

# WOFO – Independent Contractor Agreement Terms

Last updated: 7 August 2023

Wofo Limited (**Wofo**) provides a platform (**Platform**) that connects individual workers wanting to pick up shifts (**Workers**) with healthcare providers needing urgent shifts to be filled (**Providers**).

Under the Provider Terms of Use and the Worker Terms of Use, the Worker and the Provider have agreed to use these Independent Contractor Agreement terms as the basis of their contracts with each other in relation to Shifts. These terms apply to all Independent Contractor Agreements entered into through the Platform unless the parties agree otherwise and Wofo consents to the Worker and the Provider using other terms.

## 1. DEFINITIONS

1.1 In this Independent Contractor Agreement, certain words are defined throughout and otherwise:

"**ICA Services**" means the personal services to be performed by the Worker for the Provider during a Shift, as specified in this Independent Contractor Agreement.

"**Independent Contractor Agreement**" means these terms and the specific details included in the Shift confirmation through the Platform, including:

- (a) the details of the Worker and Provider;
- (b) the Shift Value;
- (c) the date, time and duration of the Shift; and
- (d) any special requirements or conditions of the Shift.

"**Provider**" means the healthcare facility/provider that is registered with Wofo and is specified as the Provider under this Agreement.

"**Provider Service Fee**" means the fee that Wofo charges a Provider for the use of the Wofo Services under the Provider Terms of Use.

"**Provider Terms of Use**" means the terms of use entered into between the Provider and Wofo as amended from time to time, available at <https://www.medstaff.co.nz/>.

"**Shift**" means the healthcare work shift specified in the Platform.

"**Shift Value**" means the amount that is due and payable by the Provider to the Worker for the Shift, calculated as the agreed hourly rate multiplied by the hours actually worked, as per this Independent Contractor Agreement. The Shift Value will be plus GST if the relevant Worker is GST-registered, and will otherwise not include GST or have GST added.

"**Wofo Services**" has the meaning set out in the Worker Terms of Use and the Provider Terms of Use.

"**Worker**" means the individual healthcare worker who is registered with Wofo and is specified as the Worker under this Agreement.

"**Worker Terms of Use**" means the terms of use entered into between the Worker and Wofo as amended from time to time, available at <https://www.medstaff.co.nz/>.

"**Worker Service Fee**" means the fee that Wofo charges a Worker for the use of the Wofo Services under the Worker Terms of Use.

## **2. INDEPENDENT CONTRACTOR AGREEMENT**

- 2.1 The parties enter into this Independent Contractor Agreement when a Provider confirms, and a Worker accepts, a Shift through the Platform.
- 2.2 This Independent Contractor Agreement is between the Provider and the Worker, and Wofo is not a party to it – even if Wofo confirms the Shift on behalf of the Provider. With the exception of its payment collection obligations under the Worker Terms of Use or the Provider Terms of Use, Wofo disclaims all liability arising from or related to this Independent Contractor Agreement.
- 2.3 Under this Independent Contractor Agreement, the Worker and Provider agree to comply with their legal obligations in respect of health and safety, including under the Health and Safety at Work Act 2015.

## **3. OBLIGATIONS**

- 3.1 Under this Independent Contractor Agreement, the Worker:
  - (a) will be an independent contractor, and acknowledges there is no employment relationship between the Provider and the Worker (or between Wofo and the Worker);
  - (b) will be responsible for its own liability for all taxes and levies (including accident compensation payments, GST and income tax), and any professional or other registration or licence fees;
  - (c) irrevocably appoints Wofo as the Worker's limited payment collection agent solely for the purpose of invoicing and collecting the Shift Value from the Provider for the ICA Services;
  - (d) is not entitled to any payment of expenses or reimbursement of expenses incurred in relation to the ICA Services;
  - (e) must provide the ICA Services professionally and with reasonable care and skill; and in accordance with:
    - (i) this Independent Contractor Agreement;
    - (ii) good industry practice;
    - (iii) all applicable laws;
    - (iv) any reasonable instructions the Provider issues to the Worker; and
    - (v) any policies the Provider provides to the Worker;
  - (f) must exercise reasonable care and skill when handling and storing the Provider's information and property and immediately return any such information and property after the end of the Shift;
  - (g) must accurately record all time for any Shift and provide accurate and complete reports to the Provider and Wofo as soon as reasonably practicable after a Shift ends;
  - (h) is not subject to any restraint of trade or non-compete obligations from the Provider, and may work for other entities without restriction (except for during the hours the Worker is providing ICA Services for a Shift);
  - (i) must not infringe the intellectual property rights of any third party in performing the ICA Services;

- (j) must comply with the Provider's privacy, confidentiality and security requirements, and otherwise take all reasonable steps to protect the Provider's confidential information and any personal information of third parties, including patients; and
- (k) must, while carrying out ICA Services:
  - (i) take all practicable steps to ensure the health and safety of the Worker, the Provider's personnel and agents, any visitors to the workplace and any people who are in the vicinity of the workplace;
  - (ii) comply with all of the Provider's health and safety rules and procedures; and
  - (iii) immediately notify the Provider of any workplace hazards, injuries or accidents.

3.2 Under this Independent Contractor Agreement, the Provider:

- (a) must ensure that it holds appropriate insurance cover for the Provider's own business risks;
- (b) may terminate this Independent Contractor Agreement with immediate effect by notice to the Worker where the Worker materially breaches the Independent Contractor Agreement, in which case the Provider is not required to pay any remaining Shift Value for the remainder of the Shift to the Worker;
- (c) must take all reasonably practicable steps to ensure the workplace is without risk to the Worker's health and safety; and
- (d) will pay the Shift Value to Wofo and not to the Worker, with Wofo acting as limited payment collection agent of the Worker, in accordance with the Provider Terms of Use.

**4. EARLY TERMINATION OF SHIFT**

4.1 Where the Worker and Provider agree to a shift arrangement spanning multiple days (**Multi-Day Shift**), either party may terminate the arrangement before the end of the Multi-Day Shift for any or no reason by giving the other party and Wofo written notice of termination, in which case the arrangement will come to an end:

- (a) at the completion of the current work period; or
- (b) if notice of termination is given after one work period has ended but before the next scheduled work period in the Multi-Day Shift is due to commence, with immediate effect.

4.2 Where a Multi-Day Shift is terminated early under this clause,

- (a) the Worker will be entitled to be paid the Shift Value for the hours that have been completed, but otherwise will have no entitlement to be paid for the balance of the Multi-Day Shift not completed; and
- (b) the Provider Service Fee and Worker Service Fee will be adjusted according to the hours that have been completed, and the Provider Service Fee and Worker Service Fee will not be payable in respect of the balance of the Multi-Day Shift not completed; and
- (c) the balance of the Multi-Day Shift may be re-listed on the Platform as a new Shift or a series of new Shifts in accordance with the Provider Terms of Use and the Worker Terms of Use.

**5. DISPUTES**

5.1 If there is any dispute relating to this Independent Contractor Agreement (**ICA Dispute**), the Worker and the Provider must first attempt to resolve it through informal discussions and negotiation. If this does not resolve the ICA Dispute, then the Worker and the Provider must (unless they agree otherwise) follow the dispute resolution process set out below.

- 5.2 If the ICA Dispute does not relate to an amount of more than \$10,000, then the Worker and the Provider agree to submit the matter to the Disputes Tribunal, where permitted by law.
- 5.3 If the ICA Dispute relates to an amount of more than \$10,000 and has not been resolved within 20 days of the ICA Dispute arising (or as otherwise agreed), then either the Worker or the Provider may refer the matter to mediation, in which case:
- (a) the mediation will be conducted as close to the location of the relevant Shift as possible, in accordance with Resolution Institute's standard mediation agreement;
  - (b) if the parties cannot agree on a mediator, the mediator (and the mediator's fee) will be determined by the Chair for the time being of Resolution Institute (or the Chair's nominee); and
  - (c) the parties will share the mediation costs equally, excluding the parties' own legal and preparation costs.
- 5.4 Either the Worker or the Provider may commence proceedings in relation to any ICA Dispute, if the ICA Dispute is not resolved on or before the earlier of the date that is:
- (a) 21 days after the ICA Dispute is referred to mediation; or
  - (b) 7 days after the date that mediation occurs.
- 5.5 Nothing in this Independent Contractor Agreement will prevent the Worker or the Provider from seeking interlocutory relief under this Independent Contractor Agreement. Otherwise, neither the Worker nor the Provider may commence proceedings in relation to any ICA Dispute, unless that person has first complied with the procedures in this Independent Contractor Agreement.

## **6. PAYMENTS**

- 6.1 Under this Independent Contractor Agreement, in respect of a Shift:
- (a) the Provider will pay the Shift Value to Wofo as the Worker's agent;
  - (b) the Provider will pay the Provider Service Fee to Wofo;
  - (c) Wofo will deduct the Worker Service Fee from the Shift Value due to that Worker; and
  - (d) Wofo will remit the balance of the Shift Value to the Worker, subject to any deductions.
- 6.2 Wofo will invoice the Provider on behalf of the Worker in respect of all Shifts performed by the Worker in the previous month. These invoices will show the Shift Value, Provider Service Fee and Worker Service Fee (and GST, if any) for each Shift.
- 6.3 Wofo will remit the Shift Value to the Worker in the next weekly pay cycle after completion of a Shift, even if Wofo does not receive the Shift Value from the Provider until later. The remittance will be made by direct credit to a New Zealand bank account nominated by the Worker.
- 6.4 The Provider must make all payments to Wofo under this Independent Contractor Agreement on or before the 20<sup>th</sup> of the month following the date of Wofo's invoice.
- 6.5 Upon the Provider paying the Shift Value to Wofo, the Provider's payment obligation to the Worker for the Shift Value is extinguished, and Wofo is responsible for remitting the Shift Value, in accordance with this Independent Contractor Agreement. If Wofo does not remit any such received amounts, the Worker will have recourse only against Wofo.
- 6.6 If the Provider fails to pay the Shift Value to Wofo within 21 days of the date payment is due, Wofo may recover from the Worker any Shift Value paid to the Worker in advance, and the Worker may pursue the Provider directly for recovery of the Shift Value not paid.
- 6.7 If the Provider pays Wofo for a Shift and later discovers that the corresponding Shift Value was not due (for example, where the Worker did not complete the Shift), the Provider will have no

recourse against Wofo. The Provider may seek to recover any excess Shift Value from the Worker directly under this Independent Contractor Agreement.

## **7. CANCELLATIONS**

7.1 No amount will be payable by the Provider to the Worker if:

- (a) the Worker or the Provider cancel a reserved Shift request before the reserved Shift is confirmed by the Provider;
- (b) the Provider or Wofo cancel a confirmed Shift at any time before commencement of that confirmed Shift; or
- (c) the Worker cancels a confirmed Shift more than 6 hours before the time that Shift is scheduled to commence.

7.2 If the Worker wishes to cancel a confirmed Shift within 6 or fewer hours before the time a Shift is scheduled to commence, or if the Worker chooses to not complete the Shift, then:

- (a) Wofo may charge the Worker a cancellation fee of up to 50% of the Worker Service Fee for that Shift; and
- (b) the Provider is not required to pay the remainder of any Shift Value to the Worker in respect of that Shift.

7.3 Except as provided under clause 3.2(b), if the Provider cancels a confirmed Shift once the Shift has started or does not permit the Worker to complete an accepted Shift, then:

- (a) the Provider must pay Wofo the full Provider Service Fee for that Shift; and
- (b) the Provider must pay the Worker for the full Shift Value if the Worker was providing ICA Services for the Shift as at the time of cancellation.

## **8. FORCE MAJEURE**

8.1 Neither the Worker nor the Provider will be liable to the other for failure to perform its obligations if the failure results from any cause beyond that party's reasonable control, including force majeure, act of God, fire, explosion, epidemic or pandemic, industrial dispute or governmental action.

## **9. DISCLAIMERS**

9.1 The Worker is not an employee of, or contractor to, Wofo. The Worker does not provide any services to Wofo, and nothing in this Independent Contractor Agreement will constitute any trust, employment relationship, joint venture, partnership, agency or arrangement between Wofo and either the Worker or the Provider.

## **10. GENERAL**

10.1 If any provision of this Independent Contractor Agreement becomes unenforceable, that provision will be read down to become enforceable or, if not possible, deleted. The other terms will continue to apply with full effect.

10.2 For the purposes of Part 2 subpart 1 of the Contract and Commercial Law Act 2017, Wofo is a designated person and is entitled to enforce against the Worker or Provider every provision of this Independent Contractor Agreement that confers a benefit on Wofo.

10.3 This Independent Contractor Agreement supersedes all previous understandings, agreements and representations and constitutes the entire agreement between the parties.

10.4 New Zealand law governs this Independent Contractor Agreement. New Zealand courts have exclusive jurisdiction.