

**MINISTER FOR HEALTH**

and

**[[#] - CONTRACTING MEDICAL PRACTITIONER]**

---

**MEDICAL SERVICES AGREEMENT NO [#] OF [#]**

---

# MEDICAL SERVICES AGREEMENT

## AGREEMENT

THIS MEDICAL SERVICES AGREEMENT No.      of      is made the      day of

between:

the Minister for Health in his incorporated capacity as the board of the Hospitals formerly comprised in the Metropolitan Health Service Board under s7 of the *Hospitals and Health Services Act 1927* (WA) which includes the Hospital named in Item 4 of Schedule 1 ("Board")

and

the medical practitioner named in Item 1 of Schedule 1 ("Contracting Medical Practitioner")

## RECITALS

- A The State has an obligation, including under the Australian Health Care Agreement between the State and the Commonwealth of Australia, to provide certain medical services to Public Patients.
- B The Board wishes to engage the Contracting Medical Practitioner under this Agreement to provide Medical Services on its behalf to Public Patients at the Hospital.
- C. The Minister for Health has delegated all the powers and duties as such to the Director General of Health.
- C The Board recognises pre-existing clinical relationships may exist between Medical Practitioners and Public Patients.

The Parties agree as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, the following definitions apply:

**Additional Services** means the services agreed between the Contracting Medical Practitioner and the Board and set out in Schedule 4, being agreed services other than Medical Services for public patients.

**Agreement** means this medical services agreement.

**Clinical Privileges** means the type of Medical Services that a Nominated Medical Practitioner is approved to provide at a Hospital.

**Clinical Privileges Conditions** means the terms and conditions specified by the Board and attached to the Nominated Medical Practitioner's application for Clinical Privileges.

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

**Director General** means the Director General of the Department of Health and includes any person acting in that position from time to time.

**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 earlier of the expiry date specified in item 6 of Schedule 1 or 30 September 2009.

**Fixed Payments** means the periodic payment by the Board specified in Schedule 5 (if any) including the Rural Practice Incentive but not including any payments for Additional Services.

**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.

**General Manager** means the person or persons appointed to manage the Hospital under the title of general manager or otherwise and includes each person acting in that capacity from time to time, whose details as at the Commencement Date appear in Item 3 of Schedule 1.

**Hospital** means the health care facility or facilities named in Item 4 of Schedule 1.

**Insolvency Event** means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Board, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a re-organisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Board or is otherwise wound up or dissolved; or
- (e) the Contracting Medical Practitioner states that he or she is unable to pay his or her debts when they fall due; or
- (f) as a result of the operation of section 459F(1) of the Corporations Law, a body corporate is taken to have failed to comply with a statutory demand; or

- (g) a body corporate is, or makes a statement from which it may be reasonably deduced by the Board that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Law; or
- (h) the Contracting Medical Practitioner takes any step to obtain protection or is granted protection from his or her creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) the Contracting Medical Practitioner becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
- (J) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Medical Practitioner** means a person or body corporate registered as a Medical Practitioner under the *Medical Act 1894*.

**Medical Services** means the type of medical services specified in Schedule 2.

**Minister** means the Minister for Health.

**MOU** means the Memorandum of Understanding between the Minister for Health and the Australian Medical Association (Western Australia) Inc. on Clinical Privileges, Conduct and Governance in Western Australian Government Hospitals and Health Services dated 21 January 2005, and for the purposes of this Agreement also includes any Board policies and procedures adopted by the Board in accordance with the MOU.

**Nominated Medical Practitioner** means a natural person who is a Medical Practitioner nominated in writing by the Contracting Medical Practitioner to perform Services under this Agreement.

**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.

**Rural Practice Incentive** means a fixed payment by the Board to the Contracting Medical Practitioner being the amount set out in Schedule 5 (if any) and paid in recognition of the requirements normally expected of a Medical Practitioner residing and practising in a regional, rural or remote area.

**Services** includes 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.

**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 7.2.

**VMP Provider Number** means the number allocated by the Board to a Nominated Medical Practitioner upon the granting of Clinical Privileges and which shall be specific to the Hospital and this Agreement.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to a clause or schedule means a clause of or schedule to this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words denoting one gender include the other gender;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (f) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and

- (g) reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns.

### **1.3 Board may Act Through Officers, Agents and Employees**

The Board may act through its authorised officers, agents and employees including, without limitation, the General Manager or the General Manager's authorised delegates.

## **2 ENGAGEMENT OF CONTRACTING MEDICAL PRACTITIONER**

### **2.1 Engagement**

The Board engages the Contracting Medical Practitioner to provide, and the Contracting Medical Practitioner agrees to provide, Services for the Term and on the terms and conditions set out in this Agreement.

### **2.2 Relationship**

The parties agree and acknowledge the Contracting Medical Practitioner is an independent contractor and not an employee of the Board and the Board is not responsible for any legal obligations, liabilities and expenses in respect of personal taxation, worker's compensation, superannuation, leave entitlements and the like applicable to the Contracting Medical Practitioner or any Nominated Medical Practitioner. As a result of being an independent contractor nothing in this Agreement affects the Board's legal or equitable rights of indemnity against the Contracting Medical Practitioner or any Nominated Medical Practitioner or either party's rights against the other at common law.

### **2.3 Non Exclusive**

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

### **2.4 Registration of Contracting Medical Practitioner**

The Contracting Medical Practitioner must during the Term be registered as a Medical Practitioner with the Medical Board of Western Australia and agrees to produce evidence of that registration to the Board within 1 month of each annual re-registration or on demand. If the Contracting Medical Practitioner is removed from the register or allows their registration to lapse, this Agreement will immediately end by virtue of that fact without affecting any accrued rights.

## **3 OBLIGATIONS OF THE BOARD**

### **3.1 Payment For Services**

The Board will pay the Contracting Medical Practitioner for Services in accordance with clause 6.

### **3.2 Resources provided by Board**

The Board 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.

### **3.3 Admission or Treatment Not Guaranteed**

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

#### **3.4 Theatre Availability**

The Board will determine theatre availability from time to time having regard to clinical need, the availability of other resources and the competing requirements of Medical Practitioners at the Hospital. The Contracting Medical Practitioner will be informed of theatre availability as soon as practicable and 3 months notice will be given if a theatre is to be electively closed or access reduced.

#### **3.5 Hospital Codes, Policies etc.**

The Board will make available Hospital codes, policies, procedures, protocols and standards 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 Contracting Medical Practitioner, or on the internet. The Board will also provide reasonable access to full copies of any such codes, policies, procedures, protocols and standards on demand by the Contracting Medical Practitioner whether by hard or electronic copies.

### **4 OBLIGATIONS OF CONTRACTING MEDICAL PRACTITIONER**

#### **4.1 Provision of Services**

Subject to clauses 3.2, 3.3, 3.4 and 5.1, the Contracting Medical Practitioner agrees to provide and in accordance with Schedule 3 be available to provide Medical Services to Public Patients at the Hospital and any Additional Services.

#### **4.2 Compliance with Clinical Privileges Conditions**

The Contracting Medical Practitioner agrees to use best endeavours to ensure all Nominated Medical Practitioners comply with the Clinical Privileges Conditions.

#### **4.3 Comply With Hospital Policies etc.**

The Contracting Medical Practitioner agrees to comply with all Hospital codes, policies, procedures, protocols and standards relevant to the Contracting Medical Practitioner which have been made available to the Contracting Medical Practitioner under Clause 3.5. In the event of an inconsistency between those codes, policies, procedures, protocols and standards and this Agreement, this Agreement shall prevail.

#### **4.4 Emergency Service Rosters**

The Contracting Medical Practitioner agrees to:

- (a) assist in the development of emergency service rosters relevant to the Medical Services;
- (b) ensure their Nominated Medical Practitioners assist in the development of emergency service rosters relevant to their Clinical Privileges in accordance with any rostering principles set by the Board with advice from the Medical Advisory Committee taking into account appropriate factors and the role and level of the hospital; and
- (c) ensure their Nominated Medical Practitioners participate in those emergency service rosters in accordance with their Clinical Privileges Conditions.

#### **4.5 Obligation to Notify**

Subject to Clause 4.6 the Contracting Medical Practitioner agrees to notify the Board in accordance with Hospital procedures, or in the absence of such procedures within a reasonable period of time, of any matter of which he or she is aware and about which a prudent Medical Practitioner should reasonably believe the Board should be notified.

This includes:

- (a) **[involving the Contracting Medical Practitioner or a Nominated Medical Practitioner]:**
  - (i) referrals to the Medical Board of Western Australia or any such similar bodies in other jurisdictions;
  - (ii) fines imposed or reprimands given by the Medical Board, undertakings given to the Medical Board as to good behaviour, or registration as a Medical Practitioner being made conditional, suspended, removed or lapsing;
  - (iii) charges with or convictions of any criminal offence involving dishonesty or punishable by imprisonment;
  - (iv) actual or potential conflicts of interest; or
  - (v) actual or anticipated failures to comply with this Agreement, including specifically any inability or non-availability to provide Services; and
- (b) **[involving any Hospital patient of a Nominated Medical Practitioner]:**
  - (i) adverse incidents;
  - (ii) verbal or written complaints received;
  - (iii) requests by the Coroner for medical reports;
  - (iv) threats of legal action or any writ, subpoena or summons received;
  - (v) referrals to the Office of Health Review; or
  - (vi) matters of which the Contracting Medical Practitioner or a Nominated Medical Practitioner would be obliged to inform their medical defence organisation, indemnity fund or insurer.

#### 4.6 Obligation to Co-operate

- (a) Subject always to sub-clause (b):
  - (i) if requested by the Board, the Contracting Medical Practitioner must provide as soon as reasonably practicable all relevant details of any matters of which the Board is notified under Clause 4.5 or otherwise becomes aware; and
  - (ii) the Contracting Medical Practitioner must take all reasonable steps to assist the Board in inquiring into and resolving any complaint, dispute or other difficulty arising under or in connection with this Agreement.
- (b) Nothing in Clauses 4.5 or 4.6 requires the Contracting Medical Practitioner or a Nominated Medical Practitioner to disclose information to the Board where to do so would cause the Contracting Medical Practitioner or that Nominated Medical Practitioner to be in breach of their respective obligations to any medical defence organisation, indemnity fund or insurer, or which may significantly prejudice any claim by the Contracting Medical Practitioner or that Nominated Medical Practitioner under their respective medical indemnity membership, cover or insurance. In any such circumstances the Contracting Medical Practitioner must use, and must cause any Nominated Medical Practitioner to use, their respective best endeavours to obtain the approval of their respective medical defence organisation, indemnity fund or insurer to disclosure of the information required by the Board, and must disclose, and must cause any Nominated Medical Practitioner to disclose, the information to the Board in accordance with any approval given.

#### 4.7 Resources supplied by Contracting Medical Practitioner

- (a) The Contracting Medical Practitioner may utilise his or her own resources (including consumables, equipment, nursing and allied health services and other staff) in providing the Services with the consent of the Board and in accordance with Hospital policies.
- (b) The Contracting Medical Practitioner warrants that any of the Contracting Medical Practitioner's consumables or equipment utilised by the Contracting Medical Practitioner are in safe and proper working order and suitable for the purpose, and all equipment is adequately and appropriately insured.
- (c) If any person (other than officers, employees or agents of the Board) supplied by the Contracting Medical Practitioner assists the Contracting Medical Practitioner in providing Services, the Contracting Medical Practitioner:
  - (i) must use all reasonable endeavours to ensure that anyone providing Services for the Contracting Medical Practitioner is suitably skilled, trained, qualified and competent;
  - (ii) must effect and maintain a policy of workers' compensation insurance if required by the *Workers' Compensation and Rehabilitation Act 1981*; and

- (iii) acknowledges that the Board recommends that the Contracting Medical Practitioner, or any such person, effects and maintains during the Term an appropriate policy of professional indemnity insurance. Failure to do so may expose the Contracting Medical Practitioner and any such person to risks that are not covered by the Board. The Contracting Medical Practitioner is advised to seek appropriate insurance advice.

#### **4.8 Public Liability Insurance**

The Board recommends that the Contracting Medical Practitioner effects and maintains during the Term a policy of public liability insurance. Failure to do so may expose the Contracting Medical Practitioner to risks that are not covered by the Board. The Contracting Medical Practitioner is advised to seek appropriate insurance advice.

### **5 NOMINATED MEDICAL PRACTITIONERS AND CLINICAL PRIVILEGES**

#### **5.1 Provision of Medical Services By Nominated Medical Practitioners**

Medical Services may only be provided through Nominated Medical Practitioners acting within the scope of their Clinical Privileges or otherwise in an emergency.

#### **5.2 Nomination for Clinical Privileges**

The Contracting Medical Practitioner must nominate for Clinical Privileges at least one Medical Practitioner to perform Services under this Agreement.

#### **5.3 Board process subject to MOU**

Subject to the MOU the Board may approve or reject applications for Clinical Privileges.

#### **5.4 Withdrawal of Nomination of Medical Practitioner**

The Contracting Medical Practitioner may, at any time by notice in writing to the Board, withdraw the nomination of any Medical Practitioner and that Medical Practitioner shall on receipt of the notice by the Board cease to be a Nominated Medical Practitioner for the purpose of this Agreement.

#### **5.5 Variation of Clinical Privileges Conditions etc.**

The Contracting Medical Practitioner acknowledges and agrees the Board may restrict, make conditional, vary, suspend or terminate the Clinical Privileges of a Nominated Medical Practitioner in accordance with the Clinical Privileges Conditions and the MOU.

#### **5.6 Procedural requirements of MOU**

The Parties acknowledge and agree that, without limiting a Party's other rights and remedies, a failure by a Party to comply with a non-material procedural requirement of the MOU does not of itself give rise to a claim for damages by the other Party.

### **6 PAYMENT**

#### **6.1 Payment to Contracting Medical Practitioner**

The Board will pay the Contracting Medical Practitioner for all Services and the Contracting Medical Practitioner will be responsible for paying a Nominated Medical Practitioner any fees agreed between the Contracting Medical Practitioner and a Nominated Medical Practitioner.



## **6.2 Payment for Services**

Subject to the provisions of this clause 6, the Board will pay the Contracting Medical Practitioner for Services in accordance with Schedule 5 and within 30 days of receipt of an invoice.

## **6.3 Invoice Requirements**

The Contracting Medical Practitioner 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) Contracting Medical Practitioner's invoice number and date of invoice;
- (b) Contracting Medical Practitioner's Australian Business Number;
- (c) VMP Provider Number for the Nominated Medical Practitioner performing the service;
- (d) patient identifier agreed with the Board;
- (e) item number for the relevant service;
- (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) agreed fee, exclusive of the Goods and Service Tax, for the relevant service; and
- (i) Goods and Services Tax payable.

## **6.4 Documentary Evidence of Service**

The Contracting Medical Practitioner agrees to ensure Hospital medical records, progress notes, discharge summaries or other Hospital documents reasonably required by the Board are completed in accordance with the Board's policies and procedures from time to time.

## **6.5 Approval of Invoice for Payment**

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

- (a) the invoice does not comply with clause 6.3;
- (b) the documentary evidence required under Clause 6.4 does not support the claim;
- (c) the Contracting Medical Practitioner has failed to answer any reasonable questions about the invoice to the reasonable satisfaction of the Board;
- (d) the invoice is received more than 180 days after an invoiced item of Service was provided, unless the item is for a patient reclassified with approval of the Board; or
- (e) there is an unresolved dispute over an item on the invoice.

## **6.6 Invoice not approved**

- (a) If the Board does not approve an invoice the Contracting Medical Practitioner 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 Contracting Medical Practitioner will be informed in writing of the reason for not approving the invoice to enable the Contracting Medical Practitioner to issue a replacement invoice or invoices.

## **6.7 Overpayment**

If an overpayment occurs, the Board will notify the Contracting Medical Practitioner and seek to agree a level and method of repayment. If there is no agreement on the level or method of repayment and subject to the disputes resolution process, the Contracting Medical Practitioner must commence repayment within 30 days of receipt of a written notice from the Board, with the repayment rate to be the average rate at which the overpayment was made.

## **6.8 Audit of Services and Payments**

The Contracting Medical Practitioner agrees the Board 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 Contracting Medical Practitioner and any payments made to the Contracting Medical Practitioner under this Agreement. The Contracting Medical Practitioner agrees to cooperate with the auditor and provide all information and documentation reasonably required for the audit. Nothing in this Clause 6.8 entitles the Board to enter the Contracting Medical Practitioner's premises.

#### **6.9 Review of Fixed Payments (If Any)**

If this Agreement includes provision for payment of Fixed Payments, the Board and the Contracting Medical Practitioner will review the Fixed Payments at the times specified in Schedule 5. Upon review, the Fixed Payments may be revised if the value of Medical Services provided to Public Patients at the Hospital varies from the Agreed Fees Base by an average of 20% over the period. If a dispute arises as to the amount of the revised Fixed Payments, payment of the Fixed Payments will be suspended and the Contracting Medical Practitioner paid at 100% of the Medical Services Schedule pending resolution of the dispute.

### **7 TERM AND SUSPENSION OR TERMINATION OF AGREEMENT**

#### **7.1 Term**

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

#### **7.2 Holding Over**

The Contracting Medical Practitioner may continue to provide Services with the consent of the Board 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 7 or otherwise by the Board giving the Contracting Medical Practitioner 3 month's written notice.

#### **7.3 Termination by Contracting Medical Practitioner**

- (a) If there is a single Nominated Medical Practitioner under this Agreement, and Clinical Privileges for that Nominated Medical Practitioner are not approved or are varied or terminated by the Board (after any appeals have been exhausted under the MOU), the Contracting Medical Practitioner may terminate this Agreement by giving written notice to the Board not later than four (4) weeks after receiving notification of the Board's decision.
- (b) If there is more than one Nominated Medical Practitioner under this Agreement, and Clinical Privileges for any Nominated Medical Practitioner are not approved or are varied or terminated by the Board (after any appeals have been exhausted under the MOU), the Contracting Medical Practitioner has the option of varying the scope of Services to be provided under this Agreement to take reasonable account of that non-approval, variation or termination, which option must be exercised not later than four (4) weeks after receiving notification of the Board's decision.
- (c) The Contracting Medical Practitioner may terminate this Agreement at any time by giving the Board 3 month's written notice.

#### **7.4 Mutual Termination**

The Board and the Contracting Medical Practitioner may by written agreement terminate this Agreement at any time.

#### **7.5 Rights of Board In Specified Circumstances**

The Board may immediately:

- (a) suspend the provision of Services by the Contracting Medical Practitioner; or
- (b) vary the scope of Services to be provided; or
- (c) terminate this Agreement,

if the Contracting Medical Practitioner:

- (i) engages in serious or wilful misconduct;
- (ii) presents a risk to the safety and well being of Hospital patients or staff;
- (iii) is unable to comply with this Agreement because of a decision of the Medical Board of Western Australia;
- (iv) is convicted of any offence punishable by imprisonment;
- (v) is charged with any offence punishable with imprisonment but in this case the Board may not terminate but may suspend or vary the operation of this Agreement pending the determination of those charges if in all the circumstances and taking into account the nature of the charge and the nature of Medical Services provided a reasonable person would consider it reasonable for the Board to do so;
- (vi) is subject to an Insolvency Event;
- (vii) fails to comply with the terms of this Agreement and does not remedy that failure within a reasonable period of time after receiving written notice from the Board requiring it to do so;
- (viii) persistently fails to comply with this Agreement despite written notice from the Board for the Contracting Medical Practitioner to comply with the Contracting Medical Practitioner's obligations;

or if:

- (ix) the Board terminates the Clinical Privileges of a Nominated Medical Practitioner because of a breach of their Clinical Privileges Conditions;

and:

if this Agreement includes payment of a Rural Practice Incentive the Board may also withhold its payment.

For the avoidance of doubt, it is acknowledged that the MOU does not apply to this Clause 7.5.

## **8 FORCE MAJEURE**

### **8.1 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.

### **8.2 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.

### **8.3 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.

### **8.4 Termination**

If a party is unable to resume its obligations under this Agreement within 6 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.

## **9 DISPUTE RESOLUTION PROCESS**

### **9.1 Disputes Generally**

Subject to Clause 9.2, any dispute between the parties under or in connection with this Agreement may be dealt with under this Clause 9.

### **9.2 Clinical Matters**

Any dispute in connection with a Nominated Medical Practitioner's Clinical Privileges or clinical conduct cannot be dealt with under this Clause 9, but will be subject to and dealt with in accordance with the procedures in respect to clinical privileges, conduct and governance referred to in the MOU.

### **9.3 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").

### **9.4 Reasonable Efforts**

The Contracting Medical Practitioner and the Board agree to use their reasonable efforts to negotiate in good faith in order to resolve any dispute.

### **9.5 Convening of Meeting**

If the parties are unable to resolve the dispute within 14 days from the issue of a Dispute Notice or such time as agreed by the parties in writing, the Board shall as soon as practicable convene a meeting to assist the parties to resolve the dispute. The meeting must be attended by:

- (a) the Contracting Medical Practitioner; and
- (b) the Board's nominee;

and may include:

- (c) for each party, someone of that party's choice, who may include a legal practitioner; and
- (d) anyone else agreed by the parties.

### **9.6 Mediation Optional**

If, after 7 days from the convening of the meeting under clause 9.5, or such other time agreed by the parties in writing, the dispute remains unresolved a mediator may be appointed by agreement of the parties to assist in the resolution of the dispute.

### **9.7 Appointment of Mediator**

Any mediator will be appointed:

- (a) by agreement of the parties; or
- (b) if the parties are unable to agree within 7 days, upon nomination by agreement of the Director General and the President of the Australian Medical Association (Western Australia) Incorporated.

### **9.8 Fees of Mediator and other costs**

Unless otherwise agreed, the fees of the mediator and the administrative costs of the mediation will be shared equally between the parties and each party will pay its own costs.

### **9.9 Conduct of Mediation**

The mediator, in consultation with the parties, will establish the guidelines for conduct of the mediation. Once established the parties agree to comply with those guidelines.

#### **9.10 Failure to Resolve Dispute**

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

### **10. 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 Board, must be addressed to and marked for the attention of the General Manager of the Hospital or, in the case of clause 4.5 only, marked to the attention of the appropriate delegate of the Board;
- (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) sent by facsimile to the addressee's facsimile number;
- (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;
  - (iii) if sent by facsimile, on production of a transmission report by the sending machine indicating the facsimile was sent in its entirety to the facsimile number of the recipient.

### **11 MISCELLANEOUS**

#### **11.1 Costs**

Each party agrees to bear their own legal and other costs in connection with the preparation, execution and completion of this Agreement and of other related documentation.

#### **11.2 Confidentiality**

The Board will not release details of this Agreement or payments to the Contracting Medical Practitioner under this Agreement except to the extent required (if possible on a no name basis):

- (a) to facilitate the operation of this Agreement;
- (b) to resolve disputes or complaints in accordance with this Agreement;
- (c) in Court;
- (d) to the Minister for Health or to Parliament;
- (e) to the Auditor-General;
- (f) for planning or audit purposes by the Board, the Department of Health or other agencies; or
- (g) as otherwise required by law.

The Board will, subject to legal requirements, give notice to the Contracting Medical Practitioner at least seven days prior to any intended action under this clause to provide details on a name-identifying basis.

#### **11.3 Assignment**

- (a) The Board may assign its rights and obligations under this Agreement to the State, the Minister, another hospital board, or any other health related entity of the State without the consent of the Contracting Medical Practitioner. In any other case, the Board may assign its rights and obligations under this Agreement with the prior written consent of the Contracting

Medical Practitioner and that consent must not be unreasonably withheld. If the Board proposes to assign this Agreement to a privately owned or operated health related entity and the Contracting Medical Practitioner does not consent to that assignment the Board may terminate this Agreement by giving the Contracting Medical Practitioner not less than three (3) month's written notice.

- (b) The Contracting Medical Practitioner may, with the prior written consent of the Board, assign its rights and obligations under this Agreement. Consent of the Board will not be unreasonably withheld, and, if granted, may be subject to the imposition of reasonable conditions.
- (c) Any change in the beneficial ownership of the Contracting Medical Practitioner, being a body corporate, will be deemed to be an assignment of this Agreement and therefore subject to the consent of the Board.
- (d) Except in the case of an assignment of the type referred to the first paragraph of sub-clause (a), any other assignment under this Clause 11.3 is not effective unless the proposed assignee agrees in writing to comply with this Agreement as if it were an original party to this Agreement.

#### **11.4 Waiver and Variation**

A provision of or a right created under this Agreement may not be:

- (a) waived, except in writing signed by the party granting the waiver; or
- (b) varied, except in writing signed by the parties.

#### **11.5 Consents**

A party may give (conditionally or unconditionally) or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

#### **11.6 Rights, Powers and Remedies**

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

#### **11.7 Governing Law**

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in Western Australia and each party irrevocably and unconditionally submits to the jurisdiction of the courts of Western Australia.

#### **11.8 Entire Agreement**

This Agreement, the Clinical Privileges Conditions and the MOU constitute the entire agreement between the parties for the provision of Services by the Contracting Medical Practitioner at the Hospital and supersedes any prior arrangements, agreements, representations or undertakings.

#### **11.9 Inconsistency**

In the event of any inconsistency between the processes in the MOU and this Agreement relating to clinical privileges, conduct and governance, the processes in the MOU shall prevail to the extent only of the inconsistency.

**Executed by the Parties as an agreement**

Signed by \_\_\_\_\_ )  
[insert Contracting Medical Practitioner's full name] \_\_\_\_\_ )

in the presence of: \_\_\_\_\_

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

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

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

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

**[OR IF THE CONTRACTOR IS A BODY CORPORATE]**

The common seal of [insert corporation's name] }  
and ACN] }  
was affixed by authority of its Directors }  
in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

Signed by [insert name and position]  
for and on behalf of  
the Director General  
as delegate of the Minister for Health:

)  
)  
)  
)

-----

in the presence of:

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

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

\_\_\_\_\_

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

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



## SCHEDULE 1

### DETAILS

**1 Contracting Medical Practitioner:**

[name]  
[ACN if appropriate]  
[ABN]  
[address]  
[facsimile]  
[telephone]  
[mobile]  
[e-mail]

**2 Contracting Medical Practitioner's Medical Board Registration Number:**

**3 General Manager's Details**

[name]  
[address]  
[facsimile]  
[telephone]  
[mobile]  
[e-mail]

**4 Hospital(s):**

**5 Commencement Date:**

**6 Expiry Date:**

## SCHEDULE 2

### MEDICAL SERVICES

The Contracting Medical Practitioner agrees to provide to Public Patients at the Hospital the following type of medical services:

*[Details to be specified and agreed by the Board and the Contracting Medical Practitioner]*

### SCHEDULE 3

#### AVAILABILITY

*[Details to be specified and agreed by the Board and the Contracting Medical Practitioner]*

## SCHEDULE 4

### ADDITIONAL SERVICES

*[Details to be specified and agreed by the Board and the Contracting Medical Practitioner]*

## SCHEDULE 5

### PAYMENTS

#### 1. Operative Date

This payment schedule will apply from [ ]

#### 2. Fee for service payments for Medical Services

In accordance with the Western Australian Government Medical Services Schedule at the rate of [ ]  
[choose one of eg 100, 75, 70, 65 or 60%]

##### Adjustments

- (a) The Western Australian Government Medical Services Schedule will be adjusted on 1 December each year by a Medical Services Index reflecting movements in general and medically specific costs, including Medical Indemnity costs unless addressed through another mechanism, and in accordance with independent economic advice.
- (b) At the discretion of the Department of Health, changes to the Commonwealth Medicare Benefits Schedule may be incorporated into the Western Australian Government Medical Services Schedule provided internal relativities within the Western Australian Government Medical Services Schedule are maintained.
- (c) At the discretion of the Department of Health, interim changes and increases to the Western Australian Government Medical Services Schedule may be made on 1 July of any year provided fee relativities are maintained.

#### 3. Fixed Payments (if any)

Rural Practice Incentive (if applicable)	\$( ) per year
Fixed Fee Component (if applicable)	\$( ) per year
Total Fixed Payments	\$( ) per year
Agreed Fees Base	\$( ) per year

##### Review of Fixed Payments

Fixed Payments review period [eg quarterly, 6 monthly, annually or specify dates] [#]

##### Adjustments

Fixed Payments will be adjusted on 1 December of each year by the Medical Services Index.

#### 4. Payments for Additional Services (if any)

[Specify]

<b>MEDICAL SERVICES AGREEMENT</b>	<b>2</b>
AGEEMENT	2
RECITALS	2
<b>1    DEFINITIONS AND INTERPRETATION</b>	<b>3</b>
1.1    DEFINITIONS	3
1.2    INTERPRETATION	4
1.3    BOARD MAY ACT THROUGH OFFICERS, AGENTS AND EMPLOYEES	5
<b>2    ENGAGEMENT OF CONTRACTING MEDICAL PRACTITIONER</b>	<b>5</b>
2.1    ENGAGEMENT	5
2.2    RELATIONSHIP	5
2.3    NON EXCLUSIVE	5
2.4    REGISTRATION OF CONTRACTING MEDICAL PRACTITIONER	5
<b>3    OBLIGATIONS OF THE BOARD</b>	<b>5</b>
3.1    PAYMENT FOR SERVICES	5
3.2    RESOURCES PROVIDED BY BOARD	5
3.3    ADMISSION OR TREATMENT NOT GUARANTEED	5
3.4    THEATRE AVAILABILITY	6
3.5    HOSPITAL CODES, POLICIES ETC.	6
<b>4    OBLIGATIONS OF CONTRACTING MEDICAL PRACTITIONER</b>	<b>6</b>
4.1    PROVISION OF SERVICES	6
4.2    COMPLIANCE WITH CLINICAL PRIVILEGES CONDITIONS	6
4.3    COMPLY WITH HOSPITAL POLICIES ETC.	6
4.4    EMERGENCY SERVICE ROSTERS	6
4.5    OBLIGATION TO NOTIFY	6
4.6    OBLIGATION TO CO-OPERATE	7
4.7    RESOURCES SUPPLIED BY CONTRACTING MEDICAL PRACTITIONER	7
4.8    PUBLIC LIABILITY INSURANCE	8
<b>5    NOMINATED MEDICAL PRACTITIONERS AND CLINICAL PRIVILEGES</b>	<b>8</b>
5.1    PROVISION OF MEDICAL SERVICES BY NOMINATED MEDICAL PRACTITIONERS	8
5.2    NOMINATION FOR CLINICAL PRIVILEGES	8
5.3    BOARD PROCESS SUBJECT TO MOU	8
5.4    WITHDRAWAL OF NOMINATION OF MEDICAL PRACTITIONER	8
5.5    VARIATION OF CLINICAL PRIVILEGES CONDITIONS ETC.	8
5.6    PROCEDURAL REQUIREMENTS OF MOU	8
<b>6    PAYMENT</b>	<b>8</b>
6.1    PAYMENT TO CONTRACTING MEDICAL PRACTITIONER	8
6.2    PAYMENT FOR SERVICES	9
6.3    INVOICE REQUIREMENTS	9
6.4    DOCUMENTARY EVIDENCE OF SERVICE	9
6.5    APPROVAL OF INVOICE FOR PAYMENT	9
6.6    INVOICE NOT APPROVED	9
6.7    OVERPAYMENT	9
6.8    AUDIT OF SERVICES AND PAYMENTS	9
6.9    REVIEW OF FIXED PAYMENTS (IF ANY)	10
<b>7    TERM AND SUSPENSION OR TERMINATION OF AGREEMENT</b>	<b>10</b>
7.1    TERM	10
7.2    HOLDING OVER	10
7.3    TERMINATION BY CONTRACTING MEDICAL PRACTITIONER	10
7.4    MUTUAL TERMINATION	10
7.5    RIGHTS OF BOARD IN SPECIFIED CIRCUMSTANCES	10

<b>8</b>	<b>FORCE MAJEURE</b>	<b>11</b>
8.1	NOTICE OF FORCE MAJEURE	11
8.2	REASONABLE EFFORTS	11
8.3	SUSPENSION OF OBLIGATIONS	11
8.4	TERMINATION	11
<b>9</b>	<b>DISPUTE RESOLUTION PROCESS</b>	<b>12</b>
9.1	DISPUTES GENERALLY	12
9.2	CLINICAL MATTERS	12
9.3	NOTIFICATION OF DISPUTE	12
9.4	REASONABLE EFFORTS	12
9.5	CONVENING OF MEETING	12
9.6	MEDIATION OPTIONAL	12
9.7	APPOINTMENT OF MEDIATOR	12
9.8	FEES OF MEDIATOR AND OTHER COSTS	12
9.9	CONDUCT OF MEDIATION	12
9.10	FAILURE TO RESOLVE DISPUTE	13
<b>10.</b>	<b>NOTICES</b>	<b>13</b>
<b>11</b>	<b>MISCELLANEOUS</b>	<b>13</b>
11.1	COSTS	13
11.2	CONFIDENTIALITY	13
11.3	ASSIGNMENT	13
11.4	WAIVER AND VARIATION	14
11.5	CONSENTS	14
11.6	RIGHTS, POWERS AND REMEDIES	14
11.7	GOVERNING LAW	14
11.8	ENTIRE AGREEMENT	14
11.9	INCONSISTENCY	14
	SCHEDULE 1	17
	SCHEDULE 2	18
	SCHEDULE 3	19
	SCHEDULE 4	20
	SCHEDULE 5	21