

DATED

DAY OF

20XX

SERVICE AGREEMENT

GlassesSA

BETWEEN

MINISTER FOR HUMAN SERVICES

("Minister")

-AND-

INSERT PARTY NAME

ABN XXX XXX XXX

("Service Provider")



Government
of South Australia

CROWN SOLICITOR

Level 17, 10 Franklin Street, Adelaide SA 5000

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SCHEDULE 1 – Agreement Details

SCHEDULE 2 – Table of Fees

SERVICE AGREEMENT dated

day of

2021

PARTIES:

MINISTER FOR HUMAN SERVICES, a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA), acting through the Department of Human Services (DHS), of Level 12 South, 1 King William Street, Adelaide 5000 in the State of South Australia (“**Minister**”)

AND

INSERT NAME ACN XXX XXX XXX, a body corporate pursuant to the *Corporations Act 2001* whose registered office is at **insert address** (“**Service Provider**”)

BACKGROUND:

- A. The Minister administers GlassesSA, a Government scheme that provides glasses at low or no cost and contact lenses at no cost to Eligible Persons (the “**GSA**”).
- B. GSA relies on the participation of providers of optometric services across South Australia.
- C. The Service Provider is a provider of optometric services to the people of South Australia at the Service Provider’s Stores.
- D. The Minister has engaged the Service Provider to participate in the GSA, and the Service Provider accepts such engagement, in accordance with and subject to the terms and conditions of this Agreement.

IT IS AGREED:**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

- 1.1.1 **"ABN"** has the meaning attributed in the *A New Tax System (Australian Business Number) Act 1999* (Cth)
- 1.1.2 **"Agreement"** means this Service Agreement and includes all Schedules.
- 1.1.3 **"Claim"** means the electronic submission of a claim in the GSA online portal for the prescription and provision of Prescribed Items under GSA.
- 1.1.4 **"Clinically Necessary"** means:
- (a) in relation to glasses, and in the professional opinion of the Prescriber:
 - (i) GSA glasses are lost, stolen or broken and irreparable; or
 - (ii) a child (being a person under 18 years of age) has outgrown their GSA glasses; or
 - (iii) new prescription – at least one line change for distance vision; or
 - (iv) new prescription – at least one line change for reading vision; or
 - (v) a new prescription is required after cataract surgery; or
 - (vi) such other circumstance or condition that in the opinion of the Prescriber necessitates the prescription of new glasses; and
 - (b) in relation to contact lenses, and in the professional opinion of the Prescriber:
 - (i) the lenses are the only means of vision correction for one of the eye conditions specified in the GSA online portal; and
 - (ii) lenses are required by the Eligible Person at the time of the prescription.
- 1.1.5 **"Commencement Date"** means the commencement date of this Agreement set out in Item 1 of Schedule 1.
- 1.1.6 **"Confidential Information"** means information disclosed by, or on behalf of, a party to this Agreement that:
- (a) is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
 - (b) is designated by the disclosing party as confidential or identified in terms connoting its confidentiality,
- but does not include information which is or becomes public knowledge other than by a breach of this Agreement or information included in this Agreement;

- 1.1.7 **“Country Optometrist”** means an optometrist at a Service Provider’s Store that has a postcode greater than 5200 in South Australia.
- 1.1.8 **“Dependant”** means a person under the age of 16 years, or a full-time student between 16-21 years who attends school, college or university, or a person between 16-18 years in receipt of Youth Allowance, or Special Benefit.
- 1.1.9 **“DVA”** means the Commonwealth Department of Veterans’ Affairs.
- 1.1.10 **“DVA Gold Card”** means the card of that name issued to eligible persons as determined by the DVA.
- 1.1.11 **“DVA Optical Scheme”** means optical services and supplies provided to eligible persons as determined by the DVA.
- 1.1.12 **“Eligible Person”** means either an Eligible Person for contact lenses, an Eligible Person for glasses, or an Eligible Person for thinner lenses.
- 1.1.13 **“Eligible Person for contact lenses”** means a natural person:
- (a) who permanently resides in South Australia; and
 - (b) who is the holder of:
 - (i) a Pensioner Concession Card; or
 - (ii) a Health Care Card, or a person who is listed on any such card as a qualified dependant; or
 - (iii) such other class of person as stipulated by the Minister in writing from time to time; and
 - (c) to whom a Prescriber has certified requires contact lenses for one or more of the following conditions:
 - (i) unilateral or bilateral aphakia;
 - (ii) keratoconus, post corneal graft and corneal trauma;
 - (iii) corneal pathology requiring therapeutic soft lens;
 - (iv) corneal pathology causing irregular astigmatism;
 - (v) aniridia and iris coloboma;
 - (vi) ametropia (myopia or hypermetropia) of +/- 6 dioptries or more;
 - (vii) anisometropia of 4 dioptries or more;
 - (viii) requiring disposable lenses for use as bandage lenses or in such cases only where the use of conventional lenses may not be appropriate; or
 - (ix) such other pathology that the Prescriber certifies necessitates the prescription of contact lenses.
- 1.1.14 **“Eligible Person for glasses”** means a natural person who permanently resides in South Australia and is:
- (a) in receipt of a maximum rate Centrelink Age Pension or Disability Support Pension; or
 - (b) in receipt of a maximum rate Centrelink JobSeeker Payment; or

- (c) in receipt of a maximum rate Centrelink Parenting Payment; or
- (d) in receipt of a maximum rate Centrelink Carer Payment; or
- (e) in receipt of a maximum rate DVA service pension; or
- (f) is the Dependant of an Eligible Person for glasses; or
- (g) is such other class of person as stipulated by the Minister in writing from time to time,

and includes an Eligible Person for thinner lenses (if applicable), but does not include:

- (h) DVA pensioners:
 - (i) who are eligible for the DVA Optical Scheme; or
 - (ii) who hold a DVA Gold Card; or
- (i) persons whose lens prescription is incompatible with the basic frames and standard lenses that are provided under GSA, unless clause 6.1.4 applies.

1.1.15 **“Eligible Person for thinner lenses”** means an Eligible Person for glasses who a Prescriber has certified has a lens prescription level of +5.00 or -5.00 with up to -2.50 cylinder, but with a combined power of +/-5.00.

1.1.16 **“Expiry Date”** means the expiry date of this Agreement set out in Item 2 of Schedule 1

1.1.17 **“Extension Period 1”** means the 12 calendar month period commencing on the Expiry Date.

1.1.18 **“Extension Period 2”** means the 12 calendar month period commencing on the expiry date of Extension Period 1.

1.1.19 **“GSA”** has the meaning in Background A.

1.1.20 **“GSA online portal”** means the GSA online portal, of which the Service Provider will have access to for the duration of the Term via a username and password provided by the Minister to the Service Provider from time to time.

1.1.21 **“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.1.22 **“GST”** means the tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.1.23 **“Health Care Card”** means the card of that name issued to eligible persons as determined by the Commonwealth of Australia through Centrelink, an agency of Services Australia.

1.1.24 **“Insolvency Administration”** means:

- (a) an administrator is appointed to the Service Provider or action is taken to make such an appointment;
- (b) the Service Provider resolves to be wound up;
- (c) an application is made to a court for an order or an order is made that the Service Provider be wound up (whether on grounds of insolvency or otherwise);

- (d) the Service Provider ceases to carry on business;
 - (e) a receiver or a receiver and manager of property of the Service Provider is appointed whether by a court or otherwise;
 - (f) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Service Provider or one of them is appointed, whether or not under an order;
 - (g) the Service Provider enters into a compromise or arrangement with its creditors or a class of them; or
 - (h) the Service Provider is or states that it is unable to pay its debts when they fall due.
- 1.1.25 **“Maximum rate Centrelink Age Pension or Disability Support Pension”** means a maximum rate pension of that name paid to Eligible Persons by Centrelink.
- 1.1.26 **“Maximum rate Centrelink Carer Payment”** means a maximum rate payment of that name paid to Eligible Persons by Centrelink.
- 1.1.27 **“Maximum rate Centrelink JobSeeker Payment”** means a maximum rate allowance of that name paid to Eligible Persons by Centrelink.
- 1.1.28 **“Maximum rate Centrelink Parenting Payment”** means a maximum rate payment of that name paid to Eligible Persons by Centrelink.
- 1.1.29 **“Maximum rate DVA service pension”** means a maximum rate pension of that name paid to Eligible Persons by the DVA.
- 1.1.30 **“Minister’s Representative”** means the person specified in Item 3(a) of Schedule 1 or any other such person notified to the Service Provider in writing by the Minister from time to time.
- 1.1.31 **“Pensioner Concession Card”** means the card of the name issued to eligible persons as determined by the Commonwealth of Australia through Centrelink, an agency of Services Australia.
- 1.1.32 **“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.1.33 **“Prescribed Item”** means contact lenses, or glasses with:
- (a) single vision lenses; or
 - (b) single vision grind lenses; or
 - (c) bi-focal lenses; or
 - (d) multi-focal lenses; or
 - (e) high index ‘thinner’ lenses (for customers with a lens prescription level of +5.00 or -5.00 with up to -2.50 cylinder, but with a combined power of +/-5.00).
- 1.1.34 **“Prescriber”** means an optometrist, orthoptist, and medical practitioner as defined in section 73 of the *Health Practitioner Regulation National Law (South Australia) Act 2010*.

- 1.1.35 **“Related Body Corporate”** means either of two bodies corporate when one of them is:
- (a) a holding company of another body corporate;
 - (b) a subsidiary of another body corporate;
 - (c) a subsidiary of a holding company of another body corporate; or
 - (d) a related body corporate under the *Corporations Act 2001* (Cth.).
- 1.1.36 **“Representative”** means either or both of the Minister’s Representative or the Service Provider’s Representative as the context requires.
- 1.1.37 **“Services”** means the services provided by the Service Provider under the GSA and this Agreement to Eligible Persons under this Agreement, as set out in clause 6.
- 1.1.38 **“Service Provider”** means the Service Provider identified on page 1 of this Agreement and includes Service Provider’s Staff.
- 1.1.39 **“Service Provider’s Representative”** means the person specified in Item 3(b) of Schedule 1 or any other such person notified to the Minister in writing by the Service Provider from time to time.
- 1.1.40 **“Service Provider’s Staff”** means the Service Provider’s subcontractors, agents and any other person employed or engaged by the Service Provider to perform this Agreement and includes a Country Optometrist and a Prescriber.
- 1.1.41 **“Service Provider’s Stores”** means the store or stores from which the Service Provider will perform the Services under this Agreement as identified in Item 7 of Schedule 1.
- 1.1.42 **“Special Benefit”** means an allowance or benefit of that name issued to eligible persons as determined by the Commonwealth of Australia through Centrelink, an agency of Services Australia.
- 1.1.43 **“State”** means the Crown in right of the State of South Australia;
- 1.1.44 **“State Data”** means data belonging to the Minister, the State or third parties, including records or other information generated, collected or stored by the Minister or the State in whatever form that information may exist and includes, but is not limited to, any content, materials, data and information provided by the Minister or a user of the Services to the Service Provider in the course of using or accessing the Services.
- 1.1.45 **“Subsidiary”** means a body corporate (in this definition called the first body) that is a subsidiary of another body corporate if, and only if:
- (a) the other body:
 - (i) controls the composition of the first body’s board;
 - (ii) is in a position to cast or control the casting of more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or
 - (iii) holds more than one-half of the issued share capital of the first body (including any part of that issued share capital

that carries no right to participate beyond a special amount in a distribution of either profits or capital); or

- (b) the first body is a subsidiary of the other body corporate as contemplated by the *Corporations Act 2001* (Cth); or
 - (c) the first body is a subsidiary of a subsidiary of the other body.
- 1.1.46 “**Subsidy**” means the subsidy payments made by the Minister under the GSA to the Service Provider as set out in the Table of Fees in exchange for the Services under this Agreement.
- 1.1.47 “**Table of Fees**” means the Table of Fees attached as Schedule 2 of this Agreement (which includes the Subsidy), as amended from time to time by the Minister in accordance with clause 21.4.1.
- 1.1.48 “**Taxable Supply**” has the meaning attributed in the GST Act;
- 1.1.49 “**Tax Invoice**” has the meaning attributed in the GST Act;
- 1.1.50 “**Term**” means the term of this Agreement defined in clause 2.1.
- 1.1.51 “**Youth Allowance**” means an allowance or benefit of that name issued to eligible persons as determined by the Commonwealth of Australia through Centrelink, an agency of Services Australia.

1.2 Interpretation

- 1.2.1 In resolving inconsistencies in this Agreement, the documents have the following order of priority:
- (a) this Agreement excluding Schedule 1 and Schedule 2;
 - (b) Schedule 1;
 - (c) Schedule 2; and
 - (d) the other schedules, attachments or annexures (if applicable).
- 1.2.2 In this Agreement (unless the context requires otherwise):
- (a) any word importing the plural includes the singular and vice versa;
 - (b) any word importing a gender includes all other genders;
 - (c) a reference to a body corporate includes a natural person and vice versa;
 - (d) a reference to a recital, party, clause, schedule or annexure is a reference to a recital, party, clause, schedule or annexure of this Agreement;
 - (e) the captions, headings, section numbers and clause numbers appearing in this Agreement are inserted only as a matter of convenience and in no way affect the construction of this Agreement;
 - (f) a reference to any legislation includes:
 - (i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and
 - (ii) any modification, consolidation, amendment, re-enactment or substitution of that legislation;

- (g) a reference to two or more persons is a reference to those persons jointly and severally;
- (h) a reference to dollars is to Australian dollars;
- (i) a reference to a party includes that party's administrators, successors and permitted assigns.
- (j) the matters listed in the Background are true and correct and form part of this Agreement; and
- (k) anything which is expressed to be done or performed by the Minister shall be properly and lawfully done or performed if so done or performed by any delegate, officer or agent of the Minister who is duly so authorised.

2. TERM

- 2.1 This Agreement remains in full force and effect and is legally binding on the parties for the period commencing on the Commencement Date and expiring on the Expiry Date, subject to:
 - 2.1.1 any extension of this Agreement in accordance with clause 2.2; and
 - 2.1.2 the earlier termination of this Agreement in accordance with the terms of this Agreement or by operation of Law, ("Term").
- 2.2 This Agreement may be extended by the Minister:
 - 2.2.1 for Extension Period 1 by giving the Service Provider written notice at least thirty days before the Expiry Date; and
 - 2.2.2 for Extension Period 2, by giving the Service Provider written notice at least thirty days before the expiry of Extension Period 1.
- 2.3 Any extension of this Agreement pursuant to clause 2.2 will be on this Agreement's terms and conditions.
- 2.4 If the Minister does not request the Service Provider to extend this Agreement for Extension Period 1 or Extension Period 2 (as the case may be) in accordance with clause 2.2, this Agreement will terminate on the Expiry Date or on the expiry date of Extension Period 1 (as the case may be).

3. CONTRACT ADMINISTRATION

- 3.1 The Service Provider's Representative and the Minister's Representative have authority to:
 - 3.1.1 exercise all of the powers and functions of their respective party under this Agreement, other than the power to amend this Agreement; and
 - 3.1.2 bind their respective party in relation to any matter arising out of or in connection with this Agreement, other than with respect of amending this Agreement.
- 3.2 Either party may change their Representative by giving 14 calendar days written notice to the other party.

4. PAYMENT OF SUBSIDY

- 4.1 The Minister will pay the Subsidy to the Service Provider in consideration for the provision of the Services by the Service Provider under this Agreement.
- 4.2 The Service Provider must submit Claims via the GSA online portal (to be notified by the Minister to the Service Provider at the Commencement Date) as soon as practicable after Services are rendered pursuant to this Agreement.
- 4.3 The Minister will pay the Subsidy to Service Provider as soon as reasonably practicable (but in any event within 30 calendar days) of receipt of a correctly submitted Claim in the GSA online portal.
- 4.4 Subject to clause 4.5, the Minister is not obliged to make any payment under this Agreement unless the Service Provider has provided a correctly completed Claim in the GSA online portal in respect of that payment.
- 4.5 If the Minister disputes:
- 4.5.1 any portion of a Claim, the parties must use their best endeavours to resolve such dispute and, once resolved, the Minister must pay any further amount that the parties agree is outstanding within 14 calendar days of such resolution; or
- 4.5.2 the way in which the Claim has been completed, the Minister must give the Service Provider the opportunity to amend and resubmit the Claim within a reasonable time from such dispute arising.
- 4.6 The Minister will not pay:
- 4.6.1 the Subsidy in advance,
- 4.6.2 the Subsidy for any items that are not Prescribed Items or not expressly listed in the Table of Fees at Schedule 2.
- 4.6.3 for any amount claimed in respect of any upgrades in any Prescribed Items selected by or prescribed for the Eligible Person under clause 6.1.4, except those items expressly listed in the Table of Fees at Schedule 2; and
- 4.6.4 for any additional costs incurred by the Service Provider as a result of any errors or amendments to Prescribed Items howsoever caused.
- 4.6.5 If the Service Provider seeks to reverse a Claim for a Prescribed Item, then the following procedure will occur:
- (a) the Service Provider must email the Minister's Representative providing reasons as to why they are seeking a reversal of a Claim;
- (b) if the Minister is satisfied as to the reasons given for the reversal then the Service Provider will be provided with bank details to enable a refund of the Subsidy to be made;
- (c) once the refund has been made, the Service Provider must provide the Minister's Representative with a payment receipt or transaction number;
- (d) the Minister will confirm receipt of the refund with the Service Provider; and

- (e) the Minister will amend the customer's record and notify the Service Provider once this has occurred.

5. GOODS AND SERVICES TAX

5.1 Acknowledgments

- 5.1.1 The Minister and the Service Provider acknowledge and agree that the amount payable by the Minister to the Service Provider for or in connection with a Taxable Supply pursuant to this Agreement does not include GST.
- 5.1.2 The Minister acknowledges and represents that:
 - (a) Department for Human Services (ABN 11 525 031 744) is the government entity administering this Agreement on behalf of the Minister and is registered pursuant to the GST Act; and
 - (b) Department for Human Services (ABN 11 525 031 744) is entitled to be treated as the maker of any Taxable Supply and the recipient of any Taxable Supply pursuant to this Agreement instead of the Minister for the purposes only of the GST Act.
- 5.1.3 The Service Provider acknowledges and represents that:
 - (a) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth), and that the ABN set out in Schedule 1 is the Service Provider's ABN,
 - (b) it is registered under the GST Act.

5.2 Minister's Obligations

Subject to the Service Provider complying with its obligations set out in clause 5.1.3, the Minister will pay to the Service Provider, on each date the Minister is required to make a payment for a Taxable Supply pursuant to this Agreement, an additional amount equal to the GST payable on the Taxable Supply or component of the Taxable Supply for which that payment is made.

5.3 Service Provider's Obligations - Tax Invoice

- 5.3.1 The Service Provider must provide a Tax Invoice to the Minister in respect of the relevant Taxable Supply before the Minister is obliged to make a payment pursuant to this Agreement in respect of a Taxable Supply.
- 5.3.2 The parties acknowledge and agree that where a Tax Invoice with respect of a Taxable Supply is automatically generated via the GSA online portal, the Service Provider is deemed to have complied with clause 5.3.1.

6. DESCRIPTION OF SERVICES

6.1 Services with respect of glasses

- 6.1.1 Subject to the remainder of this clause 6.1, the Service Provider will, in relation to Eligible Persons for glasses:
 - (a) supply complete glasses with frames and lenses (either standard lenses or (if eligible) thinner lenses) selected by the

Eligible Person for glasses, subject to such frames being suitable for the lenses, in accordance with the remainder of this clause 6.1; or

- (b) supply and fit lenses (either standard lenses or (if eligible) thinner lenses) into frames provided by the Eligible Person for glasses, in accordance with the remainder of this clause 6.1; or
- (c) if the person is also an Eligible Person for thinner lenses, provide thinner lenses instead of standard lenses under clauses 6.1.1(a) and 6.1.1(b).

6.1.2 Before undertaking the Services set out in clause 6.1.1, the Service Provider must:

- (a) ensure that the customer holds a valid and current health or concession card issued by Centrelink or DVA;
- (b) request verbal consent from the customer to undertake a Centrelink check, such that:
 - (i) if the customer provides their verbal consent under clause 6.1.2(b), the Service Provider must complete such Centrelink check on the Customer;
 - (ii) if the customer does not provide their verbal consent under clause 6.1.2(b), the Service Provider must not provide the Services set out in clause 6.1.1;
- (c) be satisfied that the customer is in fact an Eligible Person for glasses and has been assessed as successful by Centrelink; and
- (d) record all details of related to the transaction with the Eligible Person for glasses in the GSA online portal.

6.1.3 The Service Provider must not supply more than one pair of glasses every 3 calendar years under the GSA per Eligible Person for glasses, unless, in the professional opinion of the Prescriber (which must be certified by the Prescriber), the Services set out in clauses 6.1.1 are Clinically Necessary for that Eligible Person for glasses.

6.1.4 **Optional upgrades**

- (a) Any Eligible Person for glasses may choose to upgrade to frames or lenses outside the GSA standard range (for example, anti-reflective lens coating, lens tinting, or higher cost frames) at their own additional expense, which will be paid to the Service Provider. This must be completed as a separate transaction between the Service Provider and the Eligible Person for glasses and must be reported to the Minister through the GSA online portal.
- (b) If an Eligible Person for glasses is a person under 18 years of age, that Eligible Person for glasses may upgrade to frames outside the standard range and the Minister will make an additional contribution subsidy of \$50. Any further cost will be at the Eligible Person for glasses' expense.
- (c) Upgrades for contact lenses are not available through GSA.

6.1.5 **Customer co-payment**

- (a) If clause 6.1.1(b) applies, the 'customer co-payment' and Subsidy will be that set out in Table 1 of Schedule 1.
- (b) If clause 6.1.1(c) applies (and as set out in Table 2 of Schedule 2):
 - (i) the complete price for basic frames with thinner lenses may vary between optometrists (because of the cost of lens thinning) but the Subsidy is fixed;
 - (ii) if the complete price exceeds the amount in Table 2 of Schedule 2, the Prescriber must explain this to the Eligible Person for thinner lenses before purchase, and the Eligible Person for thinner lenses must pay any additional cost to the Service Provider;
 - (iii) optional upgrades are also available for basic frames with thinner lenses, in accordance with clause 6.1.4.
- (c) The Minister will meet the co-payment for Aboriginal customers for standard glasses as set out in Schedule 2. Any optional upgrades selected by Aboriginal customers will be at their own expense.

6.2 Services with respect of contact lenses

- 6.2.1 Subject to clause 6.2.2, the Service Provider must supply contact lenses to Eligible Persons for contact lenses.
- 6.2.2 Before undertaking the Services set out in clause 6.2.1, the Service Provider must first:
 - (a) ensure that the customer holds a valid and current Pensioner Concession Card or Health Care Card; and
 - (b) request verbal consent from the customer to undertake a Centrelink check, such that:
 - (i) if the customer provides their verbal consent under clause 6.2.2(b), the Service Provider must complete such Centrelink check on the Customer;
 - (ii) if the customer does not provide their verbal consent under clause 6.2.2(b), the Service Provider must not provide the Services set out in clause 6.2.1;
 - (c) be satisfied that the customer is in fact an Eligible Person for contact lenses and has been assessed as successful by Centrelink;
 - (d) certify that the provision of the contact lens or contact lenses is in the professional opinion of the Prescriber:
 - (i) the only means of vision correction for the customer; and
 - (ii) Clinically Necessary for the customer for one or more of the conditions set out in clause 1.1.13(c)
 - (e) ensure that only the lowest price lens or lenses are prescribed appropriate to the Eligible Person for contact lenses needs; and
 - (f) record the name and other required information of the Eligible Person for contact lenses in the GSA online portal.

7. ADDITIONAL COSTS

- 7.1 Subject to clause 6.1.4, in providing the Services, the Service Provider will:
- 7.1.1 not demand extra costs from Eligible Persons, particularly any extra costs incurred by the Service Provider as a result of any errors or variations in the supply of the glasses or contact lenses to an Eligible Person;
 - 7.1.2 ensure that the Eligible Person pays no more than the maximum co-payment shown in the Table of Fees in Schedule 3 for the relevant Prescribed Items issued to that Eligible Person; and
 - 7.1.3 ensure that if the Service Provider's charges for any Prescribed Items supplied to the Eligible Person are less than or equal to the value of the Subsidy, then no payment will be due by the Eligible Person to the Service Provider for any of the Prescribed Items supplied.

8. SERVICE PROVIDER'S WARRANTIES

- 8.1 The Services Provider warrants that the Services will:
- 8.1.1 comply with the description of the Services in Schedule 2;
 - 8.1.2 be provided with due care and skill;
 - 8.1.3 be provided by a person who is competent and professional with any and all experience, qualifications, registration and licensing as required by relevant authorities to prescribe and dispense the Prescribed Items to Eligible Persons;
 - 8.1.4 be provided in accordance with applicable industry or practice standards;
 - 8.1.5 be provided in a timely and efficient manner;
 - 8.1.6 be provided at the Service Provider's Stores;
 - 8.1.7 be supplied without infringing any person's Intellectual Property Rights; and
 - 8.1.8 be supplied in the most cost-effective manner consistent with the required level of quality and performance.
- 8.2 The Service Provider warrants that it has all rights, title, licences (if applicable), authorisations, consents and other approvals necessary to provide the Services.

9. SUPPLY OF SERVICES

- 9.1 The Service Provider must ensure that Services are delivered:
- 9.1.1 at the Service Provider's Stores;
 - 9.1.2 to a standard that meets or exceeds the acceptable standards required by a person in the same industry or practice area;
 - 9.1.3 in accordance with the warranties in clause 8; and
 - 9.1.4 in accordance with any policies and directions notified in writing by the Minister to the Service Provider from time to time; and

- 9.1.5 by any timeframes reasonably required by the Minister in writing to the Service Provider from time to time.

10. SERVICE PROVIDER INFORMATION AND GSA WEBSITE

- 10.1 The Service Provider acknowledges and agrees that the Minister is required to include certain information about all GSA Service Providers on the GSA website for use by third parties to compare the information of Service Providers.
- 10.2 On or before the Commencement Date, the Service Provider must provide to the Minister (at the Service Provider's cost) current business information of the Service Provider including business name, location and contact details, which information must be in a form acceptable to the Minister (as advised by the Minister to the Service Provider from time to time) so that the Minister can update the GSA website for the purposes identified in clause 10.1.
- 10.3 The Minister will update the GSA website within a reasonable time of receipt of the Service Provider submitting or updating the information referred to in clause 10.2.

11. OBLIGATIONS OF THE SERVICE PROVIDER

- 11.1 The Service Provider must, at all times in its performance of the Services:
- 11.1.1 be satisfied that the customer is an Eligible Person;
 - 11.1.2 inform the customer of GSA and notify them that they are eligible for benefit under GSA (if applicable);
 - 11.1.3 only use the GSA online portal to apply for benefit under the scheme or make a Claim;
 - 11.1.4 ensure that promotional material and advice about GSA is made available to potential Eligible Persons;
 - 11.1.5 ensure all promotional material and advice to Eligible Persons about GSA acknowledges the Minister and the South Australian Government as the administrator of GSA and provider of GSA benefits;
 - 11.1.6 not represent that the Service Provider is the owner or administrator of the GSA;
 - 11.1.7 provide any information that the Minister may request in writing to the Service Provider from time to time on all promotional material it uses with respect of the GSA;
 - 11.1.8 without limiting clause 14, not disclose, divulge or permit any of the Service Provider's Staff to disclose or divulge any Personal Information relating to any Eligible Person other than where such disclosure is permitted or required by law;
 - 11.1.9 conduct itself in an ethical manner, with client wellbeing as the highest priority.

12. SERVICE PROVIDER'S STAFF

- 12.1 The Service Provider acknowledges and agrees that the Service Provider:
- 12.1.1 is solely responsible and liable for ensuring that the Service Provider's Staff understand and comply with the terms and conditions of this Agreement;
 - 12.1.2 is liable for all remuneration, claims and other entitlements payable to the Service Provider's Staff;
 - 12.1.3 must comply and must ensure that all of the Service Provider's Staff comply with all relevant laws arising out of or in connection with the provision of the Services under this Agreement including but not limited to their dealings with any person (including any Eligible Person) seeking information about GSA or the use of the Prescribed Items;
 - 12.1.4 must only provide to Eligible Persons Prescribed Items (unless clause 6.1.4 applies) dispensed by a Prescriber;
 - 12.1.5 must be or become adequately trained in the GSA online portal;
 - 12.1.6 must be able to explain the benefits and obligations of GSA to Eligible Persons;
 - 12.1.7 in relation to prescribing contact lenses for Eligible Persons for contact lenses, must ensure that:
 - (a) contact lenses are only prescribed where contact lenses are the only means of vision correction; and
 - (b) each Prescriber is:
 - (i) a Prescriber at a Country Optometrist;
 - (ii) a Prescriber at Flinders Medical Centre;
 - (iii) a Prescriber at the Women's and Children's Hospital; or
 - (iv) a Prescriber at the Royal Adelaide Hospital; and
 - (c) where the Prescriber is a Country Optometrist, the Eligible Person has a residential address with a postcode greater than 5200 in South Australia.

13. CONFIDENTIAL INFORMATION

- 13.1 Neither party may disclose any Confidential Information of the other party except:
- 13.1.1 to their own employees or agents, on a "need to know" and confidential basis;
 - 13.1.2 as required by law or a court order;
 - 13.1.3 in accordance with any parliamentary or constitutional convention.
- 13.2 Each Party must promptly notify the other if it becomes aware of any actual or threatened disclosure of any Confidential Information of that Party, and must provide all reasonable assistance to that Party to protect and enforce the confidentiality of Confidential Information.

- 13.3 This clause must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of Confidential Information.

14. **PRIVACY**

- 14.1 The Service Provider must:
- 14.1.1 comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles established under that Act;
 - 14.1.2 to the extent that the Service Provider is not bound by the *Privacy Act 1988* (Cth), ensure that it has procedures in place which comply at a minimum with the Australian Privacy Principles;
 - 14.1.3 comply with the South Australian Government Information Privacy Principles (a copy of which can be found at <http://www.dpc.sa.gov.au>) (“**IPPs**”) as if the Service Provider were an “agency” for the purposes of the IPPs, in undertaking its obligations under this Agreement including in relation to all Personal Information received, created or held by it for the purposes of this Agreement;
 - 14.1.4 allow the Minister to undertake and cooperate with any audit or investigation which the Minister deems necessary to verify that the Service Provider is complying with the IPPs; and
- 14.2 The Service Provider must promptly notify the Minister if it fails to comply with this clause or the IPPs or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.

15. **INFORMATION TECHNOLOGY SECURITY**

15.1 **Cyber Security Framework**

- 15.1.1 The Service Provider acknowledges that the State has adopted policies and practices for security of the information assets of the Minister and the other agencies and instrumentalities of the State. These are set out in the Department of Premier and Cabinet Cyber Security Framework contained at this link: www.dpc.sa.gov.au (the “**CSF**”).
- 15.1.2 The Service Provider acknowledges and agrees that it:
 - (a) has received the current version of the CSF;
 - (b) will comply with the CSF in its performance of this Agreement.

15.2 **Information Systems**

Where the Service Provider accesses or uses the Minister’s information and communications technology systems or programs (or both) (not limited to the GSA online portal or the GSA website), the Service Provider must:

- 15.2.1 only use the Minister’s computer systems (which includes the GSA online portal) with the specific authorisation of the Minister and only in the manner as directed by the Minister from time to time;

- 15.2.2 use its best endeavours to prevent the introduction of Malicious Software (including but not limited to using up to date virus protection and other security software on its own systems);
 - 15.2.3 comply with all policies and procedures advised by the Minister from time to time; and
 - 15.2.4 notify the Minister promptly of any unauthorised use of the Minister's systems or programs of which it becomes aware.
- 15.3 The Minister may, in the Minister's absolute discretion:
- 15.3.1 change and/or discontinue any computer system being accessed by the Service Provider at any time; and
 - 15.3.2 require by written notice that the Service Provider cease using any computer system.
- 15.4 **State Data**
- 15.4.1 The Service Provider acknowledges that:
- (a) by virtue of this Agreement it may be in possession of State Data;
 - (b) it is only the custodian of that State Data; and
 - (c) it must deliver that State Data to the Minister on demand, regardless of any other legal right or remedy that the Minister may then have.
- 15.5 To the extent permitted by law, the Minister:
- 15.5.1 makes no representations as to the accuracy or completeness of the material accessed on and through any computer system, (including the content of third-party material on external linked sites, if any).
 - 15.5.2 accepts no liability for any loss or damage suffered (either directly or consequentially) as a result of the use of any computer system (including as a result of service interruption, technical faults, viruses or other contamination), or the material accessed on or through any computer system.
 - 15.5.3 does not warrant that the material accessed on or through any computer system is free of viruses or other contamination.
 - 15.5.4 does not warrant that any third-party material on external linked sites does not infringe third party intellectual property rights.

16. **INSURANCE**

- 16.1 The Service Provider must effect and maintain the policies of insurance specified in Schedule 1 for not less than the amounts specified in Schedule 1.
- 16.2 The policies of insurance referred to in clause 16.1 must be held until the expiry of the Agreement.
- 16.3 The Service Provider must provide the Minister with insurance certificates of currency for the insurances referred to in clause 16.1 on the written request of the Minister..
- 16.4 The Minister in specifying levels of insurance in this Agreement accepts no liability for the completeness of their listing, the adequacy of the sum insured,

limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability with respect of this Agreement.

- 16.5 The Service Provider acknowledges and agrees that it is the Service Provider's sole responsibility to assess and consider the risks and scope of insurances required under this Agreement.

17. RECORDS AND REPORTS

- 17.1 The Service Provider must keep true and accurate records containing all information relating to:
- 17.1.1 the making of any Claim made under this Agreement;
 - 17.1.2 the supply of any Prescribed Items, including the name and unique identifying number of each Eligible Person supplied with Prescribed Items,
- in a format reasonably required by the Minister from time to time (which may include via the GSA online portal), (the "**records**").
- 17.2 The Service Provider must, at the Service Provider's cost, provide the records to the Minister, within 24 hours of receipt of written notice by the Minister. The Minister may make and store copies of any records requested under this clause.
- 17.3 In addition to the records, the Minister may require the Service Provider to prepare and provide to the Minister any such reports as required by the Minister (in a form acceptable to the Minister) from time to time in respect of the Claims made by the Service Provider or any other matter required or performed under this Agreement.

18. RESOLUTION OF DISPUTES

- 18.1 Except in a case of genuine urgency where a party seeks immediate interlocutory relief or other interim remedy, neither party may take legal proceedings in respect of any dispute in relation to this Agreement without attempting resolution in accordance with this clause.
- 18.2 Disputes must be addressed as follows:
- 18.2.1 upon one party issuing a comprehensive written notice to the other party detailing the dispute:
 - (a) each party must refer the dispute to one of its senior officers who has not previously been involved in the dispute ("**Negotiators**") as soon as practicable after the date of the notice; and
 - (b) the Negotiators must meet within 14 calendar days of the second party receiving the written notice regarding the dispute;
 - 18.2.2 if the Negotiators cannot resolve the dispute between the parties within 30 calendar days of the Negotiators' meeting then each Negotiator must prepare a written summary of his or her attempts to resolve the dispute and immediately refer that summary to the

executive negotiators identified in Schedule 1 (“**Executive Negotiators**”); and

- 18.2.3 the Executive Negotiators must meet within 30 days of its reference to them and each party must authorise and inform its Executive Negotiator sufficiently so that he or she can undertake that meeting without detailed reference to another person; and
- 18.2.4 if the Executive Negotiators cannot resolve the dispute between the parties within 30 calendar days of the Executive Negotiators’ meeting then:
 - (a) either party may commence court proceedings in respect of the dispute; or
 - (b) the parties may refer the dispute for determination by a relevant expert agreed by the parties.
- 18.3 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.
- 18.4 This clause survives the expiration or termination of this Agreement.

19. ENDING THIS CONTRACT

- 19.1 The Minister may terminate this Agreement immediately upon giving notice in writing to the Service Provider if:
 - 19.1.1 GSA ceases;
 - 19.1.2 the Minister reasonably forms the opinion that the Service Provider will be unable to perform this Agreement;
 - 19.1.3 the Service Provider is in breach of this Agreement and has not rectified such breach within 14 calendar days of the Minister giving notice in writing to the Service Provider requiring the rectification of such breach;
 - 19.1.4 the Minister becomes aware that the Service Provider is in breach of its statutory obligations with respect to its employees or with respect to the performance of the Services;
 - 19.1.5 the Service Provider fails to disclose a conflict of interest;
 - 19.1.6 the Service Provider suffers or, in the reasonable opinion of the Minister, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.
- 19.2 Either party may terminate this Agreement without cause by giving the other party the period of notice specified in Schedule 1 (“**Notice Period for Termination for Convenience**”).
- 19.3 If a party terminates this Agreement in accordance with clause 19.2:
 - 19.3.1 the other party has no claim against the terminating party arising out of or in relation to such termination other than the right to be paid for Services provided before the effective termination date; and
 - 19.3.2 the Service Provider must comply with all reasonable directions given by the Government Party.

- 19.4 The Service Provider may terminate this Agreement immediately upon giving notice in writing to the Minister if the Minister is in breach of this Agreement and has not rectified such breach within 14 days of the Service Provider giving notice in writing to the Minister requiring the rectification of such breach.

20. EFFECT OF ENDING THIS CONTRACT

- 20.1 Any termination of this Agreement by either party does not affect any accrued right of either Party.
- 20.2 Despite termination or completion of this Agreement, this clause 20 and clauses 14, 18, 21.1, 21.2, 21.3, 21.10 and 21.11 and those other clauses that by their nature remain in force, shall survive.

21. GENERAL

21.1 Contract disclosure

- 21.1.1 The Government Party may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

- 21.1.2 Nothing in this clause derogates from:

- (a) the Service Provider's obligations under any provisions of this Agreement; or
- (b) the provisions of the Freedom of Information Act 1991 (SA).

21.2 Auditor-General

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

21.3 Exclusion of Implied Relationships

- 21.3.1 Nothing in this Agreement constitutes or confers any relationship of principal and agent, or employer and employee, or of partnership between the parties.
- 21.3.2 Neither party has the authority to act for or to incur any liability or obligation on behalf of the other party except as expressly provided in this Agreement.

21.4 Minister's right to amend

- 21.4.1 The Minister may amend the Table of Fees at any time during the Term on reasonable written notice to the Service Provider as a result of:
- (a) any agreement between the Minister and Optometry Victoria South Australia or with such other industry representative body that promotes the professional interests of any group that forms part of the Prescribers; or
 - (b) the application of any relevant Government policies.
- 21.4.2 The Minister may amend any aspect of the GSA at any time during the Term on reasonable written notice to the Service Provider (which

notice must set out the nature and scope of the variation and the effect of that variation on this Agreement), in any way deemed necessary to preserve, in the Minister's discretion, the integrity of the GSA budget, including but not limited to:

- (a) suspension of the scheme;
- (b) increase in customer co-payments;
- (c) extension of eligibility periods for glasses;
- (d) restriction on replacement glasses for loss or damage; or
- (e) any other amendment the Minister considers necessary.

21.5 No Waiver

No waiver by a party of any part of this Agreement is binding unless it confirmed in writing.

21.6 Effect of Failure to Enforce Rights

A failure or omission by a party to strictly enforce its rights under this Agreement does not amount to a waiver of those rights.

21.7 Costs

Each party is responsible for its own costs in relation to the negotiation and execution of this Agreement.

21.8 Subcontracting

21.8.1 The Service Provider must not engage any subcontractor without the prior written permission of the Minister.

21.8.2 The Service Provider remains responsible for obligations performed by any subcontractors engaged by the Service Provider to the same extent as if such obligations were performed by the Service Provider.

21.9 Conflict of Interest

The Service Provider must disclose in writing to the Minister all actual and potential conflicts of interest that exist, arise or may arise (either for the Service Provider or the Service Provider's Staff) in the course of performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

21.10 Compliance with Laws

The Service Provider must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.

21.11 Governing Law and Jurisdiction

21.11.1 This Agreement is governed by the laws in the State of South Australia.

21.11.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

21.12 Entire Agreement

21.12.1 The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes

all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

21.12.2 For the avoidance of doubt, the Parties acknowledge and agree that any prior agreement between the Parties for provision of optometric services under the GSA terminated on the Commencement Date of this Agreement and is therefore superseded by this Agreement, except that termination of any prior agreement will not affect any obligations and liabilities of either Party in respect of any antecedent breach.

21.13 **No Assignment**

21.13.1 The Service Provider must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Minister which approval shall not be unreasonably withheld.

21.13.2 Without limiting the generality of clause 21.13.1, a change of either:

- (a) 51% of the legal or beneficial shareholding of the Service Provider; or
- (b) the effective control of the ownership or the management of the Service Provider,

will be deemed to be an assignment under clause 21.13.1.

21.13.3 Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Minister and all of the Minister's rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

21.13.4 In this clause, "**Machinery of Government Change**" means a change to the structure, function or operations of the South Australian Government or the Government Party as a result of any government reorganisation, restructuring or other organisational or functional change;

21.14 **Modification**

No addition to or modification of any provision of this Agreement will be binding upon the Parties unless made by written instrument signed by the Parties.

21.15 **Severance**

21.15.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

21.15.2 Severance of any part of this Agreement will not affect any other part of this Agreement.

21.16 **Counterparts**

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.

21.17 **Work Health & Safety**

21.17.1 The Service Provider must comply with the *Work Health and Safety Act 2012 (SA)* at all times, regardless of whether the Minister issues direction in that regard or not.

21.17.2 If all or part of the work under this Agreement is to be provided on the premises of the Minister and under the direction of the Minister, the Service Provider must comply with the Minister's work health and safety policies, procedures and instructions. If the Service Provider becomes aware of any potentially hazardous situation on the Minister's premises, the Service Provider must immediately bring it to the Minister's attention.

21.18 Acting ethically

The Service Provider must conduct itself in a manner that does not invite, directly or indirectly, the Minister's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009 (SA)*) to behave unethically, to prefer private interests over the Minister's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

TEMPLATE

EXECUTED AS AN AGREEMENT

SIGNED by an authorised representative for an on behalf of the **MINISTER FOR HUMAN SERVICES** in the presence of a witness:

.....
Signature of witness

.....
Signature of authorised representative

.....
Full name and job title of witness

.....
Full name and job title of authorised representative

EXECUTED by **INSERT NAME ABN XXX XXX XXX** in accordance with Section 127 of the Corporations Act 201 and its Constitution:

.....
Signature of Director/Secretary*

.....
Signature of Director

.....
Full name of Director/Secretary*
*delete the inapplicable

.....
Full name of Director

THE COMMON SEAL of **INSERT NAME ABN XXX XXX XXX** was hereto affixed in the presence of:

.....
Signature of Director/Secretary*

.....
Signature of Director

.....
Full name of Director/Secretary*
*delete the inapplicable

.....
Full name of Director

SCHEDULE 1 – Agreement Details

ITEM 1	Commencement Date	XX XXXX 20XX
ITEM 2	Expiry Date	30 June 2024
ITEM 3	Representatives	<p><u>(a) Minister's Representative & address for notices</u></p> <p>Executive Director, Community Investment and Support Department of Human Services GPO Box 292 ADELAIDE SA 5001 ABN 11 525 031 744 Telephone: 1300 762 577 Email: GlassesSA@sa.gov.au</p> <p><u>(b) Service Provider's Representative & address for notices</u></p> <p>Name: insert Position: insert Company Name: insert Registered for GST? YES/NO Address: insert Telephone: insert Email: insert</p>
ITEM 4	Insurance	Public and Product Liability Insurance: \$20,000,000
ITEM 5	Executive Negotiators	<p><u>(a) Minister's Executive Negotiator</u></p> <p>Name: insert Director, Concessions and Support Services Telephone: insert Email: GlassesSA@sa.gov.au</p> <p><u>(b) Service Provider's Executive Negotiator</u></p> <p>Name: insert Position: insert Telephone: insert Email: insert</p>
ITEM 6	Notification for Termination for Convenience	90 calendar days
ITEM 7	Service Provider's Stores	insert location of retail stores (as applicable), unless otherwise agreed by the Minister in writing.

SCHEDULE 2 – Table of Fees

Schedule 2 – Table of Fees is attached to the next page.

TEMPLATE