**APPENDIX 3–DRAFT MEMORANDUM OF UNDERSTANDING FOR *PAY EQUITY PARTIAL PAYMENT IN ADVANCE***

**All District Health Boards**

**Memorandum of Understanding**

**Pay Equity Partial Payment in Advance**

**September 2021**

**BETWEEN**

Northland District Health Board Waitematā District Health Board

Auckland District Health Board Counties Manukau District Health Board

Waikato District Health Board Bay of Plenty District Health Board

Lakes District Health Board Hauora Tairāwhiti District Health Board

Taranaki District Health Board Hawkes Bay District Health Board

Whanganui District Health Board Mid-Central District Health Board

Capital and Coast District Health Board Hutt Valley District Health Board

Wairarapa District Health Board Nelson Marlborough District Health Board

West Coast District Health Board Canterbury District Health Board

South Canterbury District Health Board, and Southern District Health Board;

hereinafter referred to individually as the “employer” and collectively as “the DHBs”.

*AND*

The MERAS, the “union”.

**Background**

MERAS raised their pay equity claim on 15 June 2018, this was acknowledged and accepted by the DHBs on 30 June 2018.

The MERAS pay equity claim is significant and has been a lot more complex than first envisaged in 2018. While the DHBs and MERAS have been working hard to progress the claim and reach a settlement agreement, the process has taken a lot longer than anticipated. In 2020, the parties’ ongoing work was also interrupted by COVID-19.

However, the DHBs and MERAS have agreed that the claim process has now reached a point where, based on the work that has been done to date, the parties have confidence that the work completed will demonstrate that the midwifery workforce has been the subject of historical sex-based undervaluation.

More work is needed to determine the actual value (or amount) of the sex-based undervaluation and to reach a settlement agreement.

In recognition that, based on the work completed by the parties to date and in recognition of the time it is taking to settle the claim fully and as a whole, the DHBs are offering a pay equity partial payment to midwives who are MERAS members covered by the DHB MERAS Multi-employer Collective Agreement (the MECA), as part of its offer of settlement of the MECA itself, and subject at all times to the offer of settlement being ratified by the required majority of MERAS members on or by 17 September 2021.

**Purpose**

The purpose of this memorandum of understanding is to set out the terms and eligibility criteria of the pay equity partial payment, which will be made subject to all conditions being met in any individual circumstance, and subject to the offer of settlement of the MECA (of which this memorandum of understanding forms part) being ratified by 17 September 2021.

**Roles**

The district health boards (DHBs) are responsible for providing or funding the provision of public health services, to improve, promote and protect the health of people and communities in their district.

MERAS is committed to the representation of members and the promotion of midwifery. MERAS embraces Te Tiriti O Waitangi and works to improve the health status of all peoples of Aotearoa New Zealand through participation in health and social policy development.

**Outcomes**

Subject to the DHBs’ offer of settlement of the MECA being ratified on or by 17 September 2021 the desired outcomes of this memorandum are:

1. To provide the MERAS midwifery workforce with an acknowledgement from the DHBs that they have been the subject of historical sex-based undervaluation; and
2. To provide eligible MERAS members with a partial payment towards the ultimate pay equity settlement that is yet to be determined, while the parties continue in partnership to progress the pay equity claim process to determine the extent of sex-based undervaluation, and to settle the pay equity claim; and
3. The pay equity base salary adjustment and lump sum payment are offered in anticipation of the pay equity claim being settled

**Agreement**

The DHBs and MERAS agree to the following terms and eligibility criteria for a pay equity partial payment:

* Base salary adjustment - effective 2 August 2021 all base salary rates (other than Caseload Midwives) increase by $4,000 gross per annum.

The quantum of this increase recognises the importance of maintaining the integrity of the pay equity process, ensuring this work is done correctly and that over correction is avoided. Once the pay equity settlement is agreed, if over correction does occur the over corrected base pay rates will be maintained at their increased level until such time as agreed pay equity base rate adjustments exceed that base rate.

* Caseload Midwives step 1 only, Base salary adjustment - effective 2 August 2021 will increase by $4,000 gross per annum.
* A one-off pay equity lump sum payment of $6,000 gross pro-rated by FTE and service (for those with less than 12 months service on 2 August 2021) for all full-time, part-time and casual Registered, Community and Caseload Midwives and Senior Midwives who:
	+ are covered by the MERAS MECA on the date the new MECA is ratified; and
	+ were members of MERAS on (1 September 2021) and until and including the ratification date of the new MECA.
* Payment of the lump sum will be made as soon as practicable after a successful ratification.

The lump sum part payment for part-time and casual employees will be based on actual hours worked over the 12 months prior to the date of ratification, up to the equivalent of 1 FTE.

Employees on leave without pay or parental leave on the ratification date of the new MECA, and who otherwise meet in full the criteria set out above, will be eligible for the relevant pay equity payment based on the greater of actual hours worked over the previous 12 months, or contractual FTE and will receive the payment on written application after they return to work from that period of leave.

Once settlement of the pay equity claims is agreed, they will have an effective date of 31 December 2019. Workers covered by the pay equity claim(s) may be entitled to back pay to 31 December 2019, or their start date (whichever is the later) with the final back pay (PE backpay) amount calculated individually for each employee.

The pay equity lump sum payments and the pay equity base salary adjustments are agreed by the parties as instalments made in advance of the PE backpay and will be deducted from the backpay owed to employees covered by the claim.

*Deduction of pay equity payment from PE backpay*

The pay equity lump sum payments and the pay equity base salary adjustment have been agreed by the parties as instalments made in advance of the PE backpay and will be deducted from the backpay owed to employees covered by the claim as follows.

The gross value of:

* The pay equity lump sum payment; plus
* The increased gross earnings (including overtime, penal and other base-related payments resulting from the pay equity salary adjustment) received since 2 August 2021 and up to the date on which the new pay equity rate is first implemented.

DHBs have agreed not to recover from individual employees the amount by which any pay equity lump sum payment or increased gross earnings resulting from the pay equity adjustment exceeds the value of the final PE backpay.

The parties have agreed and commit to the timely commencement and completion of bargaining to settle the claims. To ensure prompt settlement of these claims pay equity bargaining will commence as soon as possible in September/October 2021 and, subject to the best efforts of all parties, settlement of the claims will be agreed by 30 July 2022.

*Communications*

The DHBs will communicate to employees covered the new MERAS MECA, and MERAS will communicate to its members, that:

1. the pay equity payment is being offered in advance of the pay equity claim settlement, and
2. the amount received by each employee will be deducted from the gross back pay that the employee becomes entitled to once the pay equity claim settlement is achieved.

*Bargaining Fee Payers*

Bargaining fee payers are not MERAS members, and therefore will not be eligible for this pay equity lump sum payment but will be eligible to receive the pay equity adjustment to base rates and the full pay equity settlement once the claim process is completed.

*Timing*

The lump sum payment will be made as soon as practicable after a successful ratification of the proposed settlement for the MECA, or where employees are on parental leave or unpaid leave, as soon as practicable on their return to work and following written application for the payment being received by the employing DHB.

*Other commitments*

In addition to the lump part sum payment outlined above, the DHBs commit to:

* + 1. continue to work in partnership with MERAS and the other relevant parties to progress the pay equity claim.
		2. the effective date of the settlement of the pay equity claim remaining as 31 December 2019.

**Conditions**

This memorandum of understanding forms part of the proposed terms of settlement dated 1 September 2021, MERAS MECA and will therefore only become effective and enforceable as an agreement if the MECA is ratified by the required majority of MERAS members on or by 17 September 2021.

If the MECA is not ratified by that time, this memorandum of understanding will automatically become invalid and unenforceable against or by the parties at Monday 20 September 2021

**Next Steps – Progressing the claim**

Further work is required to identify the value (or quantum) of the sex-based undervaluation, and the parties are continuing this pay equity claim process to determine the extent of sex-based undervaluation. Following this, the next step is for the parties to commence bargaining to settle the pay equity claim.

Applying the pay equity payment to MERAS members is not intended to disadvantage other employees covered by the claim. The parties acknowledge that other employees covered by the claim may also receive the pay equity payment prior to the eventual settlement of the claim.

The parties jointly agree and commit to the timely commencement and completion of bargaining for settlement of the Midwifery pay equity claim. To ensure prompt settlement of this claim pay equity bargaining will commence as soon as possible in September 2021.

On commencement of this Memorandum of Understanding, the Parties will commence preparations for pay equity bargaining.

**Problem Resolution**

Should it become valid and enforceable, all disputes and differences between the parties in relation to the interpretation or performance of this memorandum of understanding shall be settled in the first instance by discussions between the parties.

If this does not resolve the dispute the parties will enter a mediation process with a mediator agreed by both parties.

**Variation**

Should it become valid and enforceable, this memorandum of understanding can only be modified by a written agreement duly signed by persons authorised to sign agreements on behalf of the DHBs and the MERAS.

**Term**

Should it become valid and enforceable, this memorandum of understanding will terminate on when the DHBs and MERAS reach an agreed settlement to the claim.

**Effective Date**

This agreement will come into force on 17 September 2021, the date of ratification for the MERAS MECA, 1 February 2021 to 30 April 2023.

**Confidentiality**

Information that is exchanged shall be treated as confidential for use of the participating parties only and should not be released without prior written approval from the other party.

**Financial Responsibilities**

Each participating party will bear the costs it incurs in relation to entering into, and if relevant, enforcing, this memorandum of understanding.

**Definitions**

*Midwives*

The ‘midwifery workforce’ includes those roles covered by the MERAS MECA