

**BLAKE DAWSON WALDRON**

**L A W Y E R S**

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# **Inter-Hospital Agreement**

**Alwyn Rehabilitation Hospital  
Calvary Hospital Wagga Wagga Inc  
Hornsby Day Surgery Centre  
Hunter Valley Private Hospital  
Longueville Private Hospital  
Poplars Community Hospital  
Mayo Private Hospital  
Wolper Jewish Hospital**

**May 2001**

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**Ref: WORAAG.889537**

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## INTER-HOSPITAL AGREEMENT

### DATE

### PARTIES

ALWYN REHABILITATION HOSPITAL  
CALVARY HOSPITAL WAGGA WAGGA INC  
HORNSBY DAY SURGERY CENTRE  
HUNTER VALLEY PRIVATE HOSPITAL  
LONGUEVILLE PRIVATE HOSPITAL  
POPLARS COMMUNITY HOSPITAL  
MAYO PRIVATE HOSPITAL  
WOLPER JEWISH HOSPITAL

### RECITALS

- A. Each of the Hospitals is a religious, community based or independently owned private hospital, which provides a range of hospital, medical and ancillary health care services.
- B. From time to time each of the Hospitals requires to enter into Purchaser Provider Contracts with certain Funds.
- C. The Hospitals recognise that certain factors, including rising costs and their bargaining position relative to certain Funds, has and will make it increasingly difficult to maintain and improve the quality and scope of hospital and ancillary health care services provided by them.
- D. In order to overcome these difficulties the Hospitals wish to form a Network and appoint an agent to:
- (i) manage the collection, exchange and presentation of certain information between and on behalf of the Network members with a view to wider dissemination of cost reduction strategies amongst Network members, the development of greater efficiencies in the delivery of services by Network members and increasing the efficiency of Purchaser Provider Contracts;
  - (ii) negotiate Purchaser Provider Contracts with certain Funds on behalf of individual Network members; and
  - (iii) negotiate supply contracts of certain goods and services on behalf of the Network members in order to achieve volume discounts and reduce transaction costs,

on the terms and conditions of this document.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this document, unless the context otherwise requires:

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**"Agent"** means the person appointed as such under clause 5.2.

**"Authorisation"** means an authorisation from the Australian Competition and Consumer Commission to make and give effect to this agreement.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

**"Fund"** means a Registered Health Benefit Organisation.

**"Hospitals"** means Alwyn Rehabilitation Hospital, Calvary Hospital Wagga Wagga Inc, Cape Hawke Community Private Hospital, Hornsby Day Surgery Centre, Hunter Valley Private Hospital, Longueville Private Hospital, Poplars Community Hospital, St David's Private Hospital, Taree Mayo Private Hospital, Westside Private Hospital, Wolper Jewish Hospital and such other hospitals or organisations who may join the Network from time to time.

**"Network"** means the network formed under clause 4.1.

**"Network Committee"** means the committee formed under clause 5.1.

**"Purchaser Provider Contract"** means a contract between a Hospital and a Fund whereby the Hospital agrees to provide certain hospital and ancillary health care services to Fund members at agreed rates of contribution from the Fund.

**"Relationship Manager"** means a person nominated as such under clause 9.1(a).

## 1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

- 
- (c) A word which suggests one gender includes the other genders.
  - (d) If a word is defined, another part of speech has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) A reference to a recital or clause is to a recital or clause to or of this agreement.

## **2. CONDITION PRECEDENT TO AGREEMENT**

### **2.1 Authorisation**

This agreement is subject to the Authorisation being obtained and the performance of this agreement is subject to the conditions of the Authorisation.

### **2.2 Inconsistency with Authorisation**

If any provision of this agreement is or becomes inconsistent with any conditions of the Authorisation and the parties do not exercise any right of review or appeal with respect to the Authorisation the parties will:

- (a) amend that provision to accord with the conditions of the Authorisation; or if that cannot be done without materially and adversely changing the intended effect of this agreement;
- (b) delete that provision from the agreement; or if that cannot be done without materially and adversely changing the intended effect of this agreement;
- (c) terminate this agreement.

## **3. AGREEMENT TO CO-OPERATE IN GOOD FAITH**

Each party must co-operate with each other in good faith to give effect to this agreement.

## **4. NETWORK**

### **4.1 Formation of Network**

The Hospitals will form a non-exclusive network to be known as [ ]  
(the "Network").

### **4.2 Membership requirements**

Membership requirements and the process for making an application to join the Network are described in Schedule D.

### **4.3 Determination of membership**

Until otherwise determined by the Network Committee a Hospital's membership of the Network may be determined by written notice from the Network Committee if:

- 
- (a) the Hospital fails to continue to satisfy the requirements for membership set out in clause 4.2;
  - (b) the Hospital enters into liquidation for a purpose other than a restructuring of the operation of the hospital or organisation;
  - (c) the Hospital's continued membership brings about a material change in circumstances such as may lead to issue by the Australian Competition and Consumer Commission of a notice of intention to revoke the Authorisation; or
  - (d) the Hospital breaches a material term of this agreement.

#### 4.4 Resignation from Network

A Hospital may resign from the Network at any time upon giving written notice to the Network Committee to that effect. A Hospital will remain liable to pay the amount of its contribution to the costs of the Network up to and including the date of its resignation.

### 5. NETWORK COMMITTEE

#### 5.1 Formation of Network Committee

Each Hospital will nominate a person to form a committee for the purpose of administering the Network. This committee is to be known as the [ ] (the "Network Committee"). Each Hospital will ensure that the person so nominated has appropriate authority to participate in and carry out the functions of the Network Committee.

#### 5.2 Appointment of Agent

The Network Committee will select and appoint an agent (the "Agent") to:

- (a)
  - (i) manage the collection and exchange of non-fee information between Network members; and
  - (ii) manage the collection and exchange of fee, price and cost information between Network members,  
on the terms set out in Schedule A; and
- (b)
  - (i) manage the collection, exchange and presentation of non-fee, fee, price and cost information on behalf of the Network members to Funds; and
  - (ii) negotiate Purchaser Provider Contracts on behalf of the Network members with Funds,  
on the terms set out in Schedule B; and
- (c) conduct negotiations on behalf of Network members for the acquisition of goods and services, on the terms set out in Schedule C.

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### 5.3 Functions of the Network Committee

The functions of the Network Committee will also include:

- (a) deciding membership of the Network (in its sole and absolute discretion);
- (b) making rules and establishing procedures for the business of the Network Committee;
- (c) determining the scope of the Agent's functions (other than in relation to the negotiation of Purchaser Provider Contracts);
- (d) reviewing the effectiveness and performance of the Agent;
- (e) providing a point of contact between the Agent and the Hospitals;
- (f) facilitating the provision of all necessary information to the Agent;
- (g) budgeting and incurring all necessary reasonable costs;
- (h) arranging the collection of each Hospital's contributions towards payment of the costs of operating the Network; and
- (i) monitoring compliance with any conditions of the Authorisation.

### 5.4 Non-Functions of the Network Committee

It is not a function of the Network Committee:

- (a) to enter into a Purchaser Provider Contract on behalf of any member of the Network; or
- (a) to advise or make recommendations to any member of the Network regarding the appropriateness of any offer of a Purchaser Provider Contract communicated by the Agent.

## 6. FREEDOM OF CHOICE

### 6.1 Freedom of Choice

- (a) Each Hospital is at liberty to choose not to avail itself of all or any of the services of the Agent.
- (b) Each Hospital is at liberty to adopt any other process for negotiating or concluding a Purchaser Provider Contract that it may choose.
- (c) No Hospital will be bound to, or to decline to, contract with a particular Fund.



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## **7. NETWORK COSTS**

### **7.1 Network costs**

Until otherwise determined by the Network Committee, the Hospitals must share the costs incurred by the Network Committee proportionally having regard to the number of beds they are licensed to operate.

### **7.2 Negotiation costs**

The costs incurred by the Network Committee will not include the costs charged by the Agent in negotiating or advising on Purchaser Provider Contracts on individual Network members' behalves. The relevant individual Network member will be separately liable for such costs.

## **8. RELATIONSHIP BETWEEN PARTIES**

### **8.1 Independent contractors**

- (a) The parties enter into this agreement as independent contractors.
- (b) It is the intention of the parties that nothing in this agreement shall have the effect of creating any partnership, joint venture, agency or relationship between them other than as independent contractors.

## **9. LIAISON AND DISPUTE RESOLUTION**

### **9.1 Relationship Manager**

Each party must:

- (a) by notice to the other parties immediately upon signing this agreement, nominate a Relationship Manager; and
- (b) procure its Relationship Manager to meet with the other Relationship Managers:
  - (i) where any Relationship Manager has given notice requesting a meeting - within 3 Business Days of receiving such notice; or
  - (ii) otherwise - on a monthly basis at a mutually convenient time agreed between them,

to discuss in good faith and seek to resolve any problems which may have arisen in relation to this agreement.

### **9.2 Replacement of Relationship Manager**

A party may at any time nominate a person to replace its existing Relationship Manager. If a replacement Relationship Manager is appointed, the party appointing the replacement will provide notice in writing to the other parties within 7 days of the appointment.

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### 9.3 Disputes - references to CEOs

If a dispute arises between any parties in connection with this agreement, and the dispute is not resolved by discussions between the relevant parties Relationship Managers under clause 9.1, that dispute must be referred for discussion between the Chief Executive Officer/Managing Director of each relevant party who the relevant parties must procure to:

- (a) meet within five Business Days of the referral to discuss the matter in good faith; and
- (b) use all reasonable endeavours to settle or resolve the dispute within 10 Business Days of the referral.

### 9.4 Disputes - preservation of rights

In the event that the dispute arising between the relevant parties in connection with this agreement cannot be resolved after reference to the CEOs/Managing Directors pursuant to clause 9.3 the relevant parties shall be free to refer the dispute to any court of competent jurisdiction or otherwise exercise such rights as may be available to them.

### 9.5 Interlocutory relief

Nothing in this clause 9 affects the ability of a party to this agreement to seek urgent interlocutory relief.

## 10. CONFIDENTIALITY AND DISCLOSURES

### 10.1 Confidential Information

The provisions of clauses 10.2 to 10.5 apply where, in communications relating to this agreement or any of the transactions contemplated by it (the "Associated Transactions"), a party (the "Disclosing Party") gives to another party (the "Receiving Party") any written or oral information of a technical, business or financial nature relating to any of the party's business (the "Confidential Information").

### 10.2 Non-confidential information

For the purposes of this clause 10, Confidential Information does not include information which the Receiving Party can establish:

- (a) was in the public domain when it was given to the Receiving Party;
- (b) becomes, after being given to the Receiving Party, part of the public domain, except through disclosure contrary to this agreement;
- (c) was in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
- (d) was lawfully received from another person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality.

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### 10.3 Non-disclosure of Confidential Information

Subject to clause 10.4 the Receiving Party must not:

- (a) disclose, directly or indirectly, any Confidential Information to any person without the prior written approval of the Disclosing Party for the particular disclosure, other than to its employees, legal advisers, auditors and other consultants requiring the information for the purposes of this agreement or the Associated Transactions upon those persons undertaking to the Receiving Party to keep that information strictly confidential; or
- (b) use or make a copy of any Confidential Information otherwise than for the purposes of this agreement or the Associated Transactions.

### 10.4 Disclosure required by law

The obligations in clause 10.3 do not apply to the Receiving Party where disclosure of any Confidential Information is required to comply with any applicable law, the Receiving Party promptly gives notice to and consults with the Disclosing Party to the extent practicable and uses its best endeavours to minimise any such disclosure and to ensure that any Confidential Information so disclosed will be treated confidentially.

### 10.5 Return of Confidential Information

The Receiving Party, at the written request of the Disclosing Party, must immediately deliver to the Disclosing Party all documents and other materials containing, recording or referring to Confidential Information which are in the Receiving Party's possession, power or control.

## 11. NOTICES

### 11.1 How to give a notice

A notice, consent or other communication under this agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

### 11.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:

- 
- (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail:
- (i) within Australia - 3 Business Days after posting; or
  - (ii) to or from a place outside Australia - 7 Business Days after posting.

### 11.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

[                    ]

## 12. GENERAL

### 12.1 Amendment

This agreement can only be amended, supplemented, replaced or novated by another agreement signed by the parties.

### 12.2 Assignment

A party may only dispose of, declare a trust over or otherwise create an interest in its rights under this agreement with the consent of the other parties.

### 12.3 Governing Law

- (a) This agreement is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

### 12.4 Liability for expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing this agreement.
- (b) [                    ] must indemnify [                    ] against, and must pay [                    ] on demand the amount of, any duty that is payable on or in relation to this agreement and the transactions that it contemplates.

### 12.5 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- 
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
  - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
  - (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### 12.6 Operation of this Agreement

- (a) This agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (b) Any right that a person may have under this agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially and adversely change the intended effect of this agreement.

#### 12.7 Consents

Where this agreement contemplates that a party may agree or consent to something (however it is described), that party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this agreement expressly contemplates otherwise.

#### 12.8 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

#### 12.9 Counterparts

This agreement may be executed in counterparts.

#### 12.10 Attorneys

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

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EXECUTED as an agreement.

*[INSERT EXECUTION CLAUSES]*

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**SCHEDULE A**  
(Clause 5.2)

**1. COLLECTION OF INFORMATION**

1.1 The Agent will manage:

(a) the collection and exchange of:

(i) fee, price and cost information; and

(ii) non-fee related information,

between Network members; and

(b) the collection, exchange and presentation of non-fee, fee, price and cost information on behalf of Network members to Funds.

1.2 (a) Any such information will be collected and presented on a disaggregated basis.

(b) Disaggregated information must comply with the following criteria:

(i) the information will refer only to the size of the Hospital in terms of beds and admissions; and

(ii) the information will not refer to the name of the Hospital or the region in which the Hospital participates.

1.3 Any such information will be, or will be based on current information.

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**SCHEDULE B**  
(Clause 5.2)

**1. CONDUCT OF NEGOTIATIONS**

- 1.1 The Agent will conduct joint negotiations on behalf of Network members with a Fund or group of Funds having greater than a 10% share of the market for the supply of private hospital services to health funds and the DVA (based on current PHIAC statistical figures) with the view to procuring a Purchaser Provider Contract between each of the participating Hospitals and a Fund and the DVA.
- 1.2 (a) The Agent must communicate price offers directly to participating Hospitals who must make independent and unilateral decisions on whether or not to accept the terms of any particular Purchaser Provider Contract. Such Hospitals may, however, seek the assistance and advice of the Agent in deciding whether to accept the terms of any particular Purchaser Provider Contract.
- (b) The conduct of negotiations is subject to the provisions of clause 6 of this document.



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**SCHEDULE C**  
(Clause 5.2)

**JOINT PURCHASING OF GOODS AND SERVICES**

1. The Agent will conduct negotiations on behalf of Network members for the acquisition of goods and services.
  - (a) Each Hospital is at liberty to adopt any other process for negotiating or purchasing goods and services that it may choose.
  - (b) No Hospital will be bound to, or to decline to, contract with respect to particular goods or services.
  - (c) A Hospital may, at its election, notify the Agent of its requirement to purchase specified amounts of particular goods or services.
  
2. Any arrangement negotiated by the Agent to purchase goods and services must comply with the following criteria:
  - (a) the purchase must account for less than 35% of total sales of the purchased product or service in the market for the purchased product in New South Wales;
  - (b) the cost of the product or service purchased must account for less than 20% of the total revenue for all products or services sold by the participant in the negotiations with the Agent and the joint purchasing arrangement with the Hospitals.

**SCHEDULE D**  
**(Clause 4.2)**

1. **APPLICATIONS TO JOIN THE NETWORK**

1.1 **Eligible Applicants**

Any organisation is eligible to join the Network provided that:

- (a) it is a religious, charitable, community based or independently owned organisation;
- (b) it operates a hospital or undertakes activities with a predominant focus on providing accommodation and health care services for the sick or infirmed;
- (c) it holds [ACHS] accreditation or other equivalent accreditation acceptable to the Network Committee;
- (d) it agrees to abide by the terms and conditions of this agreement and any conditions of the Authorisation;
- (e) it has in place a trade practices compliance programme of a standard acceptable to the Network Committee; and
- (f) the addition of such an organisation would not increase the combined market share of the Network in any one market above 40% of the market for the provision of hospital services to patients.

2. **Application to join Network**

Any application to join the Network must be made in writing addressed to the Network Committee. The Network Committee may make an in principle decision to admit or decline to admit any organisation as a member of the Network in its sole and absolute discretion.

3. **Authorisations**

Where an in principle decision to admit an organisation has been made pursuant to Clause 2 of this Schedule, the applicant must apply to the Australian Competition and Consumer Commission for a variation to the authorisation granted to the Network (A30203) pursuant to section 91A of the *Trade Practices Act* (1974).

4. **Membership**

Membership will be granted where an in principle decision to admit an organisation has been made pursuant to Clause 2 of this Schedule and where a variation to A30203 has been made as required by Clause 3 of this Schedule.

