 14.5           |
| 4000    | 26             | 16.5           |

- 7.2 The figures shown in Table 2 must not be exceeded when any tone control (or control which alters the device's response) is adjusted to reduce gain at 500 Hz by 10 dB

## 8 Telecoil

- 8.1 An effective telecoil and means for enabling the telecoil must be available free of charge on all approved devices including top-up devices. Low gain devices without telecoil may be approved if they offer sufficient advantages to compensate for the absence of a telecoil and which result in a design incompatible with the inclusion of a telecoil.
- 8.2 It must be possible to adjust the device so that at the reference volume control position, and with the device oriented for maximum sensitivity, the output SPL of the device for a 50 mA/m magnetic input at 1.6 kHz is within  $\pm 4$  dB of the output of the device with an acoustic input of 59 dB SPL.
- 8.3 It must be possible to adjust the device so that when the telecoil and acoustic input responses are matched at 1.6 kHz, the telecoil response shall be the same as the acoustic input response within  $\pm 5$  dB for the frequency range 500 Hz to 4 kHz. The response slopes for the acoustic and magnetic input shall also be matched within  $\pm 5$  dB for every octave between 1 and 4 kHz.

- 8.4 The magnetic response at 150 Hz shall be less than the response at 500 Hz by at least 6 dB but a greater difference in responses is desirable.

## 9 Electrical (Audio) Input

- 9.1 Electrical (audio) input must be available for selection by a fitter, when required by the Client, on all high powered BTEs.
- 9.2 When connected, an external device shall be able to attenuate the internal microphone signal by at least 10 dB over the range 200 to 4 kHz, when the external device has a source impedance of 350 ohms or less.
- 9.3 It must be possible to adjust the device so that, with the output levels for acoustical and electrical inputs matched at 1 kHz, the output response shape for a constant voltage electrical input shall match that for acoustical input, to within  $\pm 5$  dB over the range 200 Hz to 4 kHz.
- 9.4 For a frequency of 1.6 kHz, an input voltage in the range 0.5 mV to 1.3 mV must generate the same acoustic output as an acoustic input of 70 dB SPL at 1.6 kHz, when the device is operating in the linear region.
- 9.5 A connector system incorporating a socket to accept a "Europlug" is desirable.

## 10 User Controls

- 10.1 The device must incorporate an automatic volume control and a manual volume control if required or requested. Where this is not possible a supplier must list an aid within each category that accommodates this requirement. A volume control operated remotely from the device is an acceptable alternative. A manual or automatic volume control must be made available free of charge on all approved devices including top-up devices.
- 10.2 A user operated control, if present, must be a prominent tactile feature on the device and must be easy to operate.
- 10.3 Volume control adjustment range shall be between 15 and 30 dB for an ITE or ITC device, and between 20 and 40 dB for a BTE device, and be linear in operation over at least the upper two-thirds of its range. That is, rotation of the control over the top one-third of its range must result in a gain change equal to the gain change that occurs in the middle one-third of its range, to within  $\pm 3$  dB.

- 10.4 An automatic control, if present, must be effective in keeping the output level comfortable for a wide range of input levels. At any frequency for which the full on gain exceeds 10 dB, the output level must vary by less than 20 dB as the input level varies from 50 to 90 dB SPL. The compression ratio must be less than 41 for all input levels less than 70 dB SPL.

## **11 Battery**

- 11.1 With the volume control set to the reference test position (IEC 118-0), MPO set to 105 dB SPL at 2 kHz, or minimum MPO, whichever is the greater, and an input signal of 1 kHz at a level of 60 dB SPL, the operating life of the battery must be greater than 90 hrs for 675, 13, or 312 batteries, and greater than 60 hrs for A10 or A5 batteries.
- 11.2 Stability of the device must be maintained for supply voltages between 1.1 and 1.5 volts, and supply resistances between 3 and 11 ohms.

## **12 Hearing Device Design**

- 12.1 The battery compartment must be easy to open and the battery must be easy to replace. If necessary, a tool should be provided to assist with both functions.
- 12.2 If the on/off switch is incorporated into the battery holder then it shall operate without allowing the battery to fall out of the device.
- 12.3 All devices supplied must be of solid construction and reliable in their operation.
- 12.4 An effective wax management system and/or microphone guard must be made available for custom devices.

## **13 Review of Minimum Specifications**

- 13.1 The Department, in consultation with manufacturers, will review the minimum specifications after 24 months from the implementation date of the specifications set out in this Deed.



# Specifications for Top-up Devices

## 1 Minimum Specifications for Top-up Devices

- 1.1 All ITE and ITC top-up devices must meet the specifications for free-to-client devices, including one form of noise suppression and feedback cancellation, plus include at least one feature from the list of top-up features below. CIC devices must meet the specifications for free-to-client devices and include noise suppression and feedback cancellation, but do not necessarily have to include any feature from the list below
- 1.2 All BTE top-up devices with an OSPL90 less than 128 dB SPL must include a switchable or adaptive directional microphone, at least one form of noise reduction, a feedback cancellation system and at least two of the following transient noise reduction, autophone, automatic or adaptive directional microphone, automatic multi-memory, automatic environmental adaptation or wireless connectivity. All BTEs in this category must also have at least two additional feature from the list below.
- 1.3 All BTE top-up devices with an OSPL90 of 128 dB SPL or greater must include a feedback cancellation system plus at least one additional feature from the list below.

**Table 2 Top-up Device Specifications**

| Device Type  | Specifications  |
|--|---|
| BTE (C1)<br>(OSPL90 >= 128 dBSPL) IEC<br>RTF 1600 Hz | <p>Minimum specifications</p> <ul style="list-style-type: none"> <li>• Feedback cancellation</li> </ul> <p>and at least one of the following</p> <ul style="list-style-type: none"> <li>• Transient noise reduction</li> <li>• Autophone</li> <li>• Automatic or adaptive directional microphone</li> <li>• Automatic multi-memory</li> <li>• Automatic environmental adaptation</li> <li>• Wireless connectivity</li> <li>• Multi-channel adaptive directional microphone</li> <li>• Super directional microphone</li> <li>• Frequency transposition/compression</li> <li>• Trainability/environmental learning</li> <li>• Bilateral processing/synchronisation</li> </ul> |

| Device Type  | Specifications  |
|--|---|
| BTE (C2)<br>(OSPL90 < 128 dB SPL)<br>IEC RTF 1600 Hz | <p>Minimum specifications and</p> <ul style="list-style-type: none"> <li>• Switchable or adaptive directional microphone</li> <li>• At least one form of adaptive noise reduction</li> <li>• Feedback cancellation</li> <li>• In addition to the above, at least two of the following <ul style="list-style-type: none"> <li>• Transient noise reduction</li> <li>• Autophone</li> <li>• Automatically switched directional microphone</li> <li>• Automatic multi-memory</li> <li>• Automatic environmental adaptation</li> <li>• Wireless connectivity</li> <li>• Multi-channel adaptive directional microphone</li> <li>• Super directional microphone</li> <li>• Frequency transposition/compression</li> <li>• Trainability/environmental learning</li> <li>• Bilateral processing/synchronisation</li> </ul> </li> </ul>       |
| OTE (C2 open ear BTE)                                | <p>Minimum specifications and</p> <ul style="list-style-type: none"> <li>• Capillary tube (or RITC) and dome option</li> <li>• At least one form of adaptive noise reduction</li> <li>• Feedback cancellation</li> <li>• Capacity for 0dB gain below 800Hz</li> <li>• Capacity for OSPL90 ≤ 103dB SPL at or below 800Hz</li> <li>• In addition to the above, at least two of the following <ul style="list-style-type: none"> <li>• Transient noise reduction</li> <li>• Autophone</li> <li>• Automatically switched directional microphone</li> <li>• Automatic multi-memory</li> <li>• Automatic environmental adaptation</li> <li>• Wireless connectivity</li> <li>• Multi-channel adaptive directional microphone</li> <li>• Super directional microphone</li> <li>• Frequency transposition/compression</li> </ul> </li> </ul> |

| Device Type                  | Specifications   |
|------------------------------|--|
|                              | <ul style="list-style-type: none"> <li>• Trainability/environmental learning</li> <li>• Bilateral processing/synchronisation</li> </ul>  |
| Custom (ITE, ITC, CIC*) (C3) | <p>Minimum specifications and</p> <ul style="list-style-type: none"> <li>• At least one form of adaptive noise reduction</li> <li>• Feedback cancellation</li> </ul> <p>And at least one of the following</p> <ul style="list-style-type: none"> <li>• Transient noise reduction</li> <li>• Autophone</li> <li>• Switchable, automatic or adaptive directional microphone</li> <li>• Automatic multi-memory</li> <li>• Automatic environmental adaptation</li> <li>• Wireless connectivity</li> <li>• Multi-channel adaptive directional microphone</li> <li>• Super directional microphone</li> <li>• Frequency transposition/compression</li> <li>• Trainability/environmental learning</li> <li>• Bilateral processing/synchronisation</li> </ul> |

\*For CIC requirements please see clause 1.1 above

## 2 Definitions of top-up features

| Feature                   | Definition   |
|---------------------------|--|
| Adaptive noise reduction  | A method of automatically changing the gain-frequency response, either quickly or slowly, in a manner dependent on the variation of SNR across frequency, and that causes the overall SNR to increase. |
| Feedback cancellation     | A method of reducing feedback oscillation using the addition of a signal with identical gain and opposing phase response to cancel that feedback pathway   |
| Transient noise reduction | A method of automatically changing gain, or gain-frequency response with extremely fast attack and recovery times designed to provide reduction of intense transient sounds in all SNR environments    |
| Autophone                 | A feature whose functionality switches automatically to the telephone program as soon as a telephone is brought to the ear   |

| Feature  | Definition  |
|--|---|
| Switchable directional microphone              | A microphone that can change from directional to omni-directional either by fitter or user adjustment   |
| Automatically switched directional microphone  | A microphone that can change from directional to omni-directional automatically   |
| Single-channel adaptive directional microphone | A directional microphone whose directivity pattern automatically varies so as to minimize sensitivity in the arrival direction of the dominant rearward sound source  |
| Multi-channel adaptive directional microphone  | A directional microphone whose directivity pattern automatically varies so as to minimize sensitivity, independently in two or more frequency ranges, in the arrival direction of the dominant rearward sound within each frequency range |
| Automatic multi-memory                         | Devices that automatically vary the processing strategy, including the gain/frequency response and available features, depending on the acoustic environment  |
| Automatic environmental adaptation             | A device whose output continually adapts to the environment by varying amplification parameters other than those associated with wide-dynamic range compression   |
| Wireless connectivity                          | The capacity of a device to facilitate wireless connectivity to external compatible devices   |
| Super directional microphone                   | A directional microphone whose directivity index (the ratio of sensitivity for frontal sounds relative to all other directions) is greater than 6.0 dB  |
| Frequency transposition/compression            | The downward compressing and/or shifting of output frequencies into frequency regions more likely to be audible for clients with sloping hearing losses   |
| Trainability/environmental learning            | Devices that automatically adjust signal processing parameters to user preferences in different listening environments by applying user data over time  |
| Bilateral processing/synchronisation           | A wireless communication between two devices that enables the exchange of environmental information to synchronise automatic and user-controlled signal processing variables that affect the device output.                               |

### 3 Specifications for Top-up Devices

- 3.1 These features have been identified as providing clinical benefits over and above what is required to achieve an acceptable standard of rehabilitation as specified under the terms and conditions of the contract between a registered provider and the Department of Hearing Services.
- 3.2 With the provision of appropriate evidence in support of their potential client benefit, new or innovative features not listed above will be considered for inclusion. The evidence for additional Client benefit could, for example, take the form of field trial data, other test results, or validated research.

# Specifications for Non-Standard Devices

A Non-Standard Device is a device that has special application to particular clinical requirements, which cannot be met by a BTE, ITE, ITC, CIC device.

Types of non-standard devices, which are listed on the free-to-client Schedule, include

- Body worn hearing aids
- Spectacle aids
- CROS, BICROS, STEREO CROS and Wireless CROS aids
- Bone Conduction aids
- Alternative Listening Devices (ALDs)
- Other relevant devices as they become available, such as remote controls and FMs

The performance of these devices will be assessed taking into consideration the clinical use for which they are intended and any relevant performance specifications for free-to-client devices.

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