



WA Country Health Service

Agreement for Supply of Services: **Recruitment of Medical Practitioners**

Note:

By introducing candidates for consideration for a vacancy, the recruitment agency accepts the terms and conditions set out in this Agreement. Any variations to this Agreement must be incorporated into Schedule 1 “Special Conditions” and signed by both parties.

All **Salaried Medical Officer** vacancies are advertised on the WA Country Health Service (WACHS) Medical Vacancies page or on www.jobs.wa.gov.au. Salaried vacancies are managed centrally through the WACHS Area Office Clinical Workforce & Reform Team. Further information on WACHS can be found on our web page: www.wacountry.health.wa.gov.au

All **Non-salaried medical practitioner** vacancies are managed by the Regional Medical Directors office in each region. Individual contact details for each region will be provided on request to WACHSdoctors@health.wa.gov.au

THIS AGREEMENT IS MADE BETWEEN

The Minister for Health in his incorporated capacity as the **WA Country Health Service** under section 7 of the *Hospitals and Health Services Act 1927 (WA)*, c/- **189 Wellington St, PERTH 6000 (Employer)**

AND

RECITALS:

- A.** In return for a placement fee payable to the Company, the Company has arranged the introduction of the salaried medical officer and/or the non-salaried medical practitioner to the Employer.
- B.** This Agreement sets out the terms under which the Employer agrees to engage the Company to recruit the agreed medical officers and/or medical practitioners.

Operative Provisions

1. INTERPRETATION

In this Agreement:

Agreement means this Agreement, including all the Schedules

AMA Agreement means the Department of Health Medical Practitioners (WA Country Health Service) AMA Industrial Agreement.

Candidate means the medical practitioner whose name is provided to the Employer as a potential employee or contractor of the Employer and who has the skills and experience to meet advertised vacancies.

Introduction means the initial provision of the Candidate's details by the Company.

GST means the Goods and Services Tax payable under a GST Law.

GST Law means the same as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time, and any regulations made pursuant to that Act.

Medical Services Agreement (MSA) means the contract for service between the Employer and the Candidate used for Non-salaried Placements. For the avoidance of doubt, under the MSA, the Candidate is both the contracting medical practitioner and the nominated medical practitioner.

Non-salaried Placement means engagement of the Candidate on a fixed-term contract for service as the nominated medical practitioner under the MSA.

Salaried Placement means the employment of the Candidate as a salaried medical officer on a continuous basis on a fixed-term contract of service under the AMA Agreement.

2. COMPANY'S OBLIGATIONS AND RESPONSIBILITIES

- 2.1. The Company is responsible for the Introduction of the Candidate to the Employer and facilitating the Salaried or Non-salaried Placement agreement between the Candidate and Employer.
- 2.2. The Company will exercise all reasonable care and due diligence in recommending a Candidate to the Employer.
- 2.3. The Company undertakes to comply with the principles that have their origins in "*A Code of Practice for the International Recruitment of Health Care Professionals: The Melbourne Manifesto*", May 2002.
- 2.4. The Company agrees to:
 - 2.4.1. obtain consent from the Candidate for the Employer and others to collect and use the Candidate's personal information at the beginning of the recruitment process;
 - 2.4.2. ensure that the Candidate is aware that they need to meet the Employer's requirements with regards to governance standards, including identity checks, referee checks, criminal record checks, and professional qualifications, and immunisation, credentialing and quality and safety standards;

- 2.4.3. ensure that the Candidate is informed of the current arrangements and obligations regarding medical indemnity insurance whilst undertaking medical practice in Western Australia; and
- 2.4.4. ensure that the Candidate is aware of Australian requirements including immigration and registration.
- 2.5. The Company will endeavour to ensure that the Candidate has the following qualifications and that documentary evidence is provided to the Employer prior to engagement:
 - 2.5.1. appropriate work visas;
 - 2.5.2. valid and current medical registration;
 - 2.5.3. sufficient skills and experience to undertake position as described in job description form; and
 - 2.5.4. appropriate security checks.
- 2.6. The Company will verify, where practical, the information supplied by the candidate concerning his or her qualifications and experience, including contacting referees where requested.
- 2.7. The Company will exercise its best endeavours to check the accuracy of any representations made by a Candidate and upon which the Employer may rely.
- 2.8. The Company agrees that if a Candidate is presented by the Company to the Employer and that Candidate is already known to the Employer by way of direct application or from a third party, no fee is payable by the Employer to the Company in the event that the Candidate is subsequently appointed by the Employer.

3. EMPLOYER'S OBLIGATIONS AND RESPONSIBILITIES

- 3.1. The Employer agrees that:
 - 3.1.1. the Candidate will be engaged by the Employer and the Company bears no responsibility for the suitability, competency or otherwise of a candidate;
 - 3.1.2. the Company is not responsible for any information supplied by the Candidate; and
 - 3.1.3. the decision to engage a Candidate rests with the Employer and the Employer is responsible for ensuring that the Candidate is suitable for the position
- 3.2. For Salaried and Non-salaried Placements, the Employer is responsible for:
 - 3.2.1. the process of selecting the preferred Candidate to fill the vacancy;
 - 3.2.2. the direct supervision and management of the Candidate in the performance of their duties once their employment has commenced; and
 - 3.2.3. the occupational health and safety of the Candidate whilst under contract, including induction and training required for the Candidate to comply with OH&S policies and procedures.
- 3.3. The Employer is responsible for sponsorship and associated costs of employing International Medical Graduates who have been offered a Salaried Placement requiring a working visa.
- 3.4. For Salaried Placements, the Employer is responsible for paying:
 - 3.4.1. the Candidate's salary and other remuneration or reimbursement benefits;
 - 3.4.2. all income tax and other statutory deductions from the Candidate's salary and benefits;
 - 3.4.3. all payroll tax and other statutory imposts on the Employer of the Candidate; and
 - 3.4.4. all premiums for workers compensation insurance and any other insurance.

- 3.5. For Non-salaried Placements, the contract of service is between the Employer and the Candidate with the Employer responsible for paying, on invoice, for services provided in accordance with the terms of the MSA.

4. SALARIED PLACEMENT

- 4.1. The Employer agrees that the Company maintains representation of a Candidate for a Salaried Placement for a period of twelve (12) months from the date of Introduction.
- 4.2. The Employer agrees to notify the Company of any offers of appointment made by the Employer to a Candidate for a Salaried Placement where such an offer is made within twelve 12 months of the Introduction of the Candidate by the Company.
- 4.3. All employment contracts for Salaried Placements are with the individual and not the Company. The payment of salary will be made directly to the Candidate in accordance with conditions set out in the current AMA Agreement.
- 4.4. The fee payable by the Employer to the Company for a Salaried Placement is 12.5% of the Candidate's annual salary plus GST. If the candidate is engaged for a term of less than 12 months, the fee is calculated on a pro-rata basis to a maximum of twelve months salary.
- 4.5. For the avoidance of doubt, fees are calculated on the base rate of remuneration as well as other entitlements as detailed in the employment contract, including professional development and expenses allowances, and, if applicable, allowance in lieu of private practice billing. Other entitlements, such as superannuation, allowance for access to motor vehicle, access to accommodation, travel and relocation costs, are excluded in calculating the fees payable to the Company.
- 4.6. The placement fee is to be divided in to three parts.
- 4.6.1. 30% is payable within thirty (30) days of the Candidate's written acceptance of the offer of engagement (**part 1**).
- 4.6.2. 30% is payable within thirty (30) days of the Candidate commencing duties (**part 2**).
- 4.6.3. If an orientation assessment period is stipulated in the contract, final 40% is payable within thirty (30) days of the completion of the assessment (**part 3**).
- 4.6.4. If an orientation assessment period is not required, part 2 and part 3 of the fee are payable within thirty (30) days of the Candidate's commencement.
- 4.7. If the Candidate withdraws prior to the commencement of the assessment period, the Company will fully refund part 1 of the total fee.
- 4.8. If the Employer cancels a placement after the Employer and Candidate have signed an employment contract and before the Candidate has commenced, the Employer will remain liable for the part 1 of the fee (30%).
- 4.9. If the Candidate fails to arrive for the placement within a reasonable amount of time (by negotiation) of the target commencement date resulting in withdrawal of an offer of employment, or the Candidate withdraws from the appointment process by providing evidence in writing, the Company will refund any and all placement fees paid by the Employer within a period of thirty (30) days.

5. NON-SALARIED PLACEMENT (MSA)

- 5.1. The Employer agrees that the Company maintains representation of a Candidate for a Non-salaried Placement from the date of Introduction for either a period of three (3)

years or until such time that the maximum fee set out in **clause 5.3** is paid, whichever is the shorter.

- 5.2. The Employer agrees to notify the Company of any offers of appointment, including subsequent offers of appointment, for a Non-salaried Placement made by the Employer to a Candidate within the period commencing with the Introduction of the Candidate by the Company and concluding on the date determined in accordance with **clause 5.1**.
- 5.3. The fee payable by the Employer to the Company for a Non-salaried Placement is 12.5% of the Candidate's daily rate (defined as a 24 hour period), as set out in the MSA, plus GST. The fee is calculated on a pro-rata basis to a maximum of three hundred and sixty-five (365) days. For the avoidance of doubt if a Candidate is engaged on a Non-salaried Placement on more than one occasion the maximum number of days for which the fee is payable is limited to three hundred and sixty-five (365) days accrued within three (3) years of the Introduction.
- 5.4. The fee is to be divided into two parts:
 - 5.4.1. 50% is payable on confirming the Candidate's date(s) of commencement of the Non-salaried Placement (**part 1**)
 - 5.4.2. 50% is payable on Candidate commencement (**part 2**).
- 5.5. If the Employer cancels the Agreement without due reason within 14 days of the commencement date, the part 1 fee is not refundable
- 5.6. If the Company advises that the Candidate is no longer available within 14 days of the commencement date the part 1 fee is refunded
- 5.7. If the Company advises that the Candidate is no longer available on the dates as agreed, and a future date agreeable to all parties is able to be negotiated, the part 1 fee is maintained. Part 2 of the placement fee will be paid on the revised date of commencement
- 5.8. If the Candidate fails to arrive for the placement on the agreed date the Company will refund any and all placement fees paid by the Employer within a period of thirty (30) days.

6. REPLACEMENT

6.1. Salaried Placements

Should the Candidate leave within 3 months of commencing employment with the Employer for any reason other than retrenchment or structural redundancy then, providing the placement fee has been paid in accordance with **clause 4**, the Company will use reasonable endeavours to find a suitable replacement. If a suitable replacement is not provided within three months, part 3 of the fee (40%) will be reimbursed to the Employer:

6.2. Non-salaried Placements

Should the Candidate leave or be dismissed for disciplinary reasons during the Non-salaried Placement:

- 6.2.1. the Employer will provide the Company with the opportunity to introduce a new Candidate to fill the position, or;
- 6.2.2. in the event the Company is unable to replace the Candidate the Company will, within fourteen (14) days, refund pro-rata the part 2 payment that was invoiced to the Employer.

7. CONFIDENTIALITY OF INFORMATION

- 7.1. Subject to **clause 7.2** information on Candidates provided by the Company to the Employer is confidential (**Confidential Information**) and will not be released by the Employer to a third party. For the avoidance of doubt, hospitals and health services under the control of the Minister for Health in his incorporated capacity as the WA Country Health Service are not third parties.
- 7.2. The Employer may use or disclose Confidential Information in any of the following circumstances:
 - 7.2.1. for the purposes of complying with the requirements of any Regulatory Authority;
 - 7.2.2. where the Company or the Candidate consents in writing to the disclosure;
 - 7.2.3. where release of the Confidential Information is required by law
- 7.3. Information will not be Confidential Information and subject to the provisions of this **clause 7** where:
 - 7.3.1. the information has been independently received from a third party who is free to disclose it;
 - 7.3.2. the information is in or has entered the public domain other than as a result of a breach of this Agreement; or
 - 7.3.3. the party already knew the information, the prior knowledge of which it can document by prior written records.
- 7.4. The Employer is responsible for the full fee where a Candidate is employed by a third party as a consequence of a breach of confidentiality by the Employer.

8. ADDITIONAL EXPENSES

The Company will not incur any additional expenses on behalf of the Employer without the Employer's prior agreement in writing

9. TERMS OF PAYMENT

- 9.1. Fees will be payable within 30 day of receipt of invoice. The invoice is to include the Company's ABN, the GST component and the preferred method of payment.
- 9.2. At the time of payment, the Employer must pay to the Company any amount of GST that the Employer is required to pay in accordance with GST Law.

10. LIABILITY AND INDEMNITY

- 10.1. The Company will make all reasonable efforts to ensure that Candidates introduced to the Employer are suitable for the position. The decision to employ the Candidate rests with the Employer and the Company accepts no responsibility for the suitability or competency or otherwise of the Candidate placed. The Company is not party to any employment contract between the Employer and the Candidate and the Employer expressly agrees that the Company is not liable for any actions taken by the Candidate whilst in the placement.
- 10.2. The Employer indemnifies the Company for any claims against the Company arising from the placement of the Candidate
- 10.3. The Employer's liability under the indemnity in **clause 10.2** will be reduced proportionately to the extent that any costs, losses, expenses, claims, damages or other liabilities result from any wilful, tortuous or unlawful act or omission of the Company.

10.4. The indemnity is a continuing obligation and remains in force and effect notwithstanding the termination of this Agreement.

11. TERM AND TERMINATION

11.1. This Agreement is considered accepted upon:

11.1.1. the Employer and the Company signing of this document, or

11.1.2. the Introduction of a Candidate for consideration of placement if the Agreement remains unsigned;

11.2. A party may terminate this Agreement with thirty (30) days prior written notice or such shorter time period as is reasonably required in the circumstances.

12. APPLICABLE LAW

This Agreement will be governed by, and construed in accordance with, the law for the time being in force in the State of Western Australia and the parties submit to the jurisdiction of that State and courts entitled to hear appeals from those courts.

13. NOTICES

13.1. A notice, consent, approval or other communication (each a notice) under this Agreement must be:

13.1.1. delivered to the party's address; or

13.1.2. sent by pre-paid mail to the party's address; or

13.1.3. transmitted by facsimile to the party's address.

13.2. A notice given by a party in accordance with this clause is treated as having been given and received:

13.2.1. if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day; or

13.2.2. if sent by pre-paid mail, on the third business day after posting; or

13.2.3. if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

13.3. The addresses of the parties for the purposes of giving any notice are set out on the signature execution page of this Agreement.

14. WAIVER

14.1. No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right. A waiver by any party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any other breach.

14.2. Failure or delay by any party to enforce any provision of this Agreement will not be deemed to be a waiver by that party of any right in respect of any other such breach.

15. VARIATIONS

No variations of this Agreement are legally binding on any party unless evidenced in writing signed by all parties.

16. SEVERANCE

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of this Agreement.

17. RELATIONSHIP OF THE PARTIES

- 17.1. Nothing in this Agreement creates a relationship of employer and employee, principal and agent, joint venture or partnership between the parties and no party will hold itself out as an agent for another
- 17.2. Neither party may use the name or logo of the other party, nor the name of any of the other party's employees, in any publicity, advertising, or news release without the prior written approval of an authorised representative of that party.

18. FORCE MAJEURE

If any party is delayed or prevented from the performance of any act required under this Agreement by reason of any act of God, act of nature, including any epidemic or outbreak of pandemic disease, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies, labour disputes of whatever nature or whatever reason beyond the control of the party (a **Force Majeure Event**), the affected party shall promptly notify the other party in writing, giving details of the Force Majeure Event, the acts affected by the Force Majeure Event and the extent to which they are affected, and performance of such acts shall be excused for the period of such event provided that if such interference lasts for any period in excess of 30 days either party may, by written notice to the other, terminate this Agreement.

In witness hereof, the parties have caused this Agreement to be executed as of respective dates written below.

Signed on behalf of the **Company**

Signed: _____

Name: _____

Position: _____

Date: _____ / _____ / _____

Contact for Notices
email _____ @ _____

facsimile number _____

telephone number _____

Signed on behalf of the **Employer**
for and on behalf of the Director General of Health as delegate of the Minister for Health

Signed: _____

Name: _____

Position: _____

Date: _____ / _____ / _____

Contact for Notices
email _____ @ _____

facsimile number _____

telephone number _____

**Schedule 1
Special Conditions**

Amendment to Clauses in the Body of the Agreement

By signing below, the parties agree that the terms set forth in this Schedule 1 are incorporated into the WA Country Health Service – Medical Recruitment Agreement March 2013.

Signed on behalf of the **COMPANY**

Signed: _____
Name: _____
Position: _____
Date: / / _____

Signed on behalf of the **EMPLOYER**

Signed: _____
Name: _____
Position: _____
Date: / / _____