

## Terms and Conditions of Business for the Introduction of Staff

Between:

**Healthcare Australia Pty Ltd** trading as HCA Allied Health of Level 22, 201 Elizabeth Street, Sydney  
NSW 2000, ABN 95 108 180 589 (the “Agency”).

And (Company/Organization): \_\_\_\_\_ ABN/ACN: \_\_\_\_\_  
(the “Client”)

Together the Client and the Agency are referred to as the “Parties”

**It is agreed between the Parties:**

### 1. Agreement between the Agency and the Client

- 1.1 These Terms and Conditions of Business for the Introduction of Staff (the “Terms and Conditions”) together with any special conditions or documents incorporated by reference set out the terms of the “Agreement” between the Parties.
- 1.2 Any terms contained in any document supplied by the Client will not form part of this Agreement.

### 2. Definitions

In this Agreement:

“Agency Materials” means any document, writing, price list, contract, method of doing business curriculum vitae, graphic, logo, layout or other material in which Intellectual Property rights or other rights subsist provided by the Agency to the Client for the purpose of the Agency providing the Services to the Client.

“Business Day” means a day that is not a Saturday or a Sunday or a public holiday in the state of New South Wales. “Candidate” means any person Introduced to the Client by the Agency for the purposes of the Client Engaging the person.

“Claim” means suits, actions, causes of action, claims and demands for compensation, damages or other relief (including any declaratory relief as to the existence or exercise of a right for monetary relief) on any basis whatsoever whether at law, in equity or under statute and whether in the past, present or future.

“Commencement Date” means the Business Day on which an Engagement commences and the Candidate starts work with the Client.

“Engagement” means any engagement, employment or use of a Candidate by the Client during the Introduction Term pursuant to any form of agreement involving the provision of services by the Candidate to the Client including but not limited to a contract of service, a contract for services, an agency agreement, a licence agreement, a franchise agreement or a partnership agreement, either on a Permanent, Fixed Term or Locum basis (including through a staff bank) and “Engages” and “Engaged” shall have the same meaning.

“Engagement Term” means the total period during which a Candidate is to be employed or used by the Client following the acceptance by a Candidate of an Engagement offer either on a Permanent, Fixed Term or Locum basis.

“Fee” means the fee which is payable by the Client upon the Engagement of a Candidate as set out in the Fee Schedule.

“Fee Schedule” means the schedule to these Terms and Conditions entitled *Schedule 1 - The Fee* and which contains the Agency’s table of fees and price lists.

“Fixed-Term” means the Engagement of a Candidate on fixed-term employment basis.

**“Force Majeure Event”** means an occurrence including but not limited to fire, flood, casualty, lockout, strike, labour disputes, industrial action of any kind, unavoidable accident, breakdown of equipment, national calamity or riot, acts of god, the enactment of any act of parliament or the act of any other legally constituted authority, any cause or event arising out of or attributed to war, or any other cause or event (whether of a similar or dissimilar nature) outside the reasonable control of either Party to this Agreement.

**“GST”** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“Intellectual Property Rights”** shall mean the rights in any patents, copyright, designs, trademarks (whether registered or unregistered), domain names, confidential information and all rights of a similar nature which subsist in Australia or elsewhere whether or not such rights are registered, registrable or capable of being registered.

**“Introduction”** or **“Introduced”** means the introduction of a Candidate by the Agency to the Client for the purpose of the Agency providing the Services to the Client and shall include but not be limited to the Client speaking to or interviewing a Candidate in person or by telephone and/or the Agency sending or passing to the Client any information which identifies or is capable of identifying the Candidate, including but not limited to a curriculum vitae.

**“Introduction Term”** means the period beginning the Business Day on which the Agency Introduces a Candidate to the Client and expiring on the Business Day which is twelve months from the first mentioned Business Day.

**“Locum”** means the Engagement of a Candidate to fill a temporary or casual position including where the Client Engages the Candidate on hire as an agency PAYG worker paid by the Agency or a sub-contractor through their own company or as a sole trader.

**“Part-Time”** means the Engagement of a Candidate on a permanent part-time employment basis.

**“Permanent”** means the Engagement of a Candidate on a permanent full time employment basis.

**“Post-Locum Term”** in relation to a Candidate Engaged on a Locum basis means the period beginning the Termination Date and ending on the Business Day which is twelve months from the Termination Date.

**“Related Body Corporate”** and **“Related Entity”** have the meaning given to those terms in the *Corporations Act 2001* (Cth).

**“Remuneration”** means the total salary package, wages or fees to be paid to an Engaged Candidate during the Engagement Term and includes superannuation, allowances and any other benefits.

**“Services”** means the recruitment and like and associated services provided by the Agency to the Client in accordance with this Agreement.

**“Termination Date”** means the Business Day that an Engagement terminates, expires or ends.

### 3. The Contract

- 3.1. This Agreement is capable of acceptance by the Client (or its representative) signing the signature panel to the Fee Schedule and returning a copy of the signed Agreement to the Agency.
- 3.2. Notwithstanding clause 3.1 above where an Introduction or Engagement occurs the terms set out in this Agreement are deemed to be agreed to and accepted by the Client, irrespective of whether the Client has signed and returned a copy of the Agreement to the Agency.

### 4. Permanent and Fixed Term warranties

- 4.1. Where a Candidate is engaged by the Client on a Permanent or Fixed-Term basis then the Agency warrants that it shall:
  - i. introduce a Candidate who is reasonably competent and qualified in respect to the position description provided by the Client;
  - ii. act as a mediator if required or instructed between the Client and the Candidate in relation to any discussion concerning the Candidate’s terms of employment; and
- 4.2. Where a Candidate is Engaged or is to be Engaged by the Client on a Permanent or Fixed-Term basis the Client warrants that it shall:
  - i. meet all employer obligations, as required by law, in respect to their Engagement of the Candidate including payment of workers’ compensation, superannuation entitlements and fringe benefit tax, as applicable;
  - ii. assume responsibility for the health and safety and supervision of each Candidate throughout the Engagement Term.
  - iii. not approach the Candidate’s referees or current employer and that it shall not request the Agency to do so until an interview has been completed, if the client then wishes to contact these parties directly at this point, it shall inform the Agency and shall obtain the Agency’s permission in writing before any contact is made;

- iv. notify the Agency in writing of any offer of an Engagement which it makes to the Candidate; and
  - v. notify the Agency in writing immediately where an offer of an Engagement to the Candidate has been accepted by the Candidate and shall provide details of the Candidates' Remuneration to the Agency pursuant to the Engagement.
- 4.3.** Where the Engagement of a Candidate is on a Permanent or Fixed-Term basis the Client also acknowledges and agrees that:
- i. Candidates are deemed to be under the exclusive direction, supervision and control of the Client throughout the Engagement; and
  - ii. its decision whether to Engage a Candidate is the sole responsibility of the Client.
- 5. Locum, Temporary or Contractor Engagement warranties**
- 5.1.** Where the Engagement of a Candidate is on a Locum basis the Agency warrants that it shall:
- i. use its reasonable endeavours to ensure the suitability of each Candidate by obtaining confirmation of the Candidate's identity, experience, training, qualifications, any authorisation(s) which the Client reasonably considers necessary or which may be required by law or by any professional body and the Candidate's willingness to work in the position which the Client seeks to fill;
  - ii. on instruction by the Client pay the Candidate directly where they are an independent contractor; and
  - iii. on instruction by the Client pay the Candidate directly where they are an agency PAYG worker.
- 5.2.** Where the Engagement of a Candidate is on a Locum basis the Client warrants that it shall be solely responsible for:
- i. any decision as to whether or not it elects to Engage a Candidate;
  - ii. the induction and work performance of the Candidate;
  - iii. the health and safety and supervision of each Candidate throughout the term of the Engagement; and
  - iv. ensuring that the Candidate has adequate professional indemnity and other insurance cover and that such cover is kept current at all times during the Engagement Term; and
  - v. providing the Candidate with reasonable facilities and benefits of a standard suitable for a person with the Candidate's experience, skills and qualification.
- 5.3.** Regardless of whether a Candidate is to be paid directly by the Client or is paid indirectly through the Agency, the Client warrants and agrees that it shall be solely responsible for:
- i. payment of the Candidate's salary and other Remuneration, all income tax, and other statutory deductions;
  - ii. all premiums for workers compensation insurance and any other insurance; and
  - iii. the procurement of the Client's own insurance cover in respect of all and any claims howsoever arising in connection, either directly or indirectly, with the services provided by the Candidate to the Client.
- 6. Notification, Fees & Price Fluctuations**
- 6.1.** Where a Candidate is introduced by the Agency to the Client, the Client must pay the relevant Fee to the Agency as set out in the Fee Schedule.
- 6.2.** The Fee Schedule specifies the type of Fee that applies to a particular Engagement and the method of calculation.
- 6.3.** The relevant Fee is payable by the Client to the Agency if the Engagement of a Candidate occurs during the Introduction Term or the Post-Locum Term.
- 6.4.** Fees are due for payment by the Client, in full, within 10 Business Days of the date the Agency issues an invoice to the Client for those Fees.
- 6.5.** If the Client does not pay an invoice in full by the payment due date the Agency may, at its election, charge the Client in addition to the Fees:
- i. compound interest calculated monthly on the total outstanding balance of the Fees at rate of 10% per annum; and
  - ii. any costs and expenses, including any commission payable to any commercial or mercantile agents and legal costs (on a full indemnity basis), incurred by the Agency in recovering any unpaid amounts pursuant to the Client's Agreement with the Agency.
- 7. Payment Terms**
- 7.1** All Fees and other costs and expenses must be paid, in full, by the Client to the Agency absent deduction or set-off.
- 7.2** Permanent Fees as set out in the Fee Schedule are payable as follows:
- i. 50% of the total Fees when the Client Engages the Candidate; and
  - ii. 50% of the total Fees on the Commencement Date.
- 7.3** Permanent Fees as set out in the Fee Schedule for Fixed Term, Part-Time and Locum to Permanent Engagements are payable as follows:
- i. if the Engagement is for a full time Fixed-Term of 12 months or more, 100% of the Fee is payable;
  - ii. if the Engagement is for a full time Fixed-Term or Part-Time Fixed-Term of less than 12 months, the Fee is to be calculated on a pro-rata basis by reference to the length of the Engagement Term;
  - iii. if the Candidate is Engaged for a full time Fixed-Term of less than 12 months and then further Engaged beyond the initial agreed Engagement Term, then a further Fee calculated on a pro-rata basis will be payable for each month (or part thereof) beyond the initial term up to a maximum of 12 months;

- iv. if the Candidate is Engaged on a Part-Time basis the Remuneration for calculating the Fee will be on the basis of the Candidate's Permanent full-time equivalent Remuneration;
- v. if the Engagement of a Candidate occurs in relation to a Candidate previously Engaged on a Locum basis and during the Post-Locum Term then the total Fee payable by the Client to the Agency shall be calculated in accordance with the table to the Fee Schedule entitled *Permanent Engagement of a Locum (temp to perm)*, such Fee is payable regardless of whether the subsequent Engagement of the Locum Candidate is on a Locum, Part-Time or Permanent basis or as a result or consequence of the Services provided by the Agency to the Client..
- vi. Where a Candidate is engaged by Related Body Corporate or Related Entity of the Client during the Introduction Term or Post-Locum Term then the Client shall pay to the Agency the Fee in respect of the Candidate as if the Client had Engaged the Candidate.

- 7.4 Unless otherwise specified, the Fees are exclusive of GST, if GST is payable on any supply made by the Agency to the Client pursuant to this Agreement, the Client must pay to the Agency an additional amount equivalent to the GST when that payment is due to the Agency.
- 7.5 Where an offer of an Engagement has been made in writing by the Client and is subsequently withdrawn by the Client after acceptance by the Candidate, and through no fault of the Candidate the applicable Fee will be payable as if the Candidate had been Engaged.
- 7.6 If the Client fails to notify the Agency of any offer of an Engagement which it makes to the Candidate that the Candidate has accepted or fails to provide accurate details of the Remuneration to the Agency then the Agency may, at its election:
- i. charge the Client a Fee equal to prevailing market rates of Remuneration for a like Candidate as determined by the Agency acting reasonably; or
  - ii. on reasonable notice being given to the Client inspect any documents, material, books or records in the possession of the Client which are relevant to the determination of the Fee payable in accordance with the Fee Schedule, and the Client warrants that it will provide all necessary facilities for that purpose.

## 8 Replacement Guarantee

- 8.1 The Agency guarantee set out in this clause 8 (the "**Guarantee**") only applies to Permanent placements (but does not include Candidates previously Engaged on a Locum basis by the Client) and for a period of 12 weeks beginning the first Business Day of an Engagement (the "**Guarantee Period**").
- 8.2 This Guarantee operates such that if the Client is not satisfied with the Candidate they have Engaged and elects to end the Candidate's employment during the Guarantee Period then contingent on the Client providing notice in writing to the Agency during the Guarantee Period, the Agency will use its reasonable endeavours find a replacement for the Candidate at approximately the same salary level, brief specification, geography and job function.
- 8.3 If the Agency fails to find a suitable replacement Candidate within 12 weeks of being notified in writing by the Client, then the Client will be eligible for a credit note towards the next placement Fee which will be valid for a period of 12 months (the "**Credit Note**").
- 8.4 The value of the Credit Note shall be calculated in accordance with the following:
- i. where the Candidate was Engaged by the Client for a period not exceeding 4 weeks - 75% of the placement Fee;
  - ii. where the Candidate was engaged by the Client for a period of more than 4 weeks but not exceeding 8 weeks Business Days - 50% of the placement Fee; and
  - iii. where the Candidate was engaged by the Client for a period of more than 8 weeks but not exceeding 12 weeks - 25% of the placement Fee.
- 8.5 The Guarantee is contingent on the Client having paid in full all Fees to the Agency prior to or on the due date for payment.
- 8.6 The Guarantee is not applicable where the Candidate is retrenched due to a downturn in business, closure of business, company takeover or other restructuring, or where there is a significant change to a role or role's responsibilities.

## 9 Cancellation

- 9.1 If for any reason the Client cancels the Engagement of a Permanent Candidate after the offer of a Permanent Engagement has been made to and accepted by the Candidate, but prior to the Commencement Date, then the Client must pay the Agency the applicable Fee in full and shall not be entitled to any discount.
- 9.2 In the event the Client cancels the Engagement of a Locum Candidate prior to the Commencement Date for a short term Engagement of 1 to 5 Business Days the Client will provide the Agency a minimum of 24 hours' notice in writing of termination. Should the Client fail to provide the Agency with written notice as required by this clause 9.4 then the Client will incur an Agency fee of 50% of the original applicable Fee.
- 9.3 In the event the Client cancels the Engagement of a Locum Candidate prior to the Commencement Date and/or during the locum placement for a longer term Engagement of 5 Business Days or more the client will provide the Agency a minimum of 5 Business Days' notice in writing of the termination. Should the Client fail to provide the Agency with written notice as required by this clause 9.5 then the Client will incur an Agency fee of 50% of the original applicable Fee.
- 9.4 The Client warrants and agrees that it will indemnify the Agency and the Candidate for any fees, costs expenses or loss incurred by the Agency or the Candidate arising from a consequence of a cancellation of an Engagement in accordance with

this clause 9, such costs include, but are not limited to, the Candidate's travel and accommodation related expenses, disbursements and costs.

## **10 Intellectual Property, Confidentiality & Third Party Introductions**

- 10.1** In providing the Services to the Client, the Agency may provide the Client with, or access to, Agency Material and other documents and material generally (altogether "**Agency Information**"), in relation to any such material the Client warrants and agrees that:
- i. the Agency Information is and shall be kept strictly confidential and shall not be passed or disclosed to any third party;
  - ii. the Client shall not use, disclose or commercially exploit the Agency Information for any purpose other than directly in relation to the provision by the Agency to the Client of the Services;
  - iii. the Agency owns and shall retain all the Intellectual Property rights in and to the Agency Information; and
  - iv. to the extent that the Client obtains any ownership, or Intellectual Property Rights or other rights in and to the Agency Information, the Client irrevocably assigns those rights to the Agency.
- 10.2** Where the Client discloses Agency Information to any third party, whether directly or indirectly, and a Candidate is engaged by that third party within 12 months of the date of the disclosure, the Client shall pay to the Agency the Fee in respect of the Candidate as if the Client had Engaged the Candidate.

## **11 Suitability**

- 11.1** The Agency shall use reasonable endeavours to ensure the suitability of each Candidate by obtaining confirmation of the Candidate's:
- i. identity;
  - ii. experience, training, qualifications and any authorisation(s) which the Client considers necessary or which may be required by law or by any professional body; and
  - iii. willingness to work in the position which the Client seeks to fill.
- 11.2** The Agency shall notify the Client of this information either orally, in paper form or by electronic means. The Agency shall not undertake further checks unless requested to do so by the Client. Any such further checks will be subject to charges which shall be confirmed to the Client before the checks are undertaken.
- 11.3** The Agency gives no warranty, express or implied, regarding the suitability of any Candidate. The Client warrants and agrees that it shall:
- i. take such steps as it deems necessary to satisfy itself regarding the suitability of the Candidate.
  - ii. be responsible for verifying any references (including but not limited to the confirmation of any professional or academic qualifications), arranging all medical examinations and investigations of the Candidate and obtaining any applicable immigration permissions;
  - iii. familiarise itself with all relevant legislation regarding employment of Candidates; and
  - iv. be solely responsible for any loss or expense incurred due to any infringement of legislation by the Client.

## **12 Liability & Indemnity**

- 12.1** The Client warrants that the Agency shall not be liable to the Client for any Claims, loss, liability, damages, costs, delay, and/or expenses whatsoever suffered or incurred by the Client, whether direct, indirect or consequential, as a result of the negligence, failure to hold adequate insurance cover (including professional indemnity insurance), dishonesty or misconduct of the Candidate or arising from, or connected with the Client's Engagement of a Candidate or the failure by the Agency to Introduce a suitable Candidate.
- 12.2** Notwithstanding anything else contained in the Client's Agreement with the Agency, the maximum extent of the liability of the Agency to the Client, whether under contract, at law, in equity or otherwise, is limited to an amount equal to the Fees actually paid by the Client to the Agency in accordance with this Agreement.
- 12.3** The Client shall indemnify the Agency from and against all losses, damages, costs and expenses suffered or incurred by the Agency, and all claims, demands, actions, suits or proceedings made or brought against the Agency arising out of:
- i. the Client's breach of any of the provisions of this Agreement; and
  - ii. any loss, damage, or injury caused by, resulting from or in any way connected with the Services provided by the Agency to the Client under this Agreement and howsoever caused.
- 12.4** The indemnity at clause 12.3 does not apply to the extent that any such loss or damage arises from the wilful misconduct of the Agency, or any of its officers, employees or agents.

## **13 Miscellaneous**

- 13.1** This Agreement constitutes the entire agreement between the Parties in relation to the provision of the Services by the Agency to the Client, and the parties agree that all previous agreements, understandings, negotiations and any terms implied by trade custom, practice, course of dealing or otherwise by law in relation to the Services are superseded, have not been relied upon and are expressly excluded.
- 13.2** No variation or alteration of this Agreement shall be valid unless agreed between a director or manager of the Agency and the Client in writing, stating the date on or after which such varied terms shall apply.

- 13.3** Unless the context requires otherwise, references to the singular include the plural and references to the masculine include the feminine and vice versa
- 13.4** The headings contained in this Agreement are for convenience only and do not affect its interpretation.
- 13.5** If the Agency is unable to comply with its obligations under this Agreement due to material interruption or interference caused by a Force Majeure Event, then such obligations shall be suspended while the interference or interruption continues and the Agency shall not be liable for any loss the Client suffers or costs the Client incurs as a consequence of the interference or interruption. Notwithstanding this both Parties shall endeavour to minimise and reduce any period of suspension caused by a Force Majeure Event.
- 13.6** No failure or delay by the Agency to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 13.7** If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required to render the provision legal, valid and enforceable, be severed and will not affect the validity or enforceability of the remaining provisions which will continue in full force.
- 13.8** This Agreement is governed by the laws of New South Wales Australia and each Party submits to the exclusive jurisdiction of the courts of that state and waives any right to any claim of *forum non-conveniens*, inconvenient forum, or transfer or change of venue.

**Schedule 1 – The FEE STRUCTURE- PERMANENT**

Terms used in this Schedule are defined in clause 1 of the Terms and Conditions. The Fee chargeable plus GST to the Client shall be:

**Contingent / Non-Exclusive Engagements - Recruitment Assignments**

HCA will work with you on a Contingent / Non-Exclusive basis, where you have authorized number of suppliers to identify Candidates for a given requirement and the Service Fee is contingent upon you employing a Candidate we introduce to you. Service Fees for Contingent / Non-Exclusive Engagements are as follows:

**Allied Health Professionals & Administrative positions**

Total Salary Package	Fee % of Candidate remuneration as defined in clause 1
≤ \$100,000	16 (\$5000 Minimum Candidate introduction fee)
\$100,001 - \$150,000	18
\$150,001 - \$200,000	23
> \$200,001	POA
Locums	Negotiated on a case by case scenario (see Schedule 2)

**Permanent Engagement of a Locum (Temp to Perm)**

0 – 520 hours (worked by locum)	100% of perm fees
521 – 1040 hours (worked by locum)	75% of perm fees
1041 hours plus (worked by locum)	50% of perm fees

**Schedule 2 – FEE STRUCTURE – TEMPORARY (please remove if not applicable)**

<b>Item 1</b>	Temporary Position:	
<b>Item 2</b>	Commencement date: Finish Date:	Time:
<b>Item 3</b>	Charge cycle:	Weekly
<b>Item 4</b>	Charge rate Inclusions:	Agreed charge rate \$XXXX/hr ex GST le: Travel / Accommodation
<b>Item 5</b>	Certification required	
<b>Item 6</b>	Report to	XXXXX

I agree to terms and conditions set out in this Agreement and hereby acknowledge that I have read and fully understand them and authorised to accept and sign of behalf of my organisation.

Signed on behalf of Client:

\_\_\_\_\_

Name & Position:

\_\_\_\_\_

Company:

\_\_\_\_\_

ABN/ACN:

\_\_\_\_\_

Date:

\_\_\_\_\_

Signed on behalf of Healthcare Australia:

\_\_\_\_\_

Name & Position:

\_\_\_\_\_

Date:

\_\_\_\_\_