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14 September 2023

BY EMAIL

Rebecca Ryan
Australian Competition & Consumer Commission
Lonsdale Street Melbourne VIC
GPO Box 3131, Canberra ACT 2601

Dear Ms Ryan

HCF's Application for Reauthorisation (AA1000639) - Update to Annexure A Provisions

1. We refer to The Hospitals Contribution Fund of Australia Limited ACN 000 026 746 (**HCF**) application for revocation of existing ACCC authorisation AA1000402 granted on 11 May 2018 (**Initial Authorisation**) and substitution of a new authorisation on 23 March 2023 (**Reauthorisation Application**) ([AA1000639](#)). Unless indicated, defined terms in this letter have the same meaning as those in the Reauthorisation Application.
2. As set out in paragraph 15 of the Reauthorisation Application and further explained in the supplementary submissions to the ACCC dated 11 May 2023, 9 August 2023 and 6 September 2023, HCF seeks authorisation for it and Participating MFT Providers to enter into and give effect to the specified provisions in the MFT Agreements in the same local catchment areas as HCF's DCN centres (including any future HCF dental centres). Authorisation is sought to enter into and give effect to the relevant provisions in the MFT Agreements (which were extracted in Annexure A of HCF's response to the ACCC's request dated 9 August 2023 and referred to as the "**Annexure A provisions**"), and any variations to them that have the same or a substantially similar effect.
3. HCF recently reviewed its MFT Agreements to take into account relevant regulatory developments and have put in place updated MFT Agreements which took effect on 1 September 2023. The updated MFT Agreements do not materially alter the Annexure A provisions but HCF encloses an updated

Annexure A which contains the current versions of the relevant provisions of the MFT Agreements.

If the ACCC wishes to discuss the matters addressed in this letter, please contact Peter Armitage on +61 [REDACTED].

Yours faithfully

A handwritten signature in black ink that reads "Ashurst Australia". The signature is written in a cursive, flowing style.

Ashurst

UPDATED ANNEXURE A – RELEVANT PROVISIONS OF THE MFT AGREEMENT FOR WHICH AUTHORISATION IS SOUGHT

In the provisions of the MFT Agreement in this Annexure:

- **"Benefit"** has the same meaning given to that term in the Fund Rules.
- **"Dental Practitioner"** means an eligible general dentist, paediatric dentist, or Oral Health Practitioner (**OHP**)
- **"Fund Rules"** means the 'HCF Fund Rules' as published at hcf.com.au/forms-and-brochure and as varied by HCF from time to time.
- **"Gap"** means the amount charged by You less a Benefit.
- **"Member"** has the same meaning given to that term in the Fund Rules.
- **"Policy"** has the same meaning given to that term in the Fund Rules.
- **"Private Practice"** has the same meaning given to that term in the Fund Rules.
- **"Program Benefit"** means the amount of Benefits payable to You for the services specified in Schedule A when you are participating in the Program.
- **"Terms and Conditions"** means the 'Terms and Conditions for HCF Recognised Providers of Extras Services' as varied by HCF from time to time. These Terms and Conditions are published on HCF's website at hcf.com.au/pdf/general/Terms_and_Conditions_for_Recognised_Providers_of_Extras_Services.pdf
- **"You"** and **"Your"** mean the Dental Practitioner who signs the Program Application Form and is accepted by HCF into the *More for Teeth* program.
- **"Usual Charge"** has the same meaning given to that term in the Terms and Conditions.

Provisions:

3. SERVICES AND CHARGES

3.1 In relation to the services specified in Schedule A, You agree to:

- (a) charge no more than the amounts described in the 'Maximum Charge' column of the table in Schedule A for those specific services when provided to Members; and
- (b) charge Members a fee for a service that is equal to or less than:
 - (i) Your Usual Charge; and
 - (ii) the Usual Charge that other dentists and dental professionals that are not participating in the Program within the same Private Practice receive for that service,including when any special or discounted fees are offered to patients (whether Members or not) at the Private Practice.

3.2 During any period that You offer patients (whether Members or not) a 'no-gap' promotion for any of Your services specified in Schedule A (**Promotion**), Your rights to receive the Program Benefits will be suspended for those services and you must reduce the fees you charge to Members for those services to the amount of Benefits payable under the Terms and Conditions or Your Usual Charge, whichever is the lesser amount. You must not charge Members a Gap for the services included in the Promotion.

3.3 You must notify HCF at least 7 days prior to the commencement of a Promotion and prior to the termination of a Promotion.

3.4 The charges that You raise must be accurately reflected on Your invoice or receipt, which must be provided in accordance with the Terms and Conditions and clause 5.

3.5 Subject to compliance with this clause 3, You are free to charge as per Your existing practices for services not described in the 'Service description' column of the table in Schedule A.

4. BENEFITS

4.1 Subject to the Member's entitlement to a Benefit under their Policy, the Fund Rules and all applicable laws, HCF will provide a Program Benefit up to or equivalent to the maximum amounts listed in Schedule A, subject to Indexation and clause 4.2 for the duration of the Program.

4.2 The maximum Program Benefits available to Members in respect of services as at the date of this Agreement are as specified in the table in Schedule A.

4.3 HCF may index the Program Benefits, for the items in Schedule A that it deems appropriate, on 1 January each year, up to any proportionate change in the following formula (**Indexation**):

- The Consumer Price Index (All groups, Index numbers, Sydney*, ABS Catalogue no. 6401.0) x 50% plus the Average Weekly Earnings (NSW* Original, ABS Catalogue no. 6302.0) for persons, full-time adult ordinary time earnings (AWOTE) x 50%.
- For the avoidance of doubt, the Consumer Price Index and the Average Weekly Earnings are measured for the 12 month period ending 30 June of the year prior to the indexation date.
- *For states and Territories other than NSW, Program Benefit rates are set using relevant ABS Catalogue statistics for that State or Territory and its capital city.

4.4 You must not charge Members any additional or ancillary amounts, charges or penalties (for example, an administration fee) in connection with the services covered under this Agreement.

4.5 Services provided by You to a Member that are not described in the table in Schedule A will continue to be the subject of Benefits that HCF determines a Member is entitled to under a Policy with HCF, the Fund Rules, the Terms and Conditions and all applicable laws.

4.6 HCF does not warrant or represent that a Member will be entitled to Benefits in respect of any services provided by You to the Member.