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

Between:

Healthcare Australia Pty Ltd trading as HCA Doctors of Level 22, 201 Elizabeth Street New South Wales,
ABN 95 108 180 589 ("the Agency").

And (Company/Organisation) _____ ABN: _____
Together referred to as "the Parties"

IT IS AGREED:

1. Definitions

In this Agreement (unless the context otherwise requires):

"Candidate" means any person Introduced to the Client by the Agency for the purposes of an Engagement.

"Locum" or "Contractor" or "Temporary" means a candidate to fill a temporary or casual position where the client engages the person on hire as an agency PAYG worker paid by the Agency or a sub-contractor through their own company/sole trader and is paid on a tax invoice to the agency or by the Client.

"Client" means the person, firm or corporate body together with any subsidiary or associated company as defined by Australian company law including but not limited to a hospital, trust, primary care trust or other health organisation to whom the Candidate is Introduced.

"Commencement Date" means the date on which an Engagement commences.

"Engagement" means any engagement, employment or use of the Candidate procured by or solicited by the Client or any third party pursuant to any form of agreement involving the provision of services by the Candidate including (but not exclusively) 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 or temporary, contract or locum basis (including through a staff bank), and **"Engages"** and **"Engaged"** shall be construed accordingly.

"Locum Assignment Confirmation" or "Permanent Job Description" means written or verbal confirmation by the client that forms a duty statement outlining the organisation description, position description and responsibilities, purpose, professional registration and other requirements and essential criteria.

"Fee" means the percentage of the Remuneration set out in clause 5 (or any other amount(s) agreed in writing between the Parties), which is payable by the Client to the Agency upon the Candidate's acceptance date of an offer of Engagement.

"Introduction" means the introduction of a Candidate by the Agency to the Client which shall include (but shall not be limited to):

- a) the Client speaking to or interviewing a Candidate in person or by telephone following the Client's instructions to the Agency to fill a vacancy; or
- b) the Agency sending or passing to the Client any information which identifies the Candidate, including but not limited to a curriculum vitae, and "Introduced" shall be construed accordingly.
- c) Introductions are valid for 12 months from the date of the initial introduction or following cessation of the services being provided under these terms, whichever is the latter.

"Remuneration" includes gross annual salary (which includes superannuation, allowances and benefits) or fees.

"Termination Date" means the date the Engagement terminates.

- 1.1. Unless the context requires otherwise, references to the singular include the plural and references to the masculine include the feminine and vice versa
- 1.2. The headings contained in this Agreement are for convenience only and do not affect their interpretation.

2. The Contract

- 2.1. The terms set out in this Agreement are deemed to be accepted in confidence (irrespective of whether this agreement is signed) by the Client in the event of an Introduction or Engagement.
- 2.2. This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements relating to its subject matter. The Client acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement but nothing in this clause shall limit or exclude any liability for fraud.
- 2.3. 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.

3. Permanent recruitment and Fixed Term Contracts obligations

Where the Engagement of Candidate relates to a Permanent employment or a Fixed Term Contract then the Agency obligations will be:

- 3.1. To introduce a Candidate for engagement who is reasonably competent and qualified in respect to the description provided by the client.
- 3.2. To act as a mediator if required or instructed between the Client and the Candidate in respect to all and any discussion concerning the Candidate's conditions and/or terms of employment, including any benefits stated in Locum assignment confirmation or permanent job description.
- 3.3. To assist the Client in respect to any replacement in the event the placed Candidate is unable, for any reason, to complete the assignment period as indicated in the Locum Assignment Confirmation or Permanent Job description.

Where the Engagement of a Candidate relates to a Permanent Employment or Fixed Term Contract then the Client obligations will be:

- 3.4. To meet all Employer obligations, as required by law, in respect to the employment of the placement staff, including payment of workers' compensation, superannuation entitlements and fringe benefit tax, as applicable.
- 3.5. To accept the decision to engage the Candidate rests entirely on the Client.
- 3.6. To accept all Candidates are deemed to be under the exclusive direction, supervision and control of the Client throughout the Engagement.
- 3.7. To assume responsibility for the health and safety and supervision of each candidate employed from the start of any Engagement.
- 3.8. Not to 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 before contact is made.
- 3.9. To notify the Agency of any offer of an Engagement which it makes to the Candidate.
- 3.10. To notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration to the Agency.

4. Locum, Temporary or Contractor Engagement obligations

Where the Engagement of a Candidate relates to a Locum, Temporary or Contractor placement then the Agency obligations will be:

- 4.1. To use 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 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.
- 4.2. On instruction by the client to pay the Candidate if they have established themselves as an independent contractor and have a separate ABN and on presentation of a valid tax invoice.
- 4.3. On instruction by the Client to pay the Candidate directly as an Agency PAYG worker.

Where the Engagement of a Candidate relates to a Locum, Temporary or Contract placement then the Client obligations will be:

- 4.4. To accept the decision to engage the Candidate rests entirely on the Client.
- 4.5. To accept a 4 hours minimum engagement period of the candidate. Refer Schedule 1 in Locum fees.
- 4.6. To assume all responsibility for the induction, and work performance of the Candidate, including environmental, health and safety issues. For avoidance of doubt, all Candidates are deemed to be under the exclusive direction, supervision and control of the Client throughout the engagement. The Client undertakes that it will assume responsibility for the health and safety and supervision of each Locum from the start of any engagement.
- 4.7. To provide the Candidate facilities/benefits which are reasonable and commensurate with a standard suitable for a person with the Candidate's experience, skills and qualification

Where the Locum, Temporary or Contractor accepted by the Client is to be paid directly by the Client and the Client accepts the responsibility for paying whether directly or indirectly through the agency

- 4.8. The Locum/Temporary/Contractor's salary and other remuneration, all income tax, and other statutory deductions from the locum's salary and benefits, all payroll tax and other statutory imposts on the Client as the employer of the Locum/Temporary/Contractor and all premiums for workers compensation insurance and any other insurance.
- 4.9. The Locum/Temporary/Contractor placed by the Agency is encouraged to have an in forced professional Indemnity insurance policy.
- 4.10. The Client is solely responsible for the procurement of their insurance cover in respect of all and any Claims howsoever arising in connection with the Locum/Contractor services (including professional indemnity insurance cover), and for ensuring that such cover is kept current at all times during the locum services. While the agency places the locum on notice that same is a requirement of the Locum/Contractor Temporary undertaking any placement through the Agency and the client hereby acknowledges that the Agency accepts no liability or responsibility, and is indemnified and released by the client in respect of such liability and responsibility, if any Locum/ Temporary/ Contractor fails to obtain or maintain the requisite insurances during the period of the locum services; such policy lapses during any such period; or any Claim is voided in whole or part by the locum/Temporary/Contractor's insurer for any reason.

5. Notification, Fees & Price Fluctuations

- 5.1. The Client must pay the Fee to the Agency if the Client Engages the Candidate as a consequence of or resulting from an Introduction by or through the Agency, whether direct or indirect, within 12 months following up the cessation of service provided as described in these terms and conditions.
- 5.2. The Fee is equal to the amount as set out at Schedule 1.
- 5.3. To pay the Agency's Locum/Temporary/Contract Fee in full within 7 days of the date of invoice.
- 5.4. To pay the Agency's Permanent Fee in full within 14 days of the date of invoice.
- 5.5. **Locum/Temporary/Contractor charges are set out in schedule 1 and are payable following;**
A returned timesheet approved by the Client with a signature and/or an email approval for payment either directly or indirectly by the Agency which includes any other special conditions between Client and Locum/Contractor/Temporary.
- 5.6. **Permanent Contingent Assignments charges are set out in Schedule 1 and are payable as follows**
 - i. Half of the total Charges upon the Candidate accepting an offer of Engagement with the Client.
 - ii. Half of the total Charges upon the Candidate commencing Engagement with the Client.
- 5.7. **Retained Search and Executive Search charges are set out in schedule 1 or any specific agreement between the Agency and the Client, as is payable as follows:**
 - i. A fixed amount, as agreed in writing between the parties prior to commencement of the Assignment, upon acceptance by the Agency of the assignment.
 - ii. Half of the balance of the agreed Placement Charge upon the Candidate accepting an offer of Engagement with the Client.
 - iii. Half of the balance of the agreed Placement Charge upon the Candidate commencing Engagement with Client.
- 5.8. **Fixed Term, Part Time and Temporary to Permanent charges are set out in schedule 1 and payable as follows:**
 - i. If the appointment is for a full-time fixed term 12 months or more, the Placement Charge will be an amount equal to the Charge Percentage of the Candidate's total annual Salary Package for the first 12 months.
 - ii. If the appointment is for fixed term of less than 12 months, the Placement Charge will be an amount equal to the Charge Percentage of the Candidate's pro rata total annual Salary Package
 - iii. If the Candidate is appointed for a fixed term of less than 12 months and then further appointed beyond the initial agreed term, then a Charge will be payable for each month (or part thereof) beyond the initial term up to a maximum of 12 months. Invoicing for the Charges will take place immediately upon a further term being agreed or, if the appointment remains on a month to month basis, monthly in advance on or before the 7th day of each month.
 - iv. If the Candidate is appointed in a Permanent position on a part-time basis the salary package for calculating the Placement Charge will be on the basis of a full-time equivalent salary.
 - v. If the Permanent appointment follows the Candidate providing a Locum Service then, a Placement Charge will be an amount equal to the Charge Percentage of the Candidate's Salary Package for the first 12 months as The Fee is equal to the amount as set out at Schedule 1 (Temp to Perm). Invoicing for the Charges will take place immediately upon the Candidate accepting a Permanent offer of employment.

- 5.9. If the Client does not pay any invoice within 14 days of its date the Agency may assign to a third party the right to render invoices and pursue and receive payments. Any fees or legal costs incurred by the Agency pursuing outstanding payments will be charged on to the Client.
- 5.10. GST and any other applicable taxes are payable at the applicable rate on all sums chargeable under this Agreement.
- 5.11. The Agency is not responsible for any cost and expenses including travel, relocation, registration, sponsorship, work permits, entry residency and/or work visas that may be required by law by the Candidate including and not limited to the cost of certification, qualification, training, attending courses deemed by the client to be relevant to the position.
- 5.12. Where an offer of employment has been made in writing by the Client and is subsequently withdrawn by the Client after acceptance by the Candidate through no fault of the Candidate, the applicable contingent Assignment Placement Charge will be payable.
- 5.13. If the Client fails to notify the Agency of any offer of an Engagement which it makes to the Candidate that the Candidate has been accepted or fails to provide accurate details of the Remuneration to the Agency then a charge will be an amount equal to the charge percentage of the Candidate's Salary Package based on market rates or the award for the first 12 months equal to the amount as set out at Schedule 1. Invoicing for the Charges will take place immediately.

6. Replacement Guarantee

- 6.1. The Agency guarantee only applies to permanent medical candidates placed for a period of the first 12 Weeks.
- 6.2. The guarantee period is calculated from date of commencement to the date of resignation. This guarantee means that if the Client is not satisfied with the placement or the placed candidate decides to end their employment with the client and the Agency is notified in writing within the guarantee period, the agency will find a replacement for the candidate with whom the Client is not satisfied. That is, the Agency will find one replacement at approximately the same salary level, brief specification, geography and job function. If the Agency fails to find a suitable replacement within 12 weeks the Client will be eligible for a credit note towards the next placement fee which will be valid for a period of 12 months.
- 6.3. The credit note will be calculated as follows; up to 4 weeks of employment of the Candidate by the Client, the Client will be eligible for a credit note of 75% of the placement fee. Between 5 to 8 weeks a 50% credit note and between 9 to 12 weeks a 25% credit note.
- 6.4. The above guarantee is contingent on all fees having been paid within the days set out in points 5.3 and 5.4 of invoice date, and on the understanding that any additional costs such as advertising are not included in this replacement guarantee.
- 6.5. The replacement 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.
- 6.6. Where the Client exercises this guarantee the Client must notify the Agency within 48 hours of the candidate leaving the business, and work with the Agency exclusively for 12 weeks to fulfil the assignment.

7. Cancellation

- 7.1. If for any reason the Client cancels the Permanent Engagement before the Permanent Engagement commences and after the offer of a Permanent Engagement has been made to the Candidate, the Client must pay the Agency the Permanent Fee and shall not be entitled to any discount. The client must also reimburse in full the candidate for direct losses and any other reasonable costs incurred as a result of the client cancellation.
- 7.2. In the event a Locum or Contractor or Temporary is terminated by the Client prior to the start date for a short term engagement of 1 to 5 days the client will provide the Agency a minimum of 24 hours' notice period of termination and the Client shall pay the Locum in a timely manner for reasonable costs and/or damages incurred to the Locum or Contractor or Temporary. Failure to provide the agreed notice will incur an Agency fee of 50% of the original intended engagement fee.
- 7.3. In the event a Locum or Contractor or Temporary is terminated by the Client prior to the start date for a longer term engagement of more than 5 days or more the client will provide the Agency a minimum of 5 days' notice period of termination and the Client shall pay the Locum in a timely manner for reasonable costs and/or damages incurred to the Locum or Contractor or Temporary. Failure to provide the agreed notice will incur an Agency fee of 50% of the original intended engagement fee.

8. Confidentiality & Third Party Introductions

- 8.1. The Client agrees that the information it receives about the Candidate as a result of an Introduction, including but not limited to the identity of the Candidate, is and shall be kept strictly confidential and shall not be passed or disclosed to any third party.
- 8.2. Where the Client discloses the information referred to in clause 8 above to any third party, whether directly or indirectly, and the Candidate is engaged by that third party within 12 months of the date of the Introduction, the Client shall pay the Fee in respect of the Candidate as set out in clause 3.

9. Suitability

- 9.1. The Agency shall use reasonable endeavours to ensure the suitability of each Candidate by obtaining confirmation of:
- 9.2. The Candidate's identity;
- 9.3. The Candidate's experience, training, qualifications, any authorisation(s) which the Client considers necessary or which may be required by law or by any professional body; and
- 9.4. The Candidate's willingness to work in the position which the Client seeks to fill,
- 9.5. And 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.
- 9.6. The Agency gives no warranty, express or implied, regarding the suitability of any Candidate. The Client shall take such steps, as it deems necessary, to satisfy itself regarding the suitability of the Candidate. The Client shall 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. The Client must familiarise itself with all relevant legislation regarding employment of Candidates. The Agency shall not be responsible for any loss or expense incurred due to any legislation infringement by the Client.

10. Liability

- 10.1. The Agency shall not be liable to the Client for any loss, liability, damages, costs, delay, and claims or expenses whatsoever suffered or incurred by the Client (whether direct, indirect or consequential) as a result of the negligence, dishonesty or misconduct of the Candidate or arising from, or connected with the Engagement of a Candidate or the failure to introduce a suitable Candidate.
- 10.2. Subject to clause 10.1, to the extent that the Agency is liable in respect of any loss, liability, damages, costs, delay, claims or expenses whatsoever suffered or incurred by the Client, the Agency's liability shall be limited to the amount of the fee received by the Agency pursuant to clause 3.3.

11. Miscellaneous

- 11.1. If the Agency is unable to comply with its obligations under this Agreement due to material interruption or interference caused by an event of force majeure, 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 both Parties shall endeavour to minimise and reduce any period of suspension caused by an event of force majeure.
- 11.2. The expression "an event of force majeure" includes but is 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 contract other than shortage or lack of money.
- 11.3. 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. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.4. 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 apply with the minimum modification necessary to make it legal, valid and enforceable or, if such modification is not possible, be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 11.5. A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 11.6. These Terms and Conditions are subject to the laws of NSW.

Schedule 1 – The Fee

The fee chargeable plus GST to the Client shall be:

Hospital Doctors - Juniors, Registrars and Consultants & General Administrative positions	
Permanent Placements	20% of candidate remuneration as defined in clause 1 (\$12,500 Minimum candidate engagement fee)
Locums	20% of candidate’s remuneration package (4 hours minimum engagement fee)
Radiologists	
Permanent Placements	\$50,000
Locums	20% of candidate’s remuneration package (4 hours minimum engagement fee)
General Practitioners	
Permanent General Practitioners in locations RA 4 upwards, as determined by ASGC-RA (2006) classification system	20% of candidate remuneration as defined in clause 1 (\$12,500 Minimum candidate engagement fee)
Non VR GP (General Registration with AHPRA)	\$18,500
VR GP (Vocational Registration or specialist with AHPRA)	\$23,500
Locum	20% of candidate’s remuneration package (4 hours minimum engagement fee)
Executive and Management positions	
Contingent Searches	25% of candidate remuneration as defined in clause 1 (\$30,000 Minimum candidate engagement fee)
Retained Searches (Exclusive of general disbursements)	30% of candidate remuneration as defined in clause 1 (\$40,000 Minimum candidate engagement fee)
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

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 HCA doctors: _____

Name & Position: _____

Date: _____