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| **Employment and Management of Locum Medical Officers by NSW Public Health Organisations** | Health - NSW Gov - RGB col gradient |
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**Appendix B: Agreement for the Employment of Locum Medical Officers in NSW Public Health Organisations**

This standard agreement has been prepared for use by NSW Public Health Organisations in the engagement of Medical Locum Agencies.

This document contains mandatory clauses, highlighted in yellow, that reflect NSW Health policy requirements and standards and conditions for the conduct of Medical Locum Agencies providing Locum Medical Officers to NSW Public Health Organisations.

Public Health Organisations may negotiate with Medical Locum Agencies any additional contractual clauses that are not inconsistent with or do not conflict with the mandatory clauses.

**CONTENTS PAGE**

***[to be inserted]***

**THIS AGREEMENT** is made on the       day of       2     .

**BETWEEN**

***(Name)*** *,* a statutory corporation established pursuant to the *Health Services Act* 1997, of***(address*)**      , (“**the Customer**”);

**ABN**

***(Name)*** , **ABN**       of **(*address*)**      , (“**the Supplier”)**

**1 DEFINITIONS AND INTERPRETATION**

1.1 Unless otherwise defined, all terms used in this Agreement have the same meaning as in the Policy and the standards and conditions for the provision of Locum Medical Officers to NSW Public Health Organisations set out in the NSW Health Medical Locum Agency Requirements

1.2 For the purpose of this Agreement:

“**Agreement**” means this agreement and includes:

1. any Schedules annexed to it; and
2. the NSW Health standards and conditions for the provision of Locum Medical Officers to NSW Public Health Organisations

“**Authorised Officer**” for each party means the person specified in Schedule 1 or such other person as the party may, from time to time, nominate in writing;

**“Confidential Information”** means information of a party whether verbal, written or in electronic form or some other form that:

1. is confidential by its nature;
2. is designated by either party as confidential; or
3. the recipient of the information knows or ought to know is confidential to either party, its agents or its advisers,

but does not include information that:

(d) is or becomes public knowledge, other than by breach of this Agreement or by any unlawful means; or

(e) is ascertainable through independent enquiries;

“**Confirmed** **Order**” has the meaning given to it by clause 5.4 of this Agreement;

“**Fee**” means the fee as referred to in clause 6 and Schedule 2;

“**GST**” has the meaning given to this term in the GST Law;

“**GST Law**” has the meaning given by the *A New Tax System (Goods & Goods and Services Tax) Act 1999 (Cth)*, related legislation and any delegated legislation made pursuant to such legislation;

“**Intellectual Property**”includes patent, know-how, copyright, design, semi-conductor or circuit layout rights, computer software, confidential information, domain names, formulas, inventions, trademarks, trade, business or company names or other proprietary rights and any rights to registration of such rights in Australia or elsewhere.

“**Locum Medical Officer**” means a medical practitioner introduced to the Customer by the Supplier in accordance with this Agreement, and who may be employed by the Customerin casual or temporary capacity to provide cover for an absent member of the permanent non-specialist medical staff or when shifts are unable to be filled by overtime or casual medical employees, and who is not a current member of the Customer’s casual medical pool;

“**Medical Locum Agency Requirements**” means the requirements for certification and entry to the NSW Health Register of Medical Locum Agencies. The Medical Locum Agency Requirements set out the standards and conditions against which Medical Locum Agencies must demonstrate compliance for certification and continued registration to supply Locum Medical Officers to NSW Public Health Organisations;

“**Medical Workforce Unit**” means the unit of the Customer responsible for the employment of Locum Medical Officers, the contact details for which are described in Schedule 3 to this Agreement;

**“NSW Health”** means public health organisations, the NSW Ministry of Health, the Ambulance Service of NSW, and all other organisations under the control and direction of the Minister for Health or the Secretary of Health;

“**Order**” means a request made by the Customer made in accordance with this Agreement seeking an appropriate Locum Medical Officer to fill a shift or shifts at a health facility controlled by the Customer;

“**Public Health Organisation**” means a public health organisation constituted under the *Health Services Act* 1997 (NSW);

“**Policy**” means NSW Health Policy Directive PD2019\_006 Employment and Management of Locum Medical Officers by NSW Public Health Organisationsas amended or replaced from time to time;

“**Services**” means the supply of Locum Medical Officers to the Customer in accordance with this Agreement and the standards and conditions set out in the Medical Locum Agency Requirements;

“**Standards and conditions**” means the standards and conditions for the provision of Locum Medical Officers to NSW Public Health Organisations set out in the Medical Locum Agency Requirements, a copy of which is available at <http://www.health.nsw.gov.au/aboutus/business/locums/index.asp>, and which are incorporated as terms and conditions of this Agreement.

1.3 Except where the context otherwise requires:

1. clause headings are for convenience only and are not intended to affect the interpretation of this Agreement;
2. where any word or phrase has a defined meaning, any other form of that word or phrase has a corresponding meaning;
3. words in the singular include the plural and vice versa;
4. all the provisions in any Schedule to this Agreement are incorporated in, and form part of, this Agreement and bind the parties; and
5. the terms of this Agreement prevail to the extent of any inconsistency between that term and any Schedule to this Agreement;
6. 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.

**2 TERM**

2.1 This Agreement commences on      , and continues for a period of       years unless terminated earlier in accordance with clause 18.

**Renewal Terms**

2.2 No later than ninety (90) days prior to the expiration of the Agreement, the parties may agree in writing to extend the Agreement for a further term (“Renewal Term”), and the terms of this Agreement, which may be modified by the parties by agreement in writing, will apply to any such Renewal Term.

**3 RESPONSIBILITIES OF THE CUSTOMER**

3.1. The Customer acknowledges and agrees that:

(a) Locum Medical Officers supplied by the Supplier under this Agreement are, at the time they commence a shift at a the Customerfacility, engaged by the Customer as employees of the NSW Public Health Organisation pursuant to the *Health Services Act* 1997;

(b) it assumes, as the delegate of the Secretary of the NSW Ministry of Health, all statutory and other legal obligations in respect of that employment relationship; and

(c) it will comply with all applicable NSW Health policy directives in respect of that employment relationship, including NSW Health Policy Directive PD2012\_046 *Remuneration Rates for non-specialist medical staff – short term / casual (locum)*, as amended or replaced from time to time, and where rates are approved in accordance with PD2012\_046 that exceed the rates prescribed by that policy the Customer must provide a copy of the approval to the Supplier at the time of the Confirmed Order.

3.2 The Customer must at all times during the term of this Agreement:

(a) ensure that the level of responsibilities and duties at which it requires a Locum Medical Officer to work in its facilities are consistent with those specified in the Order;

(b) provide appropriate supervision and direction of the Locum Medical Officer whilst the Locum Medical Officer works at any facility of the Customer;

(c) ensure Locum Medical Officers are made aware of any applicable policies and procedures of the Customer, and any changes to them from time to time; and

(d) notify the Supplier in writing of any concerns held by the Customerabout the performance or conduct of a Locum Medical Officer that arise where the Locum Medical Officer is working at a facility of the Customer pursuant to a Confirmed Order.

**4 RESPONSIBILITIES OF THE SUPPLIER**

4.1 The Supplier must at all times during the term of this Agreement:

(a) remain listed on the NSW Health Register of Medical Locum Agencies;

(b) comply with all requirements of the Policy and the Medical Locum Agency Requirements, including any changes or updates to the Policy and the Medical Locum Agency Requirements of which the Supplier is advised in writing by the NSW Ministry of Health from time to time;

(c) ensure that Locum Medical Officers consent to the Customernotifying the Supplier of the matters referred to in clause 3.2(d) of this Agreement;

(d) provide the Services diligently and with all reasonable skill and care expected in the provision of such Services and in accordance with all representations and warranties as to the Supplier’s experience and ability expressly or impliedly made by reference to:

(i) its application for inclusion on the NSW Health Register of Medical Locum Agencies;

(ii) this Agreement;

(iii) by law; or

(iv) any and all information, documents, forms and the like submitted by the Supplier to the NSW Ministry of Health and/or to any third party auditor body accredited with Joint Accreditation System of Australia & New Zealand (JAS-ANZ) for the purposes of inclusion on the NSW Health Register of Medical Locum Agencies;

(e) ensure that its agreements with Locum Medical Officers include a requirement that where a Locum Medical Officer is unable to work a shifts or shifts in a Confirmed Order for any reason, the Locum Medical Officer must advise the Customer’s Medical Workforce Unit and/or the Supplier as soon as possible.

4.2 The parties agree that for the purpose of providing the Services the Supplier is required to obtain information from third parties (including but not limited to health professional registration bodies) and that it shall not be liable for any errors or inaccuracies contained in such information, provided that the Supplier acts with reasonable skill and care in obtaining and considering such information prior to passing it on to the Customer.

**5 ORDERS**

5.1 The Customermay place Orders for Locum Medical Officers in accordance with Medical Locum Agency Requirements and Schedule 3to this Agreement.

5.2 The Customer does not make any representation or provide any guarantee or undertaking that it will place any particular volume of Orders, or any Orders at all, with the Supplier for supply of Locum Medical Officers under this Agreement, or that any Order placed will result in a Confirmed Order with the Supplier.

5.3 The Supplier does not make any representation or provide any guarantee or undertaking that it will be able to supply a Locum Medical Officer in response to an Order placed by the Customer.

5.4 Following the placing of an Order:

(a) the Supplier may offer to fill the Order with a Locum Medical Officer in accordance with the requirements of Schedule 3 to this Agreement; and

(b) the Customermayaccept the Locum Medical Officer offered by the Supplier in accordance with the requirements of Schedule 3 to this Agreement,

in which case the Order becomes confirmed (a “**Confirmed Order**”).

5.5 All Orders and Confirmed Orders must be placed through the Customer’sMedical Workforce Unit and in accordance with the requirements of Schedule 3 to this Agreement.

5.6 The Customerwill not have any obligation to pay commission to the Supplier in respect of any Confirmed Orders made otherwise than in accordance with clause 5.5 unless:

(a) where the Customerhas an online/electronic booking system, theonline/electronic booking system is temporarily unavailable due to technical problems and the Order or Confirmed Order is placed in accordance with the requirements of Schedule 3 to this Agreement; or

(b) the Supplier is advised by an officer of the Customerthat the Order or Confirmed Order is required to be placed as an emergency and in accordance with the requirements of Schedule 3 to this Agreement.

5.7 Where there is a Confirmed Order in respect of a particular Locum Medical Officer:

(a) the Supplier must provide the Locum Medical Officer in accordance with the requirements of the Confirmed Order and must not unreasonably cancel the Confirmed Order;

(b) where the Supplier is unable to fulfil the Confirmed Order for any reason, the Supplier must:

(i) notify the Medical Workforce Unit in writing or orally in accordance with the requirements of Schedule 3 as soon as reasonably practicable to enable alternative filling of the vacancy;

(ii) not offer to supply that Locum Medical Officer for another shift or shifts at the same time at any NSW Health facility (except with the agreement of the Customer);

(iii) use its best endeavours to offer the Customera suitable alternative Locum Medical Officer for the shift or shifts; and

(iv) if a suitable alternative Locum Medical Officer is not able to be supplied, reimburse the Customerany expenses (such as airfares or accommodation) which have been reasonably incurred by the Customeras a result of the placement of the Confirmed Order and prior to receiving notice of its cancellation;

(c) the Customermust:

(i) not further promote or advertise (internally or externally) the shift or shifts which are the subject of the Confirmed Order;

(ii) fulfil the requirements of the Confirmed Order and must not unreasonably cancel the Confirmed Order;

(d) where the Customeris unable to fulfil the Confirmed Order for any reason (including without limitation that the shift or shifts the subject of the Confirmed Order are no longer available), the Customermust:

(i) notify the Supplier of the cancellation in writing or orally in accordance with the requirements of Schedule 3 as soon as reasonably practicable;

(ii) where the Customer provides notice of cancellation to the Supplier less than 24 hours prior to the commencement of the shift or shifts covered by Confirmed Order, the Supplier shall be entitled to payment of the commission that would otherwise have been payable in respect of the shift or shifts covered by the Confirmed Order, unless:

(A) the Customerbecomes aware that the Locum Medical Officer does not meet the requirements of the Order, in which case no commission is payable; (Note: this paragraph will also apply where a Confirmed Order is cancelled during the course of the shift or shifts covered by the Confirmed Order);

(B) the shift or shifts the subject of the Confirmed Order become unavailable due to unforeseen circumstances beyond the reasonable control of the Customer(such as a major incident), in which case no commission is payable;

(C) the Locum Medical Officer is placed in alternative work by the Supplier during the whole of the working period covered by the Confirmed Order, in which case no commission is payable; or

(D) the Locum Medical Officer is placed in alternative work for part of the working period covered by the proposed Order, in which case Supplier shall be entitled to payment of commission for the balance of the working period only; and

(iii) reimburse the Supplier and the Locum Medical Officer any expenses (such as airfares or accommodation) which have been reasonably incurred as a result of the placement of the Confirmed Order and prior to receiving notice of its cancellation;

(e) the Customer is required under NSW Health Policy Directive PD2013\_036 *Service Check Register for NSW Health Services,* as amended or replaced from time to time, to complete a check of the NSW Health Service Check Register in respect of the Locum Medical Officer the subject of the Confirmed Order and, in the event the Locum Medical Officer is identified on the Register, the Customer:

(i) will conduct a risk assessment of the Locum Medical Officer pursuant to the NSW Health Service Check policy;

(ii) may at its absolute discretion cancel the Confirmed Order; and

(iii) will advise the Locum Medical Agency the Confirmed Order has been cancelled because:

(A) a risk assessment is required to be conducted pursuant to the NSW Health Service Check policy; or

(B) following a risk assessment conducted pursuant to the NSW Health Service Check policy, the Customerhas decided not to accept placement of the Locum Medical Officer;

(f) other than as expressly provided in clause 5.7(d)(ii), the Supplier and the Locum Medical Officer shall not be entitled to any commission, compensation, remuneration or other payment arising from the cancellation of a Confirmed Order by the Customer.

**6 FEE**

6.1 The Customer will, in consideration of the Supplier performing the Services, pay to the Supplier the Fee in accordance with Schedule 2.

**7 GST**

**Same meaning as the GST law**

7.1 The Parties agree that:

(a) words or expressions used in this clause which are defined in the GST Law have the same meaning in this clause unless otherwise provided;

(b) unless a payment is expressly stated to be inclusive of GST, all payments have been calculated without regard to GST;

(c) if GST is payable on a Taxable Supply made under, by reference to, or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST amount as additional consideration.

**Supplier to issue tax invoice**

7.2 The supplier must deliver to the recipient (or the payer of the relevant consideration if different to the recipient) a tax invoice for any Taxable Supply made under this Agreement on the earlier of:

(a) the date any claim for payment for the Taxable Supply is made by the supplier; or

(b) the date any amount is payable by the recipient to the supplier in respect of the Taxable Supply.

**Reimbursement of costs**

7.3 If a payment to a party is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then that payment will be reduced by the amount of any input tax credit or reduced input tax credit to which that party is entitled for that loss, cost or expense.

**Adjustment note**

7.4 If an adjustment note is required by the GST Law to be provided by the supplier to the recipient or payer in respect of any Taxable Supply made under this Agreement, the supplier must deliver such adjustment note to the recipient or payer:

(a) where the supplier causes the relevant adjustment event, within seven (7) days of the date of the adjustment event; or

(b) otherwise, within seven (7) days after the supplier becomes aware of the relevant adjustment.

**Registration under GST Law**

7.5 Each party warrants that at the time any Taxable Supplies are made under this Agreement, that party is or will be registered under the GST Law.

**GST Groups**

7.6 If a party is a member of a GST group, references to GST for which the party is liable and to input tax credits to which the party is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

**8 INFORMATION TO BE PROVIDED BY THE SUPPLIER**

8.1 The Supplier must provide the Customer with:

(a) the information required by the Medical Locum Agency Requirements; and

(b) personal information relating to Locum Medical Officers required for the purposes of employment records and payment of Locum Medical Officers by the Customer.

The parties acknowledge and agree that Locum Medical Officers may also supply their own personal information directly to the Customerfor the purposes of clause 8.1(b).

8.2 The Supplier must ensure that all information required to be provided by it under clause 8.1 is provided in accordance with applicable privacy legislation.

8.3 The Customermust ensure that it keeps confidential all information provided to it under clause 8.1, and only uses or discloses the information:

(a) in accordance with this Agreement; or

(b) as required or permitted by law or NSW Health policy directive.

8.4 If the quality of the information required to be provided by the Supplier under clause 8.1 does not meet the reasonable requirements of the Customer, the Locum Medical Officer cannot be registered in the on-line system (where applicable), nor placed in a facility until the information is considered satisfactory.

8.5 It is the responsibility of the Supplier to ensure that its contact details, in particular, email and mobile phone number, are up to date. The Customer cannot be held responsible for a non-receipt of an Order or Confirmed Order by a Supplier where information provided by the Supplier is incorrect or out of date.

**9 SECONDARY EMPLOYMENT APPROVAL**

9.1 The Supplier accepts that if the Locum Medical Officer is otherwise employed anywhere in the NSW Health Service, it is the responsibility of the Locum Medical Officer to seek secondary employment approval from the relevant Chief Executive or delegate in accordance with applicable NSW Health and/or the Customerpolicy directives. This approval must be provided prior to acceptance of the Locum Medical Officer by the Customer.

**10 subsequent employment of locum medical officers within nsw health**

10.1 The parties agree that:

(a) at any time after a Locum Medical Officer completes his or her initial placement period at a facility of the Customer, the Locum Medical Officer is free to enter into an alternative employment arrangement with any NSW Public Health Organisation, including permanent, temporary and casual employment, and that subject to clause 10.1(b) below no compensation or other payment shall be required to be made by the Public Health Organisationto the Supplier in respect of such employment of the Locum Medical Officer;

(b) in the event the Locum Medical Officer subsequently joins the Customer’s casual medical pool, provided no more than 13 weeks has passed between the last shift worked by the Locum Medical Officer with the Customer through the Supplier and the first shift worked by the Locum Medical Officer through the casual medical pool of the Customer, then the Supplier is entitled to a one off payment from the Customercalculated as follows:

(i) where the Locum Medical Officer has worked 12 shifts or more through the Supplier in the 13 week period prior to the first shift worked by the Locum Medical Officer through the casual medical pool – $750;

(ii) where the Locum Medical Officer has worked less than 12 shifts through the Supplier in the 13 week period prior to the first shift worked by the Locum Medical Officer through the casual medical pool – $1,250;

(c) following the one off payment in clause 10.1(b) no further compensation or commission is payable by the Customer to the Supplier in respect of the Locum Medical Officer;

(d) where a period greater than 13 weeks has passed between the last shift worked by the Locum Medical Officer with the Customer through Supplier and the first shift worked by the Locum Medical Officer through the casual medical pool of the Customer, then no compensation or further commission is payable by the Customer to Supplier in respect of the Locum Medical Officer;

(e) prior to the Locum Medical Officer joining the Customer’s casual medical pool, the Customerwill be required to undertake the appropriate check in accordance with the NSW Health Policy Directive PD2019\_003 *Working with Children Checks and Other Police Checks*, as amended or replaced from time to time. It is recognised that the Locum Medical Officer’s decision to join the casual medical pool is a choice to be exercised freely by the individual Locum Medical Officer and must not be influenced by the Supplier or the Customer. The Customer’s staff will at all times act in accordance with the NSW Health *Code of Conduct*;

(f) a Locum Medical Officer who has joined the Customer’scasual medical pool is free at any time to leave the casual medical pool and re-join the Supplier, however in that event if the Locum Medical Officer subsequently re-joins the Customer’scasual medical pool the Customerwill not be liable to make any further payment under clause 10.1(b); and

(g) the amounts specified in clause 10.1(b) shall be increased on 1 July of each year during the term of this Agreement by the amount of the Australian Consumer Price Index (weighted average of eight capital cities) as published by the Australian Bureau of Statistics for the most recently published twelve month period ending prior to 1 July in that year.

**11 COMMUNICATION BETWEEN THE CUSTOMER AND LOCUM MEDICAL OFFICERS**

11.1 The Customer acknowledges and agrees that it will not communicate directly with a Locum Medical Officer for the purpose of offering the Locum Medical Officer a specific shift or shifts at a the Customer facility.

11.2 The parties agree that nothing in clause 11.1 prevents the Customerfrom:

(a) communicating directly with a Locum Medical Officer for the purpose of offering the Locum Medical Officer a shift at a the Customer facility where the Locum Medical Officer is employed (including full-time, part-time or through a casual medical pool) as a medical officer elsewhere within the NSW Public Health Organisation, but not where the Locum Medical Officer’s employment in the NSW Public Health Organisation arises exclusively through a locum arrangement;

(b) communicating directly with a Locum Medical Officer in the event of a pandemic or other emergency or disaster;

(c) complying with a requirement of the law or NSW Ministry of Health policy directive; or

(d) using information provided by either the Supplier or Locum Medical Officers in accordance with clause 8.1 of this Agreement to communicate directly with Locum Medical Officers:

1. for the purpose of providing information to Locum Medical Officers relating to their rights and obligations as employees within the NSW Public Health Organisation; or
2. for the purpose of providing information to Locum Medical Officers relating to general employment opportunities (but not a specific shift or shifts) within NSW Health (including employment through casual medical pools),

and the Supplier is responsible for ensuring that Locum Medical Officers are aware their personal information may be used by the Customerfor these purposes

**12 CONFIDENTIALITY AND PRIVACY**

12.1 Subject to clause 12.1, the both parties must not, in any circumstances give access to or disclose Confidential Information of the other party to any person.

12.2 The obligation of confidentiality set out in clause 12.1 does not extend to Confidential Information that is permitted or required to be disclosed by the operation of law.

12.3 Both parties must:

(a) comply with their obligations under applicable privacy legislation to the extent that such legislation is relevant to this Agreement and/or the performance of the Services;

(b) not do anything that would cause the other party to breach its obligations under any such legislation; and

(c) comply with NSW Health privacy policies.

**13 INTELLECTUAL PROPERTY**

13.1 In accordance with the NSW Health Policy Directive PD2005\_370 *Intellectual Property Arising from Health Research,* as amended from time to time, the Customer may assert rights over any Intellectual Property created by a Locum Medical Officer during the course of their work at a facility of the Customer pursuant to a Confirmed Order.

**14 CONFLICT OF INTEREST**

14.1 The Supplier undertakes that at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services. The Supplier must notify the Customer in writing immediately upon becoming aware of the existence, or possibility, of a conflict of interest.

**15 INDEMNITY**

**Supplier’s indemnity**

15.1 The Supplier must indemnify and keep indemnified the Customer and the State of New South Wales and each of their officers, employees and agents (“those indemnified”) from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses (including reasonable legal costs and expenses), which may be brought against, made upon, or suffered or incurred by any of those indemnified arising directly or indirectly as a result of or in connection with:

(a) the provision of the Services to the extent that the same is due to a breach of the terms of the Agreement or a negligent, wilful or reckless act, default or omission of the Supplier or any of its officers, employees, agents and/or subcontractors; and/or

(b) any act or omission of the Supplier or any of its officers, employees, agents and/or subcontractors in connection with the provision of the Services under this Agreement resulting in personal injury to or death of any person, or the loss of or damage to property.

15.2 The Supplier’s liability to indemnify those indemnified under clause 15.1 shall be reduced proportionately to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

**Customer’s indemnity**

15.3 The Customer must indemnify and keep indemnified the Supplier and its employees and agents (“those indemnified”) from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses (including reasonable legal costs and expenses) which may be brought against, made upon, or suffered or incurred by any of those indemnified arising directly or indirectly as a result of or in connection with:

(a) any act or omission on the part of a Locum Medical Officer in the course of the Officer’s employment at a facility of the Customer following the supply of the Locum Medical Officer by the Supplier under this Agreement; and/or

(b) any negligent, wilful or reckless act, default or omission of the Customer or any of its officers, employees, agents and/or subcontractors in connection with this Agreement.

15.4 The Customer’s liability to indemnify those indemnified under clause 15.3 shall be reduced proportionately to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

**16 MINIMUM INSURANCE REQUIREMENTS**

16.1 Without limiting the Supplier’s obligations under this Agreement, the Supplier must during the continuance of this Agreement, and for a period of twelve (12) months after its expiration or termination (unless clause 16.1(c) applies in which case the period shall be six (6) years), take out and maintain with a reputable insurance company the following insurance policies:

1. a broad form public liability policy of insurance in the amount of not less than fifteen million dollars ($15,000,000) in respect of any one occurrence and twenty million ($20,000,000) in the aggregate for any one period of cover;
2. workers’ compensation insurance in accordance with applicable legislation in respect of all employees of the Supplier; and
3. a professional indemnity policy of insurance in the amount of not less than ten million dollars ($10,000,000) in respect of any claim and twenty million dollars ($20,000,000) in the aggregate for any one period of cover, and which must be maintained by the Supplier until the expiry or termination of this Agreement and a period of not less than six (6) years after the expiry or termination of this Agreement.

16.2 The Supplier will, on request, produce to the Customer satisfactory evidence that the Supplier has effected and renewed the insurance policies referred to in clause 16.1.

**17 DISPUTE RESOLUTION**

17.1 In the event of any dispute about the terms of operation of this Agreement, before taking any other action:

(a) the party raising the dispute will notify the other party in writing of the dispute and the nature of it;

(b) upon the giving and receiving of a notice of dispute, the Customer’s Chief Executive or delegate and the Principal / Director / Chief Executive of the Supplier will attempt to resolve the dispute through negotiation;

(c) if the dispute remains unresolved after one (1) week of receipt of the notification of the dispute, the parties will constitute a joint committee, consisting of two (2) representatives of each party. The parties will endeavour to constitute this committee within two (2) weeks of the receipt of notification of the dispute. The joint committee will attempt to resolve the dispute by negotiation;

(d) if the dispute is not resolved by negotiation after one (1) month of the committee being constituted, unless the committee agrees that the dispute can be dealt with in an alternative way, the parties will refer the dispute to a meeting of the Secretary of the NSW Ministry of Health or delegate, and a nominee of the Supplier, who will jointly attempt to resolve the dispute;

(e) if a resolution of the dispute is still not possible, the dispute will be referred to an independent mediator or arbitrator nominated by the President of the Law Society of NSW who will mediate an outcome or, failing a successful mediated resolution, make a decision that will be binding on both parties;

17.2 Each party will bear their own costs; with the costs associated with the use of an independent mediator/arbitrator under clause 17.1 are to be shared equally by the parties.

**18 Termination**

**Termination for convenience**

18.1 Either party may terminate this Agreement for convenience by giving not less than three (3) months’ notice in writing, with such termination being effective upon the expiry of this three (3) month period.

**Settlement of outstanding monies**

18.2 If either party terminates this Agreement for convenience:

(a) the party terminating the Agreement must reimburse the other party for any unavoidable costs and expenses directly incurred as a result of termination provided that any claim is supported by satisfactory written evidence of the costs claimed;

(b) the parties must do everything reasonably possible to prevent or otherwise mitigate any losses resulting from the termination.

**Termination for cause**

18.3 Where the Supplier:

(a) ceases to be listed on the NSW Health Register of Medical Locum Agencies; or

(b) breaches the Agreement in circumstances which the Customer reasonably considers give rise to a risk to the health or life of any person,

the Customer may terminate this Agreement with immediate effect by providing notice in writing to the Supplier.

18.4 With the exception of the circumstances in clause 18.3, this Agreement may be terminated by either party for any breach of this Agreement where such breach has failed to be rectified within thirty (30) days of written notification of the breach by the other party.

**Effect of termination on prior rights including Confirmed Orders**

18.5 Subject to clause 18.6, termination of this Agreement for any reason shall not:

(a) extinguish, prejudice or affect any antecedent rights that may have accrued to a party prior to the date of termination; or

(b) affect the rights and obligations of the parties in respect of a Confirmed Order made prior to termination (including the right of the Customer to cancel the Confirmed Order in accordance with clause 5.7(d) of this Agreement).

18.6 Where this Agreement is terminated pursuant to clause 18.3, any Confirmed Orders made prior to termination are deemed to have been cancelled by the Customer at the time notice of termination is provided, and the Supplier shall not be entitled to any payment in respect of such cancelled Confirmed Orders.

18.7 Notwithstanding any other provision of this Agreement, the covenants provided by either party shall survive the expiration or earlier termination of this Agreement

**19 GENERAL**

**Governing law**

19.1 The laws in force in the State of New South Wales govern this Agreement.

19.2 Each Party submits to the exclusive jurisdiction of the courts of the State of New South Wales.

**Notices**

19.3 Any notice under this Agreement must be:

(a) delivered to the Authorised Officer’s address;

(b) sent by pre-paid mail to the Authorised Officer’s address; or

(c) transmitted by facsimile or electronic means to the Authorised Officer’s address.

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

(a) if delivered to the Authorised Officer’s address, on the day of delivery if a business day, otherwise on the next business day;

(b) if sent by pre-paid mail, on the third business day after posting;

(c) if transmitted by facsimile or electronic means to the Authorised Officer’s address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

**Relationship between the parties**

19.5 The Supplier shall not represent itself, and shall ensure that its employees and agents do not represent themselves, as being employees or agents of the Customer.

**Entire agreement**

19.6 This Agreement constitutes the entire agreement between the parties and supersedes any former arrangement or agreement with the Supplier in place at the hospitals or facilities of the Customer.

**Variation**

19.7 Any variation to the Agreement must be in writing signed by both parties.

19.8 The Customer may advise the Supplier of any proposed amendment to the terms of this Agreement by providing at least three (3) months’ notice in writing, unless the proposed amendment results from a change in legislation, regulation or the law in which case the Customer must provide notice in writing to the Supplier of the proposed amendment as soon as practicable. If the Supplier fails to agree in writing to an amendment proposed by the Customer in accordance with this clause, the Agreement shall terminate at the expiration of the period of notice provided by the Customer.

**Counterparts**

19.9 This Agreement may be executed in counterparts and all such counterparts taken together will be deemed to constitute one and the same Agreement.

**Assignment**

19.10 Except with the prior written consent of the Customer, the Supplier may not assign the whole or any part of the Supplier’s obligations under this Agreement, and the parties agree that such consent may be given or withheld by the Customer in its absolute discretion.

EXECUTED as an Agreement.

SIGNED by ………………………………………………… [*Insert full name]*

As authorised signatory for the*(name of Public Health Organisation)*

…………………………………………

Signature of Authorised Person

in the presence of:

……………………………………….

Signature of witness

……………………………………….

Name of Witness (Print)

SIGNED on behalf of the *(name of Medical Locum Agency)*, by:

………………………………………………………

Director

Name:

………………………………………………………

Director/Secretary

Name:

in the presence of:

………………………………………

Signature of witness

………………………………………

Name of witness (Print)

……………………………………….

Address of witness

**Schedule 1 – AUTHORISED OFFICERS**

**Customer’s Authorised Officer**

Name:

Position:

Telephone:

Mobile:

Facsimile:

E-mail:

**Supplier’s Authorised Officer**

Name:

Position:

Telephone:

Mobile:

Facsimile:

E-mail:

**Schedule 2 – payment**

***[insert agreed commission or fee as well as any other matters relating to payment just as payment terms]***

**Schedule 3 – orders and confirmed orders**

***[to be inserted:***

* ***details of Medical Workforce Unit, including contact details in the event of an emergency or technical problems with /electronic on-line booking system***
* ***process for placing Orders and Confirmed Orders***
* ***process for cancelling Confirmed Orders]***