**Engagement of Medical Practitioners under Contracts for Services Policy MP 0079/18**

**Day Rate Medical Services Agreement Template**

**DAY RATE**

**MEDICAL SERVICES AGREEMENT**

**Date:**

**<<Name of Health Service Provider>>**

**and**

**<<Title>> <<Given Name>> <<Family Name>>**

**MEDICAL SERVICES AGREEMENT NUMBER <<MSA Number>>**

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**MEDICAL SERVICES AGREEMENT**

**AGREEMENT**

**THIS MEDICAL SERVICES AGREEMENT No.** <<MSA Number>> **is made on** <<Operative Date>>

**BETWEEN:**

<<*name of health service provider*>> ("**HSP**")

and

the Medical Practitioner named in Item 1 of Schedule 1 ("**Contractor**")

**RECITALS**

A. The HSP wishes to engage the Contractor under this Agreement to provide Medical Services on its behalf to Public Patients at certain of the hospitals for which the HSP is responsible.

B. The HSP is a health service provider pursuant to section 32 of the *Health Services Act 2016* (WA)*.*

C. The *<<title of officer responsible for administration of the contract>>* has been authorised by the HSP to execute this Agreement on its behalf.

The Parties agree as follows:

# 1. DEFINITIONS AND INTERPRETATION

**1.1 Definitions**

In this Agreement, the following definitions apply:

**Additional Services** means services, other than Medical Services, agreed between the Contractor and the HSP to be provided, as set out in Schedule 2 of this Agreement.

**Aged Care Criminal Record Screening (ACCRS)** means a National Police Certificate or a National Police History Check, which does not record that the person has been convicted of murder or sexual assault, or convicted of, and sentenced to, imprisonment for any other form of assault, in accordance with Part 6 of the *Accountability Principles 2014* (Cth).

**Agreement** means this Medical Services Agreement.

**Best Practice** means practices, methods and acts undertaken in accordance with that degree of skill, diligence, prudence and foresight that would reasonably be expected from a professional, reputable and prudent Medical Practitioner undertaking similar work and practices, under the same or similar circumstances or conditions.

**Business Day** means a day other than Saturday, Sunday or a public holiday in Western Australia.

**Claim** means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made under or arising in connection with this Agreement or under any Law.

**Close Availability** **(on-call)** means the Contractor must be contactable and available so as to be able to personally attend a patient within 30 minutes from the time of a service request to do so by Hospital staff, unless otherwise agreed in Schedule 2 or 3 of this Agreement.

**CMP Number** means the number allocated by the HSP to a Contractor upon the granting of a Scope of Clinical Practice, which shall be specific to the Hospital and this Agreement.

**Commencement Date** means the commencement date specified in Item 5 of Schedule 1 of this Agreement.

**Confidential Information** of a party means information in respect of this Agreement provided or disclosed by, or obtained from, that party that:

(a) is by its nature confidential; or

(b) is specified by the party to be confidential; or

(c) the other party knows or ought to know is confidential.

Confidential Information does not include information that is or becomes publicly known through no fault of the receiving party, or is disclosed by its owner to any third party without an obligation of confidentiality.

**Contractor** means the Medical Practitioner named in Item 1 of Schedule 1 of this Agreement.

**Contractor's Notice of Response** means a notice given by the Contractor under clause 6.6(e).

**Credentialed or Credentialing** means the formal process used to verify the qualifications, experience and professional standing of Medical Practitioners for the purpose of forming a view about their competence, performance and professional suitability to provide safe, high quality health care services within specific organisation environments.

**Criminal Record Screening** means a national criminal history record check as required under the WA Health Criminal Record Screening Policy.

**Eligible Person** has the meaning given to it under section 3 of the *Health Insurance Act 1973 (Cth)* and includes persons declared to be eligible persons under section 6 of that Act.

**Expiry Date** means the expiry date specified in item 6 of Schedule 1 of this Agreement.

**Force Majeure** means any cause not reasonably within the control of the party claiming force majeure including, but not limited to, accident, illness, fires, flood, storms and other damage caused by the elements, strikes, riots, explosions, governmental action (other than that related to health purchasing), acts of God, insurrection and war but does not include the financial circumstances of a party.

**GST** has the meaning given by the GST Law.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Health Services Act** means the *Health Services Act 2016* (WA).

**Health Service Provider or HSP** means the board governed health service provider established by clause 14 of the *Health Services (Health Service Providers) Order 2016* made under s 32 of the *Health Services Act* (gazetted on 17 June 2016) and any of its successors.

**HSP Final Notice** means a notice given by the HSP under clause 6.6(f).

**Hospital** means the health care facility or facilities named in Item 4 of Schedule 1 of this Agreement and may include from time to time, such place where the HSP determines Medical Services are to be provided.

**Hospital Policies** means any policies, codes, procedures, protocols and standards (as amended, superseded or replaced from time to time), applicable to the HSP and / or Hospitals in connection with the provision of Medical Services, or the care of Public Patients at HSP hospitals, which are notified, or have been notified or are made available to the Contractor from time to time.

**Indemnity** means the “Terms and Conditions of the Indemnity for Non-Salaried Medical Practitioners, effective from 1 August 2013”, as updated or replaced from time to time. A copy of the Indemnity is located at [Medical indemnity (health.wa.gov.au)](https://www.health.wa.gov.au/Articles/J_M/Medical-indemnity).

**Insolvency Event** means the occurrence of any of the following events:

(a) (**informs creditors**): a corporation informs its creditors generally that it is insolvent;

(b) (**receiver**): a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;

(c) (**execution**): a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;

(d) (**voluntary liquidation**): the corporation enters into voluntary liquidation;

(e) (**application**): an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days of being made;

(f) (**winding up**): an order is made for the administration, dissolution or winding up of a corporation;

(g) (**resolution**): a resolution is passed for the administration or winding up of the corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State;

(h) (**arrangement or composition**): a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State;

(i) (**statutory demand**): a corporation fails to comply with, or apply to have set aside, a statutory demand within 10 Business Days of the time for compliance and:

(i) if the corporation applies to have the statutory demand set aside within 10 Business Days of the time for compliance, the application to set aside the statutory demand is unsuccessful; and

(ii) the corporation fails to comply with the statutory demand within five Business Days of the order of the court dismissing the application;

(j) (**execution levied against it**): a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge;

(k) (**insolvency**): a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);

(l) (**death etc.**) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or

(m) (**analogous matters**) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Law** means all applicable present and future laws including all Western Australian and Commonwealth acts and statutes for the time being enacted and all regulations, by-laws, requisitions or orders made under any such act from time to time by any statutory, public or other competent authority, whether or not existing at the Commencement Date.

**Loss** means any liability of any kind whatsoever, loss, damages, cost, expense, claim, action, personal injury (including illness), death or damage, diminution in value, including:

(a) all interest and all amounts payable to third parties; and

(b) all legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action and all amounts paid or payable in settlement of a claim or action.

**Medical Board** means the Medical Board of Australia.

**Medical Practitioner** means a person registered under the *Health Practitioner Regulation National Law (WA) Act 2010* in the medical profession.

**Medical Services** means the type of medical services to be provided to Public Patients as specified in Schedule 2.

**National Law** means the *Health Practitioner Regulation National Law (WA) Act 2010*.

**Notice of Restriction or Suspension** means a notice given by the HSP under clause 6.6(a).

**Power** means a right, power, remedy or authority under this Agreement, or otherwise at law or in equity and includes any statutory power.

**Professional Misconduct** includes

(a) unprofessional conduct by the Contractor that amounts to conduct that is substantially below the standard reasonably expected of a Medical Practitioner of an equivalent level of training or experience;

(b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a Medical Practitioner of an equivalent level of training or experience; and

(c) conduct of the Contractor, whether occurring in connection with the practice of medicine or not, that is inconsistent with the Contractor being a fit and proper person to hold registration in the medical profession.

**Public Patient** means an Eligible Person who receives free of charge to them a public hospital service and includes an involuntary patient detained in authorised portions of the Hospital.

**Records** means all records and information of any kind, including originals and copies, relating to the Agreement, whether or not containing Confidential Information, and however such records are held, stored or recorded.

**Scope of Clinical Practice** means the type of Medical Services that an individual Medical Practitioner has been approved by the HSP Credentialing Committee to provide at a health care facility.

**Scope of Clinical Practice Conditions** means any condition specified by the HSP Credentialing Committee that applies to a Contractor’s Scope of Clinical Practice.

**Serious, Negligent or Wilful Misconduct** means negligent, wilful or deliberate behaviour that is inconsistent with the continuation of this Agreement. This may include conduct that causes serious and imminent risk to the health or safety of a person or the reputation or viability of the HSP or health care facility.

**Services** means Medical Services and, where the context permits or requires, Additional Services.

**State** means the State of Western Australia, any State government department, agency or instrumentality and any body whether incorporated or unincorporated that is established or continued for a public purpose by or under a written law.

**Tax Invoice** has the meaning given by the GST Law.

**Term** means the term of this Agreement being the period on and from the Commencement Date to and including the Expiry Date unless terminated earlier in accordance with this Agreement, and includes where the context requires any period of holding over under clause 6.2.

**Unprofessional Conduct** means professional conduct that is of a lesser standard than that which might reasonably be expected of the Contractor by the public or the Contractor’s professional peers, and includes:

(a) a contravention by the Contractor of the National Law, whether or not the Contractor has been prosecuted for, or convicted of, an offence in relation to the contravention;

(b) a contravention by the Contractor of:

(i) a condition to which the Contractor’s registration was subject; or

(ii) an undertaking given by the Contractor to the Medical Board;

(c) the conviction of the Contractor for an offence under another Act, the nature of which may affect the Contractor’s suitability to continue to practise the profession;

(d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person’s wellbeing;

(e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care;

(f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider;

(g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the Contractor;

(h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the Contractor has a pecuniary interest in giving that referral or recommendation, unless the Contractor discloses the nature of that interest to the person before or at the time of giving the referral or recommendation; and

(i) conduct or behaviours toward the public or a Contractor’s peers that are inconsistent with the WA Health Code of Conduct and professional codes, guidelines and policies set by the Medical Board.

**Unsatisfactory Professional Performance** means the knowledge, skill or judgment possessed, or care exercised by, the Contractor in the provision of the Medical Services is below the standard reasonably expected of a Medical Practitioner of an equivalent level of training or experience.

**Working with Children Act or WWC Act** means the *Working with Children (Criminal Record Checking) Act 2004* (WA).

**Western Australia Working with Children Card** **or WA WWC Card** means the assessment notice, in the form of a card, issued to successful applicants pursuant to the Working with Children Act.

**1.2 Interpretation**

In this Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

(c) a reference to a gender includes other genders;

(d) a reference to a person includes a public body, a company and an incorporated or unincorporated association or body of persons;

(e) a reference to a party is to a party to this Agreement;

(f) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

(g) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;

(h) a reference to a clause, schedule, attachment or annexure herein is a reference to a clause in, or a schedule, attachment or annexure to, this Agreement;

(i) all the provisions in any schedule, attachment or annexure to this Agreement are incorporated in, and form part of, this Agreement and bind the parties;

(j) headings are included for convenience and do not affect the interpretation of this Agreement;

(k) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(l) no rule of interpretation is to be applied to the disadvantage of a party on the basis that it was responsible for preparing this Agreement;

(m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

(n) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;

(o) a reference to writing includes all means of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;

(p) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;

(q) a reference to a month is to a calendar month and a reference to a year is to a calendar year;

(r) 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 inclusive of that day;

(s) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;

(t) a reference to a monetary amount means that amount in Australian currency;

(u) a reference to time is to local time in Perth, Western Australia; and

(v) a reference to related body corporate has the meaning given in the *Corporations Act 2001* (Cth).

**1.3 HSP Authorised Officers**

The HSP may act through its authorised officers from time to time.

# 2. ENGAGEMENT OF CONTRACTOR

**2.1 Engagement**

The HSP engages the Contractor to provide, and the Contractor agrees to provide, Services for the Term on the terms and conditions set out in this Agreement.

**2.2 No Guarantee**

The HSP does not guarantee or make any assurance that the Contractor will be required to provide any particular volume of Services during the Term of this Agreement.

**2.3 Non Exclusive**

The engagement of the Contractor to provide Medical Services is not an exclusive arrangement. This means the HSP may engage other Medical Practitioners to provide the same or similar Medical Services as the Contractor, provided that any such engagement does not affect contractual obligations under this Agreement. Nothing in this Agreement in any way affects a Contractor’s right of practice elsewhere, provided that any such practice does not affect the Contractor's contractual obligations under this Agreement.

**2.4 Registration of Contractor**

The Contractor must during the Term be registered as a Medical Practitioner with the Medical Board and produce evidence of that registration to the HSP upon request. If the Contractor is removed from the register or allows their registration to lapse, this Agreement will immediately cease by virtue of that fact without affecting any accrued rights.

**2.5 Legal Working Rights**

(a) The Contractor must be legally entitled to work in Australia for the Term of this Agreement.

(b) The Contractor must at the request of the HSP provide evidence of:

(i) Australian citizenship or

(ii) Permanent Residency of Australia or

(iii) New Zealand citizenship who has entered Australia on a valid passport or

(iv) Evidence of a valid visa detailing rights to work.

(c) If the Contractor does not abide by clause 2.5 (a) this Agreement will immediately cease by virtue of that fact without affecting any accrued rights

(d) If the Contractor does not abide by clause 2.5 (b) the HSP may invoke clause 6.4 of this Agreement.

# 3. OBLIGATIONS OF HSP

**3.1 Payment for Services**

The HSP will pay the Contractor for Services in accordance with clause 5.

**3.2 Resources provided by Board**

The HSP will provide resources reasonably necessary for the treatment of Public Patients at the Hospital, including consumables, beds, equipment, theatre time, nursing and allied health services and other staff, but the availability of those resources at any particular time or for the treatment of an individual's particular clinical condition, is not guaranteed.

**3.3 Admission or Treatment Not Guaranteed**

The admission of any person to or treatment of any person at the Hospital depends on both clinical need and the Hospital’s capacity and availability of resources at any given time.

**3.4 Hospital Policies**

(a) The Contractor must take all steps necessary to locate and familiarise themselves with and abide by all Hospital policies, codes, procedures, protocols and standards and to require the same of their employees and any other person supplied by the Contractor who assists the Contractor in providing Services.

(b) The HSP will make available Hospital Policies either in policy manuals placed on Hospital wards, on staff notice boards, through hospital newsletters, flyers or bulletins, delivered to any mail box at the Hospital designated for use by the Contractor, or on the internet. The HSP will also provide reasonable access to full copies of any such policies, codes, procedures, protocols and standards on demand by the Contractor whether by hard or electronic copies. The HSP will take all reasonable steps to notify the Contractor of any policy changes.

**3.5 Contract Management**

Within two weeks of the commencement of this Agreement, a representative of the HSP and the Contractor or a representative of the Contractor shall meet for the purpose of discussing how the services which are the subject of this Agreement will be delivered.

# 4. OBLIGATIONS OF CONTRACTOR

**4.1 Provision of Services**

(a) The Contractor agrees to provide Medical Services to Public Patients at the Hospital(s) listed at Item 4 of Schedule 1, and any Additional Services as set out at Schedule 2.

(b) The Contractor must:

(i) at all times comply with his or her Scope of Clinical Practice and any Scope of Clinical Practice Conditions. Only in the event of an emergency may the Contractor use clinical judgment regarding the treatment of any patient irrespective of the Scope of Clinical Practice;

(ii) provide Medical Services on all dates when rostered and

(A) attend the hospital during rostered periods; and

(B) respond appropriately to all calls from the Hospital if additionally rostered for Close Availability on call when clinical need requires his or her attendance;

(iii) respond to requests for clinical advice from other HSP sites or hospitals as soon as practicable, with a response time commensurate to the level of urgency of the request;

(iv) cooperate with any auditor appointed by the HSP and provide all information and documentation reasonably required for the audit.

(v) participate in clinical governance, clinical quality assurance, quality improvement and risk management processes, projects or activities as reasonably required by the HSP.

**4.2 Clinical decisions**

Subject to all Laws and this Agreement, the HSP will not control, or be responsible for, the Contractor's clinical decisions in respect of admission, treatment and discharge of Public Patients.

**4.3 Compliance with Laws**

(a) The Contractor must provide Medical Services and Additional Services, as set out in Schedule 2, in compliance with all Laws, Hospital Policies and Best Practice, from time to time applicable to the performance of the Medical Services and Additional Services.

(b) WWC Act compliance:

(i) The Contractor must comply with the WWC Act, and must obtain and provide evidence of a current WA WWC Card during the term of this Agreement, as required.

(ii) Where a WA WWC Card is required, the Contractor must not provide any services until evidence of a WA WWC Card (or evidence of application of a WA WWC card by way of a receipt) is provided to the HSP. Where a Contractor has provided evidence of application of a WA WWC Card by way of a receipt, the Contractor must not withdraw their WA WWC Card application without notifying the HSP in writing as soon as practicable.

(iii) If the Contractor is required to hold a WA WWC Card and it expires during the term of this Agreement, the Contractor must not provide any services until evidence of a current WA WWC Card is provided.

(iv) Where a WA WWC Card is required, the Contractor must not continue to provide services if the Contractor cancels their WA WWC Card.

(v) Where a WA WWC Card is required and notwithstanding if a WA WWC Card has already been obtained and evidence provided to the HSP, the Contractor must not continue to provide services and must notify the HSP in writing as soon as practicable if the Contractor is charged with or convicted of a Class 1 or Class 2 scheduled offence under the WWC Act.

(vi) The Contractor must not provide any services if the Contractor is the subject of a WWC ‘interim negative notice’ or a WWC ‘negative notice’. If the Contractor provides any services whilst the subject of an ‘interim negative notice’ or ‘negative notice’ this Agreement will immediately cease by virtue of that fact without affecting any accrued rights.

(c) The Contractor must obtain and provide to the HSP evidence of an Australian-wide National Police Certificate dated within the previous 12 months of issue or a criminal record screening which is dated within the previous three years of issue. The Contractor must provide evidence of a National Police Certificate or criminal record screening every three years or earlier if required by Law or Hospital Policy. The Contractor must not provide any services until evidence of a National Police Certificate or criminal record screening is provided to the HSP. If the Contractor’s National Police Certificate or screening expires during the term of this Agreement, the Contractor must not provide any services until evidence of a current National Police Certificate or criminal record screening is provided. If the Contractor provides any services without a current National Police Certificate or criminal record screening, this Agreement will immediately cease by virtue of that fact without affecting any accrued rights.

(d) The Contractor must obtain and provide evidence of an Aged Care Criminal Record Screening (ACCRS) to the HSP if providing Medical Services to aged care patients in Commonwealth Funded Multi-Purpose Sites under the terms of this Agreement if required to do so. The Contractor must provide evidence of ongoing screening every three years or earlier if required by Law or Hospital Policy. The Contractor must not provide any services until evidence of a ACCRS is provided to the HSP. If the Contractor’s ACCRS expires during the term of this Agreement, the Contractor must not provide any services until evidence of a current ACCRS is provided. If the Contractor provides any services without a current ACCRS, this Agreement will immediately cease by virtue of that fact without affecting any accrued rights.

(e) In accordance with 10.1 of this Agreement, the cost of screenings outlined in clause 4.3 (b), (c) and (d) will be covered by the Contractor, unless otherwise agreed by the HSP.

(f) In the event of an inconsistency between the Hospital Policies and this Agreement, this Agreement shall prevail.

(g) In the event of an inconsistency between all Laws, the Hospital Policies and this Agreement, the relevant Law shall prevail.

**4.4 Immunisation**

(a) Prior to service provision, Contractors must provide the HSP with written evidence from an approved laboratory of methicillin-resistant staphylococcus aureus (MRSA) clearance if he or she has worked, or has been a patient or a student, in any hospital or residential care facility outside of Western Australia in the last 12 months.

(b) If the HSP forms the view that patient safety may be compromised by a Contractor not being screened and/or vaccinated as required by Hospital Policies, the HSP may, in accordance with clause 6, suspend or terminate this Agreement.

(c) In accordance with clause 10.1 of this Agreement, the cost of the MRSA clearance outlined in clause 4.4 (a) will be covered by the Contractor, unless otherwise agreed by the HSP.

**4.5 Obligation to Notify**

Subject to clause 4.6 the Contractor must notify the HSP in accordance with Hospital Policies, or in any event within five Business Days of any matter of which he or she becomes or should have been aware and about which a prudent Medical Practitioner should reasonably believe the HSP should be notified, including but not limited to:

(a) adverse patient incidents;

(b) verbal or written complaints received;

(c) requests by the Coroner for medical reports;

(d) threats of legal action or any writ, subpoena or summons received;

(e) referrals to the Health and Disability Services Complaints Office;

(f) matters of which the Medical Practitioner would be obliged to inform their medical defence organisation, indemnity fund or insurer;

(g) if medical indemnity protection has been removed or has lapsed;

(h) if Credentialing or Scope of Clinical Practice has been reduced, limited, suspended or revoked at any other Hospital or health service (public or private);

(i) notifications or referrals to the Medical Board or the State Administrative Tribunal or any such similar bodies in other jurisdictions;

(j) any investigation by a relevant college or professional body;

(k) a misconduct finding (including a finding of unsatisfactory professional performance, unprofessional conduct or professional misconduct) being made against them under the National Law;

(l) cautions issued, fines imposed or reprimands given by the Medical Board or the State Administrative Tribunal any such similar bodies in other jurisdictions;

(m) undertakings given to the Medical Board or the State Administrative Tribunal any such similar bodies in other jurisdictions as to good behaviour, or registration as a Medical Practitioner being made conditional, suspended, removed or lapsing;

(n) charges with or convictions of any criminal offence involving dishonesty or punishable by imprisonment in any jurisdiction;

(o) actual, potential, or perceived conflicts of interest; or

(p) any communicable illness or disease that would interfere with the treatment of patients at the Hospital or presents risk to patients or other people at the Hospital.

**4.6 Obligation to Co-operate**

(a) If requested by the HSP the Contractor must provide, as soon as reasonably practicable, all relevant details and documents relating to any matters of which the HSP is notified under clause 4.5 or otherwise becomes aware; and

(b) the Contractor must take all reasonable steps to assist the HSP in inquiring into, and resolving, any complaint, dispute or other difficulty arising under or in connection with this Agreement.

**4.7 Indemnity and Insurances**

(a) In accordance with the terms and conditions of the Indemnity, the Minister for Health indemnifies the Contractor. The Indemnity satisfies the Professional Indemnity Insurance Arrangements Registration Standard of the Medical Board.

(b) In addition to the Indemnity, the Contractor must effect and maintain during the Term a policy of public liability insurance for a sum of not less than $20,000,000.00.

(c) The Contactor must provide evidence of such insurance to the HSP on demand.

**4.8 Resources supplied by Contractor**

(a) The Contractor may utilise his or her own resources (including consumables, equipment, nursing and allied health services and other staff) in providing the Services but only with the written consent of the HSP and in accordance with Hospital Policies.

(b) The Contractor warrants that any of the Contractor's consumables or equipment utilised by the Contractor are in safe and proper working order and suitable for the purpose, that all appropriate quality standards and infection controls are documented and complied with, and all equipment is adequately and appropriately insured.

(c) If any person (other than officers, employees or agents of the HSP) supplied by the Contractor assists the Contractor in providing Services, the Contractor:

(i) must ensure that anyone providing Services for the Contractor is suitably skilled, trained, qualified and competent;

(ii) if required by the *Workers’ Compensation and Injury Management Act 1981* (WA), must effect and maintain a policy of workers' compensation insurance; and

(iii) must ensure that the Contractor or any such person, effects and maintains during the Term an appropriate policy of professional indemnity insurance.

(d) The Contractor indemnifies and keeps indemnified the HSP from and against all Losses and Claims incurred or sustained by the HSP in respect of, or arising from, the provision of any Services by the Contractor using his or her own resources in breach of his or her obligations in this clause 4.8.

(e) The indemnity provided in subclause 4.8(d) above survives the expiry or termination of this Agreement.

# 5. PAYMENT

**5.1 Payment for Services**

Subject to the provisions of this clause 5, the HSP will pay the Contractor for Services in accordance with Schedule 3 within 20 days of receipt of an invoice complying with the statutory requirements of a Tax Invoice.

**5.2 Invoice Requirements**

The Contractor agrees to submit regular invoices complying with the statutory requirements of a Tax Invoice. For Medical Services, the invoice must specify the following minimum information:

(a) Contractor's invoice number and issue date of invoice;

(b) Contractor's Australian Business Number;

(c) Site at which the services were provided;

(d) MSA Contract Number under which the services were provided;

(e) Site CMP Number and name of the Contractor;

(f) Date the relevant service was provided;

(g) Number of occasions the relevant service was provided and any other service qualifiers including but not limited to applicable modifiers and times of service;

(h) Description of services provided or item number (if applicable);

(i) Agreed fee, exclusive of GST, for the relevant service; and

(j) GST payable;

(k) Payment details.

**5.3 Approval of Invoice for Payment**

The HSP may decline to approve an invoice for payment if:

(a) the invoice does not comply with clause 5.2;

(b) medical records, progress notes, discharge summaries or any other Hospital documents do not support the basis of the invoice;

(c) the Contractor has failed to answer any reasonable questions about the invoice to the reasonable satisfaction of the HSP;

(d) the invoice is received, without reasonable cause, more than 30 days after an invoiced item of Service was provided; or

(e) there is an unresolved dispute over an item on the invoice.

**5.4 Invoice not Approved**

(a) If the HSP does not approve an invoice the Contractor will be notified as soon as possible to see whether the matter can be quickly resolved, including by provision of an adjustment note.

(b) If the matter cannot be quickly resolved, the invoice will be returned and the Contractor will be informed in writing of the reason for not approving the invoice to enable the Contractor to issue a replacement invoice or invoices.

**5.5 Overpayment**

(a) If the HSP makes an overpayment to the Contractor, the Contractor must:

(i) notify the HSP in writing of the overpayment immediately after it becomes aware of the overpayment; and

(ii) repay to the HSP the full amount of any overpayment, within 10 Business Days after he or she becomes aware of the overpayment.

(b) If the HSP discovers an overpayment to the Contractor, the HSP must notify the Contractor in writing and the Contractor must repay the full amount of the agreed overpayment within 10 Business Days of receipt of the HSP’ notice or such other time as agreed.

**5.6 Audit of Services and Payments**

The Contractor agrees the HSP may audit at any time or times during the Term or within 24 months after the expiry of the Term any Services provided by the Contractor and any payments made to the Contractor under this Agreement. The Contractor agrees to cooperate with the auditor and provide all information and documentation reasonably required for the audit. Nothing in this clause 5.6 entitles the HSP to enter the Contractor's premises.

**5.7 Income derived from Services provided to Non-Public Patients**

In consideration of the payments made under this agreement, the Contractor also agrees for the duration of this Agreement and any holding over period, the HSP has the right to all revenue the Contractor may earn from providing Medical Services to non-public patients at the Hospital. The Contractor agrees to do all that is necessary to ensure such revenue is paid to the Hospital as and when they are earned.

# 6. TERM AND SUSPENSION OR TERMINATION OF AGREEMENT

**6.1 Term**

This Agreement shall continue for the Term unless earlier terminated in accordance with its provisions.

**6.2 Holding Over**

The Contractor may continue to provide Services with the consent of the HSP after the expiry of the Term. This holding over arrangement will be on the terms and conditions of this Agreement except that it may be terminated at any time by either party in accordance with this clause 6 or otherwise by the HSP giving the Contractor four weeks’ written notice.

**6.3 Termination by Contractor**

The Contractor may terminate this Agreement at any time by giving the HSP four weeks’ written notice.

**6.4 Termination by the HSP**

Without prejudice to the HSP’s rights under clause 6.6 of this Agreement, the HSP may terminate this Agreement at any time by giving the Contractor:

(a) four weeks’ notice in writing; and

(b) either require the Contractor to work out the notice, or pay an amount equivalent to that part of the notice period not required to be worked out.

The HSPs' right to terminate this Agreement under this clause 6.4 is final and is not subject to the provisions of clause 8 Dispute Resolution.

**6.5 Mutual Termination**

The HSP and the Contractor may by written agreement terminate this Agreement at any time.

**6.6 Rights of HSP in Specified Circumstances**

(a) Without prejudice to the HSP's right to terminate this Agreement under clause 6.4 of this Agreement, the HSP may, by notice in writing given to the Contractor (Notice of Restriction or Suspension), immediately restrict, make conditional, vary or suspend the provision of Services by the Contractor if, in the HSP's opinion, based on the information available to it, the Contractor:

(i) engages in serious, negligent, or wilful misconduct;

(ii) presents a risk to the safety and wellbeing of Hospital patients or staff;

(iii) behaves in a way that constitutes Unsatisfactory Professional Performance, Unprofessional Conduct or Professional Misconduct;

(iv) is unable to comply with this Agreement because of a decision of the Medical Board or the State Administrative Tribunal;

(v) is charged with having committed, or is convicted, or found guilty of, any offence punishable with imprisonment, taking into account the nature of the charge and the nature of Medical Services provided a reasonable person would consider it reasonable for the HSP to do so;

(vi) is subject to an Insolvency Event;

(vii) fails to comply with a term of this Agreement, and does not remedy that failure within a reasonable period of time after receiving written notice from the HSP requiring it to do so;

(viii) persistently fails to comply with a term of this Agreement despite receiving two or more written notices from the HSP requiring the Contractor to comply with his or her obligations;

(ix) is required to give an undertaking to be of good behaviour to, or is reprimanded, fined, restricted in practice, or suspended by, the Medical Board or the State Administrative Tribunal; or any such similar body in another jurisdiction;

(x) has a misconduct finding made against them under the National Law; or

(xi) has breached his or her Scope of Clinical Practice Conditions.

(b) If the HSP decides to restrict, vary, or impose a condition on the provision Medical Services pursuant to this clause, it must also decide a review period for the restriction, variation or condition.

(c) If this Agreement includes any other payments the HSP may also withhold its payment.

(d) A Notice of Restriction or Suspension given by the HSP to the Contractor pursuant to this clause 6.6 must specify which of (a)(i) to (a)(xi) above applies to the Contractor and the information relied on by the HSP in issuing the notice.

(e) A Contractor, the subject of a Notice of Restriction or Suspension issued pursuant to this clause 6.6 may, within five Business Days of the date of the notice, respond to the notice in writing (Contractor's Notice of Response) inviting the HSP CEO to revoke the Notice of Restriction or Suspension, outlining the Contractor's reasons why the notice should be revoked.

(f) Within five Business Days of receipt of a Contractor's Notice of Response, the HSP may, by further notice in writing given to the Contractor (HSP Final Notice), vary, revoke, or refuse to revoke, the Notice of Restriction or Suspension. The decision in the HSP Final Notice is final and is not subject to the provisions of clause 8 Dispute Resolution.

**6.7 If Scope of Clinical Practice affected**

If the Contractor's Scope of Clinical Practice is restricted, made conditional, varied, suspended or terminated, this Agreement will also be similarly restricted, made conditional, varied, suspended or terminated.

# 7. FORCE MAJEURE

**7.1 Notice of Force Majeure**

If by Force Majeure a party is unable (wholly or in part) to carry out its obligations under this Agreement or is delayed in doing so that party agrees to give prompt notice of the event of Force Majeure to the other party stating the date of the occurrence of the event of Force Majeure and its nature.

**7.2 Reasonable Efforts**

The party claiming Force Majeure agrees to use all reasonable efforts to remove the cause of it, except that no party is obliged to settle any strike, lockout or other industrial dispute on terms not acceptable to it, and from time to time as is reasonable in the circumstances give notice to the other party of those efforts and the likely timetable for resumption of its obligations under this Agreement.

**7.3 Suspension of Obligations**

If either party is unable (wholly or in part) by Force Majeure to carry out its obligations under this Agreement (other than an obligation to pay an amount of money) and it has given notice of the Force Majeure as required by this clause 8, then the obligations of the affected party in so far as they are subject to Force Majeure shall be suspended during but no longer than the continuance of the Force Majeure and for such further period as shall be reasonable in the circumstances.

**7.4 Termination**

If a party is unable to resume its obligations under this Agreement within six months of the occurrence of an event of Force Majeure either party by written notice to the other may terminate or seek to vary this Agreement.

# 8. DISPUTE RESOLUTION PROCESS

**8.1 Disputes Generally**

Subject to clauses 6.4, 6.6, and 6.7, any dispute between the parties under or in connection with this Agreement may be dealt with under this clause 8.

**8.2 Notification of Dispute**

Either party may notify a dispute by written notice to the other party adequately identifying the issue the subject of the dispute (“Dispute Notice”).

**8.3 Reasonable Efforts**

The Contractor and the HSP nominee agree to meet and must use their reasonable efforts acting in good faith, to resolve the dispute by joint discussions within ten Business Days of the date of the Dispute Notice.

**8.4 Convening of Meeting**

If the parties are unable to resolve the dispute within ten Business Days from the issue of a Dispute Notice or such time as agreed by the parties in writing, the HSP shall, as soon as practicable, convene a meeting to assist the parties to resolve the dispute. The meeting must be attended by:

(a) the Contractor; and

(b) a HSP nominee;

and may include:

(c) for each party, someone of that party's choice, who may include a legal practitioner; and

(d) if requested by the Contractor, a nominee of the Australian Medical Association (Western Australia) Incorporated.

**8.5 Failure to Resolve Dispute**

If the dispute is not resolved, the parties may, in their independent discretion, exercise their legal rights or any other lawful entitlement or take no further action to resolve the dispute.

# 9. NOTICES

A notice, approval, consent or other communication in connection with this Agreement:

(a) must be in writing;

(b) must clearly identify the purpose of the communication;

(c) in the case of a notice to the HSP, must be addressed to and marked for the attention of the Regional Director or, in the case of clause 4.5 only, marked to the attention of the appropriate HSP authorised officer, or in the case of a Contractor's Notice of Response only, marked for the attention of the HSP CEO;

(d) must be either:

(i) left at the address of the addressee; or

(ii) within Australia, sent by prepaid ordinary post to the address of the addressee; or

(iii) with the consent of the parties, sent by email to the addressee’s email address;

(e) takes effect from the time it is received unless a later time is specified in it; and

(f) is taken to be received:

(i) if left at the address of the addressee, the day it is left;

(ii) if sent by post within Australia, on the third day after posting; or

(iii) if sent by email, on production of an electronic or physical copy of the email including the time of receipt.

# 10. MISCELLANEOUS

**10.1 Costs**

Each party must pay its own costs and disbursements in connection with the preparation and execution of this Agreement and of other related documentation.

**10.2 Confidentiality**

Each party to this Agreement must keep the other party’s Confidential Information confidential, and must not use or disclose to any person the other party’s Confidential Information except:

(a) where necessary for the purpose of the performance of this Agreement;

(b) as authorised in writing by the disclosing party;

(c) to the extent that the Confidential Information is or becomes public knowledge (other than because of a breach of this clause by the receiving party) or is disclosed by the other party to a third party without an obligation of confidentiality;

(d) as required by any law, judicial or parliamentary body or governmental agency; or

(e) when required (and only to the extent required) to the professional advisers of the receiving party, and the receiving party must ensure that such professional advisers are bound by the confidentiality obligations equivalent to those imposed on the receiving party under this clause;

(f) in the case of the HSP, where disclosed to a Minister or the Auditor-General or in order to respond to a direction or request of a House, or a request by a Committee, of the Parliament of Western Australia, for information and anyone else within Government of Western Australia who has a right to such information; or

(g) in the case of the Contractor, where disclosed to a Minister or the Auditor-General or in order to respond to a direction or request of a House, or a request by a Committee, of the Parliament of Western Australia, for information and anyone else within Government of Western Australia who has a right to such information.

**10.3 Return of Confidential Information**

Each party must return all Records relating to this Agreement containing the disclosing party’s Confidential Information immediately at the expiration or termination of this Agreement, other than a copy of those Records which must be retained by law.

**10.4 Assignment**

(a) The HSP may assign its rights and obligations under this Agreement to the State, the Minister for Health, another HSP, or any other health related entity of the State without the consent of the Contractor. In any other case, the HSP may assign its rights and obligations under this Agreement with the prior written consent of the Contractor and that consent must not be unreasonably withheld. If the HSP proposes to assign this Agreement to a privately owned or operated health related entity and the Contractor does not consent to that assignment the HSP may terminate this Agreement by giving the Contractor not less than seven days’ written notice.

(b) The Contractor must not assign his or her rights and obligations under this Agreement.

**10.5 Relationship of the parties**

(a) Nothing in this Agreement gives a party authority to bind the other party in any way.

(b) The parties agree and acknowledge that the Contractor is an independent contractor of the HSP and will not be deemed to be an employee, agent, subcontractor or consultant of the HSP.

(c) The HSP is not responsible for any legal obligations, liabilities and expenses in respect of personal taxation, worker's compensation, superannuation and the like applicable to the Contractor.

(d) Neither this Agreement, nor the relationship created by it, is intended to create, and will not be construed as creating any partnership or joint venture or fiduciary relationship, as between the parties.

**10.6 Waiver and Estoppel**

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Agreement.

(b) A waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party and no course of dealings between the parties removes this requirement.

(c) No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

(d) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any law or under this Agreement by the HSP does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any law or under this Agreement.

**10.7 Variation**

Any variation of any term of this Agreement must be in writing and signed by the parties.

**10.8 Approvals, consents**

Subject to any express provision of this Agreement, where any approval, consent, determination or waiver is required from or to be made by a party:

(a) that approval, consent, determination or waiver must be obtained in writing; and

(b) a party may:

(i) grant or refuse that approval or consent, make that determination or waiver, in the party’s absolute discretion, without giving any reason for that grant or refusal or making; and

(ii) grant that approval or consent, or make that determination or waiver, subject to any conditions that the party may impose.

**10.9 Rights, Powers and Remedies**

The rights, powers, authorities, discretions, and remedies arising in connection with this Agreement are cumulative with and do not exclude any other right, power, authority or remedy of the parties.

**10.10 Exercise of Powers**

(a) A party may exercise a Power at that party’s discretion, and separately or concurrently with any other Power.

(b) A single exercise of a Power, by a party does not prevent a further exercise of that, or of any other Power, by that party.

(c) If a party fails to exercise, or delays in exercising, a Power, that does not prevent its exercise.

**10.11 Governing Law**

(a) This Agreement is governed by the law in force in Western Australia.

(b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**10.12 Entire Agreement**

This Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

**Executed by the parties as an agreement**

**Signed by:**  )

*<<Title>> <<Given Name>> <<Family Name>>* )

) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**in the presence of:**

Witness' Signature )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness' Full Name )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness' Address )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness' Occupation )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signed by:**

*<<title of officer responsible* )

*for administration of the contract>>* )

for and on behalf of )

the Board of the Health Service Provider: )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**in the presence of:**

Witness' Signature )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness' Full Name )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness' Address )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness' Occupation )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# SCHEDULE 1: DETAILS

**1. CONTRACTOR:**

*<<Title>> <<Given Name>> <<Family Name>>*

*<<Primary Address>>*

*<<Primary Suburb>> <<Primary Post Code>>*

*<<Primary State Name>>*

*<<Primary Country>>*

Phone: *<<Primary Phone Number>>*

Fax: *<<Primary Fax Number>>*

Mobile: *<<Primary Mobile Numbers>>*

Email: *<<Primary Email Address>>*

**2. CONTRACTOR’S MEDICAL BOARD REGISTRATION NUMBER:**

*<<Registration Number>>*

**3. HSP CONTACT DETAILS**

*<< Contact Name>>*

*<< Contact Position>>*

*<< Address>>*

*<< Suburb>>*

Western Australia *<< Post Code>>*

Phone: *<<Phone Number>>*

Fax: *<<Fax Number>>*

Email: *<<Email Address>>*

**4. HOSPITAL(S):**

<<MSA Sites>>

**5. COMMENCEMENT DATE:**

*<<Operative Date>>*

**6. EXPIRY DATE:**

*<< Expiry Date>>*

# SCHEDULE 2: SERVICES

**1. MEDICAL SERVICES**

The Contractor agrees to provide the following Medical Services at the Hospital:

**2. SCOPE OF CLINICAL PRACTICE**

**2.1 Applicable to all categories:**

The Contractor agrees to work within the following Scope of Clinical Practice as endorsed by the HSP Credentialing Committee:

<<Credentialed Site/s – Clinical Area/s – Procedure/s>>

The defined Scope of Clinical Practice and procedural groups that are applicable to this Agreement are limited to that which is approved by the HSP Credentialing processes and subsequently endorsed by the HSP Credentialing Committee, and are specific to the Contractor contracted under this Agreement. Any supervision requirements and/or conditions imposed by the Medical Board will also apply.

The defined Scope of Clinical Practice may change during the course of this Agreement if the Scope of Clinical Practice is amended by the HSP Credentialing processes. At all times, the Scope of Clinical Practice for any Medical Practitioner contracted under this Agreement will be limited to the Medical Practitioner’s endorsed Scope of Clinical Practice.

**3. DESCRIPTION OF MEDICAL SERVICES TO BE PROVIDED**

**3.1 All categories:**

(a) Provide services at *<<insert MSA Group>>* level consistent with the Scope of Clinical Practice described above.

(b) The above applies to all Contractors who in addition may be able to provide a different range of services, subject to Credentialing by the HSP.

(c) Make all reasonable efforts to ensure access for patients of the region to public, and where appropriate private, hospital beds and care under an appropriate specialist in Perth or other regional centre.

(d) Attend at the Hospital(s) listed at Item 4 in Schedule 1 in and out of hours and to render Medical Services in accordance with the Scope of Clinical Practice listed above including:

(i) emergency presentations to emergency departments;

(ii) hospital inpatients under your care;

(iii) emergency attendances on hospital inpatients under the care of other Medical Practitioners when they are not available or are not rostered for emergency services; and

(iv) any other patients who are referred to you.

(e) When unavailable for attendance on hospital inpatients under his/her care, the Contractor must make alternative provision for attendance on and care of such inpatients. Where arrangements acceptable to the Hospital cannot be made for the ongoing medical care of any inpatients under the care of a Medical Practitioner, the Hospital may transfer such patients to another appropriate facility.

(f) Accept referrals of patients from the HSP region.

(g) Ensure Services are provided in a culturally appropriate manner.

**4. ADDITIONAL SERVICE REQUIREMENTS**

# SCHEDULE 3: PAYMENTS

**1. OPERATIVE DATE**

This payment schedule will apply from *<<Operative Date>>*

**2. APPLICABLE PAYMENT OPTIONS**

The following Payment Options apply to this Medical Services Agreement

**3. PAYMENT OPTIONS**

**3.1 Other Services**

**3.2 Payments for Medical Services (Day Rate)**

**3.3 Payments for Medical Services (Other Options)**

**3.4 Other conditions**

If Travel within the region applicable =

**(a) Travel within the region**

If Travel to and from the region applicable =

**(b) Travel to and from the region**

If Accommodation in the region applicable =

**(c) Accommodation in the region**

If Other applicable =

**(d) Other**