

WA Country Health Service
Agreement for Supply of Services:
Recruitment of Medical Practitioners

The body of this Agreement (that is from the following page to the execution clauses) is intended to be identical to the standard form of Agreement as maintained by WACHS. Any textual change to the body of this Agreement is to be ignored, and reference instead had to the standard form, as amended by Schedule 1 by way of Special Conditions.

Note:

By introducing candidates for consideration for a vacancy, the recruitment agency accepts the terms and conditions set out in this Agreement.

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 Central Office Clinical Workforce & Reform Team. Further information on WACHS can be found on our webpage: 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 **WA Country Health Service 189 Wellington St, PERTH, WA, 6000**

AND

COMPANY NAME COMPANY ADDRESS

RECITALS:

- A.** The Company offers to introduce prospective candidates to WACHS for positions of salaried medical officers and/or non-salaried medical practitioners.
- B.** This Agreement sets out the terms under which WACHS agrees to engage the Company to recruit the agreed medical officers and/or medical practitioners.

Operative Provisions

1. INTERPRETATION

1.1 In this Agreement:

Agreement means this Agreement, including all the Schedules

AMA Agreement means the WA Health System - Medical Practitioners AMA Industrial Agreement 2016.

Candidate means the medical practitioner whose name is provided to WACHS as a potential employee or contractor of WACHS 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* (CT) as amended from time to time, and any regulations made pursuant to that Act.

Medical Services Agreement (MSA) means the contract for service between WACHS 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.

WACHS means WA Country Health Service, a body corporate established under section 32 of the *Health Services Act 2016*.

1.2 Except where the context otherwise requires:

- i) clause headings are for convenient reference only and are not intended to affect the interpretation of this Agreement;
- ii) where any word or phrase has a defined meaning, any other form of that word or phrase has a corresponding meaning;
- iii) any reference to a person or body includes a partnership and a body corporate or body politic;
- iv) words in the singular include the plural and vice versa;
- v) all the provisions in any schedule to this Agreement are incorporated in, and form part of, this Agreement and bind the parties;
- vi) a reference to a replacement of a document or standard, means any document or ruling which amends, updates, replaces or supersedes that document or standard;

- vii) if a period is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- viii) a reference to a monetary amount means that amount in Australian currency; and
- ix) references to a party includes its Personnel

2. COMPANY'S OBLIGATIONS AND RESPONSIBILITIES

- 2.1. The Company is responsible for the Introduction of the Candidate to WACHS 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 WACHS.
- 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 WACHS 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 WACHS's requirements with regards to governance standards: including identity checks; referee checks; criminal record checks and clearance; and verification of professional qualifications; AHPRA (Medical Board of Australia) registration requirements and pre-employment health screening requirements including immunization, credentialing and scope of clinical practice; and safety and quality standards including NSQHS (National Safety and Quality Health Service) Accreditation 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;
 - 2.4.3.1. a Candidate who chooses to purchase professional indemnity insurance do so at own expense and WACHS is not liable for any direct or related costs incurred by the Candidate in that event;
 - 2.4.4. ensure that the Candidate is aware of Australian requirements including immigration and registration.
- 2.5. The Company will endeavor to ensure that the Candidate has the following qualifications and that documentary evidence is provided to WACHS prior to engagement:
 - 2.5.1. appropriate work visas;
 - 2.5.2. valid and current registration with the Medical Board of Australia;
 - 2.5.3. enough skills and experience to undertake position as described in job description form; and
 - 2.5.4. appropriate security and screening 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 check the accuracy of any representations made by a Candidate and upon which WACHS may rely.
- 2.8. The Company agrees that if a Candidate is presented by the Company to WACHS and that Candidate is already known to WACHS by way of direct application or from a third party, no fee is payable by WACHS to the Company if the Candidate is subsequently appointed by WACHS.

3. EMPLOYER'S OBLIGATIONS AND RESPONSIBILITIES

- 3.1. WACHS agrees that:
 - 3.1.1. the Candidate will be engaged by WACHS 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 WACHS and WACHS is responsible for ensuring that the Candidate is suitable for the position
- 3.2. For Salaried and Non-salaried Placements, WACHS 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. WACHS 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, WACHS 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 WACHS 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 WACHS and the Candidate with WACHS responsible for paying, on invoice, for services provided in accordance with the terms of the MSA.

4. SALARIED PLACEMENT

- 4.1. WACHS 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. WACHS agrees to notify the Company of any offers of appointment made by WACHS 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 WACHS 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 WACHS cancels a placement after WACHS and Candidate have signed an employment contract and before the Candidate has commenced, WACHS 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 or the candidate is unable to commence due to external factors such as (but not limited to): failure to register with Medical Board of Australia; failure to obtain valid work visa; and failure to obtain approval for appropriate credentialing and scope of clinical practice, the Company will refund any and all placement fees paid by WACHS within a period of thirty (30) days.

5. NON-SALARIED PLACEMENT (MSA)

- 5.1. WACHS 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. WACHS agrees to notify the Company of any offers of appointment, including subsequent offers of appointment, for a Non-salaried Placement made by WACHS 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 WACHS 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. Subject to clause 9.1, payment will be made by WACHS upon receipt of a valid tax invoice. The invoice must include a timesheet showing the authorised hours worked by Candidate each day during the period covered by the invoice. The Company may choose to invoice WACHS on a fortnightly or monthly basis.

6. REPLACEMENT

6.1. Salaried Placements

Should the Candidate leave within 3 months of commencing employment with WACHS 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 endeavors 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 WACHS:

6.2. Non-salaried Placements

Should the Candidate leave or be dismissed for disciplinary reasons during the Non-salaried placement WACHS will provide the Company with the opportunity to introduce a new Candidate to fill this position.

7. CONFIDENTIALITY OF INFORMATION

- 7.1. Subject to clause **7.2 information** on Candidates provided by the Company to WACHS is confidential (**Confidential Information**) and will not be released by WACHS to a third party. For the avoidance of doubt, hospitals and health services controlled by bodies corporate established under the *Health Services Act 2016* are not third parties.
- 7.2. WACHS 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. for obtaining legal advice; and
 - 7.2.4. 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 because 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. WACHS is responsible for the full fee where a Candidate is employed by a third party because of a breach of confidentiality by WACHS.

8. ADDITIONAL EXPENSES

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

9. TERMS OF PAYMENT

- 9.1. Fees will be payable within 30 day of receipt of a valid tax 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, WACHS must pay to the Company any amount of GST that WACHS 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 WACHS are suitable for the position. The decision to employ the Candidate rests with WACHS 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 WACHS and the Candidate and WACHS expressly agrees that the Company is not liable for any actions taken by the Candidate whilst in the placement.
- 10.2. WACHS indemnifies the Company for any claims against the Company arising from the placement of the Candidate
- 10.3. WACHS'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 willful, 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 OF AGREEMENT

- 11.1. This Agreement commences:
 - 11.1.1. from the date this Agreement is last signed by either WACHS or the Company; or
 - 11.1.2. the Introduction of a Candidate for consideration of placement if the Agreement remains unsigned;
- 11.2. Subject to amendment or earlier termination in accordance with clause 12 this Agreement shall continue in force from the date of execution and terminate on 1 October 2020

12. TERMINATION

- 12.1. Either party may terminate this Agreement with thirty (30) days prior written notice or such shorter time as is reasonably required in the circumstances if the other party:

- (a) is in breach of any obligations under the Agreement and fails to remedy such breach where it is capable of remedy within fourteen (14) days of a written notice from the terminating party specifying the breach and requiring its remedy;
- (b) is declared insolvent or has an administrator or receiver appointed over all or any part of its assets or ceases or threatens to cease to carry on its business.

13. 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.

14. ELECTRONIC EXCHANGE

This Agreement may be executed and delivered in counterparts, including via facsimile or Adobe Acrobat or “.pdf” format, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument.

15. NOTICES

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

- (a) must be in writing;
- (b) may be given by an authorised officer or representative of WACHS or the Company (as the case may be); and
- (c) must be sent to:

WACHS: Contact for Notices

name	
address	
email	
telephone	

Company: Contact for Notices

name	
address	
email	
telephone	

- 15.2. a notice given in accordance with this clause shall be deemed received:
- (a) if hand delivered, on delivery;
 - (b) if send by prepaid post on the third business day after the date of posting (or on the 10th business day after the date of posting if posted to or from outside Australia); and
 - (c) if send by email transmission, at the time that would be the time of receipt under the *Electronic Transmissions Act 2011 (WA)*

16. WAIVER

- 16.1. 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.
- 16.2. 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.

17. VARIATIONS

- 17.1. No variations of this Agreement are legally binding on any party unless evidenced in writing signed by all parties.
- 17.2. Where variations to the Agreement are agreed by the parties, those variations will be set out as "Schedule 2 Variations" to this Agreement (or otherwise sequentially numbered according to the sequence of the agreed variations) and signed by the authorised delegates of both parties. To the extent of any inconsistency between the terms of this Agreement and a term recorded in Schedule 1, the term recorded in Schedule 1 will prevail.

18. 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.

19. RELATIONSHIP OF THE PARTIES

- 19.1. 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
- 19.2. 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.

20. 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 more than 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: _____

Signed for and on behalf of the WA Country Health Service in accordance with section 41 of the *Health Services Act 2016*

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

**Schedule 1
Special Conditions**

Amendment to Clauses in the Body of the Agreement

Schedule 2
Variations to Agreement