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Assignment of Intellectual Property

between

Karitane
ABN 25 000 018 842
(Assignor)

and

Health Administration Corporation
ABN 45 100 538 161
(Assignee)

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This agreement is made on the day of 2021

between **Karitane**
 ABN 25 000 018 842 of 138-150 The Horsley Drive, Carramar New South Wales
 2163 (**Assignor**)

and **Health Administration Corporation**
 ABN 45 100 538 161 of 1 Reserve Road, St Leonards, New South Wales 2065
 (**Assignee**)

Recitals

- A The Assignor is the legal and beneficial owner of the Intellectual Assets.
- B The Assignor agrees to assign its entire right, title and interest in the Intellectual Assets in the Work to the Assignee on the terms and conditions of this document.
- C The Assignee agrees to licence the Intellectual Property Rights in the Work to the Assignee on the terms and conditions of this document.

Now it is agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this document:

Acknowledgement means the acknowledgement to be included in the NSW Virtual Residential Parenting Service Model of Care that it has its foundation in the Karitane Virtual Residential Unit Model of Care in placements to be agreed between the parties.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

Consideration means the amount of \$125,000;

Copyright Act means the *Copyright Act 1968* (Cth);

Copyright Material means any Intellectual Assets in which copyright subsists.

Corporations Act means the *Corporations Act 2001* (Cth);

Effective Date means the date on which the Consideration is paid to the Assignor;

Encumbrance means any charge, mortgage, hypothecation, lien or other security interest and includes a 'security interest' as defined in the *Personal Property Securities Act 2009* (Cth).

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

GST Law has the same meaning as in the GST Act;

Intellectual Assets means:

- (a) the Work;
- (b) any Intellectual Property Rights associated with the Work;
- (c) know-how, trade secrets and other intangible assets deployed by the Assignor in connection with the Work; and

- (d) the right to take action against third parties for the unlawful use of the assets described in (a), (b) and (c) above or the infringement of the Intellectual Property Rights described in (a), (b) and (c) above whether occurring before, on or after the date of this document.

Intellectual Property Rights means all intellectual, industrial or proprietary rights conferred by statute, at common law or in equity, whether issued or pending, registered or unregistered, including all forms of copyright, trade marks, designs, patents, the right to control the use and disclosure of Confidential information or other similar proprietary rights or any rights to registration of such rights existing in the world, whether created before, on or after the date of this document;

Licence Term means the period commencing from the Effective Date and expiring on the date on which the Assignee implements the NSW Virtual Residential Parenting Service Model of Care or such other date as notified by the Assignee to the Assignor in writing;

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing presently or which may in the future come into existence.

Nominated Person means:

- (a) In the case of Assignor its Chief Executive Officer;
- (b) In the case of the Assignee [Executive Director, Health and Social Policy Branch];

NSW Virtual Residential Parenting Service Model of Care means the model of care for parents the Assignee is planning to develop for parents and babies which need to be supported during the early stages of parenting and which avoids admission to an inpatient residential unit;

Payment Date has the meaning given in clause 4.3;

Purpose means for use by the Assignor in the conduct of its business;

Work means the documentation created by Karitane to support the Karitane Virtual Residential Unit model of care it designed and began delivering to parents and babies during the lock down in 2020 associated with Covid 19 and which avoided admission to an inpatient residential unit, and which is an annexure to this document and initialled for the purposes of identification.

1.2 Interpretation

In this document, unless the context otherwise requires:


- (a) a reference to:
- (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexures to this document and references to this document include any recital, schedule or annexure;
 - (iv) any contract (including this document) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (x) time is a reference to legal time in Sydney, New South Wales;
- (xi) a reference to a day or a month means a calendar day or calendar month;
- (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this document as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) headings and the table of contents are for convenience only and do not form part of this document or affect its interpretation;
- (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (g) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day; and
- (h) a provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document.

2 Assignment of Intellectual Property Rights

- 2.1 The Work was developed by employees of the Assignor and the Intellectual Property Rights in the Work are owned by the Assignor.
- 2.2 The Assignor assigns to the Assignee absolutely, all of its right, title and interest, including all Intellectual Property Rights, in and to the Work as and from the Effective Date.
- 2.3 The assignment contained in clause ~~Error! Reference source not found.~~ ¹¹⁶ includes the right for the Assignee to take action and obtain relief (including to be paid all amounts recovered in any action whether by way of damages, account of profits or on any other basis) in relation to

any infringement of Intellectual Property Rights in or to the Intellectual Assets whether before, on or after the date of this document.

- 2.4 If the assignment of any, or of any part, of the rights to be assigned under clause **Error! Reference source not found.**  is for any reason ineffective:
- (a) the assignment of all other rights under that clause will nevertheless be of full effect; and
 - (b) to the extent that the assignment is ineffective, the Assignor will hold the rights not effectively assigned for the Assignee absolutely and will exercise those rights solely at the direction of and for the benefit of the Assignee.
- 2.5 The Assignee warrants that it will include the Acknowledgement in all publications and promotions in respect of the NSW Virtual Residential Parenting Service Model of Care.

3 Licence Grant

The Assignee grants to the Assignor with effect from the Effective Date, subject to the terms and conditions of this document, a non-sub-licensable royalty-free licence to use the Intellectual Property Rights in the Work for the Purpose during the Licence Term.

4 Consideration

4.1 Obligation to Pay

In consideration for the assignment in Clause 2 of this document the Assignee will pay the Assignor the Consideration on or before the Payment Date.

4.2 Assignor to provide Tax Invoice

On execution of this document the Assignor will provide Assignee with a tax invoice which complies with the GST Act (**Tax Invoice**) for the amount of the Consideration plus GST.

4.3 Payment of Tax Invoice

The Assignee must pay the Tax Invoice provided to it under clause 4.2 within 14 days of receipt (**Payment Date**) in order to trigger the assignment under clause 2.

5 Confidentiality

- 5.1 Subject to clause 5.2, on and from the date of this document, the Assignor undertakes to the Assignee:
- (a) to keep confidential:
 - (i) all information that is known to or in the possession of the Assignor that relates to the Intellectual Assets;
 - (ii) the terms of this document; and
 - (iii) the parties' ongoing discussions in relation to the Intellectual Assets; and
 - (b) to take all reasonable measures to keep the information the subject of subparagraph (a) secure from unauthorised use or access.

- 5.2 Information the subject of clause 5.1(a)(i) may be disclosed by the Assignor to the extent such disclosure is required in connection with the licence granted to the Assignor under clause 3.

6 Assignor obligations

On and from the Effective Date, the Assignor:

- (a) relinquishes all rights (inclusive of all statutory and common law rights) to the Intellectual Assets;
- (b) acknowledges that the Assignee may subsequently sell, license or assign the Intellectual Assets to third parties; and
- (c) must deliver to the Assignee without delay:
 - (i) any and all tangible embodiments (in written and electronic form) of the Intellectual Assets including all documents relating to or in support of the ownership and title to the Intellectual Assets which are in the possession, custody or control of the Assignor; and
 - (ii) any documents reasonably required by the Assignee to change the applicant or registrant of any application or registration relating to the Intellectual Assets.

Notwithstanding the provisions of this clause, the Assignor may retain a physical copy of the Work for use in connection with the licence granted to the Assignor under clause 3.

7 Warranties and Liabilities

7.1 Assignor warranties

The Assignor warrants that:

- (a) to its knowledge the Work is original;
- (b) it is the legal and beneficial owner of the Intellectual Assets;
- (c) the Intellectual Assets are free from any Encumbrances and other adverse interests;
- (d) it has not granted rights to a third party inconsistent with the rights granted under this document;
- (e) it has full legal capacity and power to enter into this document and to carry out the transactions that this document contemplates;
- (f) the use of the Intellectual Assets by the Assignee will not infringe the Intellectual Property Rights of any third party;
- (g) there are no actions, claims, objections, proceedings or investigations pending or threatened relevant to the Assignor and/or the Intellectual Assets;
- (h) the execution of this document and the performance by the Assignor of its obligations under this document will not cause the Assignor to be in breach of any agreement or understanding to which it is a party or is a subject.

7.2 Limitations on Liabilities

- (a) The Assignee acknowledges and agrees that the Assignor:
 - (i) has not made and does not make any representation, guarantee or warranty, implied or expressed regarding the content of the Work; and
-

- (ii) excludes all terms, warranties and conditions otherwise implied (whether by statute, common law, collaterally or otherwise) by any law applicable to this document or anything done under or pursuant to this document in particular, but without limitation, any implied condition, warranty or other terms as to quality and fitness for a particular purpose of the Work and its content is expressly excluded.
- (b) Neither party shall be liable to the other party for any indirect, incidental, special, punitive, exemplary or consequential damages (including, without limitation, any damages arising from loss of use or lost business, revenue, profits, data or goodwill) arising in connection with this document, whether in an action in contract, tort, strict liability or negligence, or other actions, even if advised of the possibility of such damages.
- (c) Subject to any applicable law the Assignor's maximum aggregate liability under or in connection with this document, whether in contract, tort (including negligence) or otherwise (including under the indemnity in clause 8) shall in no circumstances exceed the amount of the Consideration.

8 Indemnity

- 8.1 The Assignor indemnifies and holds the Assignee harmless from and against any claim or liability reasonably incurred or suffered by the Assignee as a result of any breach by the Assignor of its obligations under this document, including any breach of a warranty given by the Assignor.
- 8.2 The indemnity in this clause 8:
 - (a) is a continuing obligation, separate and independent from the other obligations of the parties;
 - (b) will not be affected by any matter including without limitation, the termination, renewal or extension of this document or any indulgence, waiver or other concession given by the Assignee unless the Assignee agrees in writing; and
 - (c) includes legal costs and disbursements on a full indemnity basis.
- 8.3 It is not necessary for the Assignee to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause 8.
- 8.4 The Assignor must pay on demand any amount it must pay under the indemnity in this clause 8.

9 Moral rights

- 9.1 The Assignor represents and warrants to the Assignee as at the date of this document that:
 - (a) it has obtained the signed consent of all original authors of the Copyright Material to any act or omission (whether occurring before, on or after the date of this document) which might otherwise constitute a breach or infringement of their Moral Rights in the Copyright Material;
 - (b) to the extent permitted by law, the original authors of the Copyright Material have waived all Moral Rights they may have in the Copyright Material;
 - (c) the consents and waivers described in clauses 9.1(a) and 9.1(b) were genuinely given and no duress was applied by the Assignor to any of the authors of the Copyright Material in connection with them giving the consents and waivers; and
 - (d) the consents and waivers described in clauses 9.1(a) and 9.1(b) operate in Australia and all jurisdictions in which those consents and waivers are enforceable.

10 Dispute resolution

10.1 Dispute

If a dispute, claim, question or disagreement arises out of or in relation to this document (including any dispute as to breach or any question regarding the existence, validity or termination of this document) (a Dispute), the Dispute must be determined in accordance with the procedure in this clause 10, and a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause 10.

10.2 Dispute Notice

The parties shall use all reasonable efforts to settle the Dispute. If these efforts are unsuccessful, any party may escalate the Dispute to the respective Nominated Person by giving written notice to that effect to the other parties specifying the nature of the Dispute (**Dispute Notice**).

10.3 Nominated Persons Meeting

Promptly after receiving a Dispute Notice, the parties shall procure a meeting (in person, by webcast or by teleconference) between their respective Nominated Person, or the delegate of their respective Nominated Person with sufficient authority, to endeavour to resolve the Dispute expeditiously by negotiation.

10.4 Proceedings

If the dispute has not settled within 20 Business Days after the Nominated Persons or the delegates of the Nominated Persons embarked on attempts to resolve the Dispute, or any other period agreed to in writing by the parties, any party may commence litigation in relation to the relevant Dispute.

10.5 Urgent Relief

Nothing in this clause 10 will prevent a party from seeking:

- (a) urgent injunctive or interlocutory relief; or
- (b) preliminary relief to enforce intellectual property rights or confidentiality obligations;

in a court of competent jurisdiction.

11 Notices

11.1 Service of notices

A notice, consent, approval or other communication under this agreement (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 11.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by facsimile or email, or any other lawful means.

11.2 Effect of receipt

A Notice given in accordance with this clause 11 is treated as having been given and received:

- (a) if personally delivered, on delivery;
- (b) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting;
- (c) if sent by facsimile, when the sender's fax machine produces a transmission report stating that the transmission of the entire Notice was complete; and

- (d) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

11.3 Addresses

- (a) The particulars for delivery of Notices are initially:

Karitane

Name: Grainne O'Loughlin
 Attention: Chief Executive Officer / Company Secretary
 Address: 138-150 The Horsley Drive, Carramar New South Wales 2163
 Phone: 9794 2358
 Email: grainne.oloughlin@health.nsw.gov.au

Name: Tish Bruce
 Attention: Executive Director, Health and Social Policy Branch
 Address: 1 Reserve Rd, St Leonards NSW 2065
 Phone: 9424 5944
 Email: tish.bruce@health.nsw.gov.au

12 General

12.1 Stamp duty

Assignee must pay all stamp duty (including any penalties) payable or assessed in connection with this document and any document required by or contemplated under this document.

12.2 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

12.3 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12.4 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

12.5 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold consent to be given under this document and is not obliged to give reasons for doing so.

12.6 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

12.7 Waiver and exercise of rights.

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this document does not operate as a waiver of that right, power or remedy. A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

12.8 Amendment

This document may only be varied or replaced by a document executed by the parties.

12.9 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

12.10 Severability

If any part or provision of this document is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this document will continue to operate.

12.11 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Executed as a an agreement

Executed as an agreement by **Karitane** in accordance with section 127 of the *Corporations Act 2001* (Cth):

DocuSigned by:
Lee Carpenter
16FA9C7CE9E0470...

Director

Lee Carpenter

Name of Director
BLOCK LETTERS

DocuSigned by:
Grainne O'Loughlin
757718B91F224B3...

*Director/*Company Secretary

Grainne o'Loughlin

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Signed for and on behalf of Health Administration Corporation ABN 45 100 538 161 by its authorised officer:

TISH DAVIES

Name of signatory

Executive Director, Health & Social Policy Branch

Position of signatory

in the presence of:

Susan Kerr

Print name of witness

TISH DAVIES

Signature

29.7.2021

Date

Susan Kerr

Witness signature

Date

29/7/2021