

**TERMS AND CONDITIONS****1. ACCEPTANCE**

- 1.1 These Terms and Conditions (**Terms**) form the Recruitment Agreement (**Agreement**) between Breeze Medical Recruitment (ABN 72 152 397 620) (referred to as "**we**", "**us**" or "**our**"), and you, the health professional seeking to register as a locum with us (referred to as "**you**" or "**your**"), and collectively the Parties.
- 1.2 We are a medical locum placement agency which introduces you, and other health professionals, to health care facilities (**Clients**) for a fee charged to the Client upon placement (**Services**).
- 1.3 You agree and accept that our Services are provided to you on these Terms.
- 1.4 You accept our Terms by:
- (a) indicating you accept these Terms on our website [www.breezemedical.com.au](http://www.breezemedical.com.au) (**Site**), whether by clicking the relevant box on the registration page or otherwise;
  - (b) confirming by email that you accept these Terms;
  - (c) signing and returning these Terms; or
  - (d) instructing us to proceed with the Services.

**2. SERVICES**

- 2.1 We agree to perform the Services with due care and skill.
- 2.2 We will begin performing the Services from the date you accept these Terms.
- 2.3 You acknowledge and agree that, to enable us to perform the Services and find suitable positions for you, you will provide with any information and documents reasonably required by us, including, but without limitation, information and documents relating to your identification, health and immunisation status, medical registration and academic and professional experience (**Relevant Information**).
- 2.4 We may request to see original copies or certified copies of the Relevant Information.
- 2.5 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.6 Suppliers of third party services who are not an employee or our direct contractor (**Third Party Services**) will be your responsibility. We are not responsible for the quality of service provided by suppliers of Third Party Services. You must make direct arrangements with them.

**3. YOUR INFORMATION**

- 3.1 In accordance with Australian Privacy Legislation, and our Privacy Policy, we will only use your personal and sensitive information to credentialise and secure locum placements on your behalf.
- 3.2 You authorise us to collect and use personal information about you, including Relevant Information in the interest of securing suitable employment. Prior to distribution of information that would identify you personally, Breeze will seek your consent.

- 3.3 All information provided by you must be supplied honestly and in good faith.

- 3.4 We will introduce you to Clients on the basis of, and relying upon, the accuracy and completeness of Relevant Information supplied to us by you at the time of making this Agreement, or anytime before or during the term of this Agreement.

- 3.5 You agree to provide us with all Relevant Information required from time to time and any updates to that Relevant Information.

- 3.6 You must notify us in writing, as soon as possible, if there is any change to your Relevant Information (in particular your clinical registration conditions).

**4. PRICE, INVOICING AND PAYMENT**

- 4.1 You will not be required to pay any fee to us in respect of placements arranged for you by us.

- 4.2 Our pricing structure, payment methods and these Terms may be amended from time to time in our discretion. The pricing changes will apply to you for services provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our website or are provided to you, whichever is earlier.

**5. YOUR OBLIGATIONS AND WARRANTIES**

- 5.1 In consideration of the benefits provided to you under this Agreement, you undertake that during this Agreement, and when this Agreement is terminated, you will not do either of the following:

- (a) directly approach, canvass, solicit or deal with any Client or customer of ours with whom we provided you with contact in order to provide the Services to you (who were Clients or customers at the date of termination of this Agreement or within the 12 months prior); or
- (b) interfere with, disrupt or attempt to disrupt the relationship, contractual or otherwise, between us and any of our suppliers (who were suppliers at the date of termination of the Agreement or within the 12 months prior).

This restraint will apply for twelve (12) months after the termination of this Agreement in Queensland.

- 5.2 You will notify us immediately if you are offered casual, temporary or permanent work by a Client to whom you were directly or indirectly introduced by us.

- 5.3 You may not, and you agree that you will not, use our Services and then complete, or assist another individual to complete, an arrangement with any of our Clients independent of our Services in order to circumvent the obligation to pay fees related to our provision of the Services or to remove us as a party to any subsequent arrangements or agreements between you and our clients.

- 5.4 All our Clients are legally bound not to offer employment to candidates introduced to them by us, except with our written consent. You agree that, in addition to your other obligations, you will not engage in any arrangement which induces or may induce a Client to breach its agreement with us in that regard.

- 5.5 You agree and warrant that throughout the term of this Agreement that:
- (a) there are no legal restrictions preventing you from agreeing the Terms;
  - (b) you will cooperate with us and provide us with information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services;
  - (c) the Relevant Information, and any other information you provide, is true, correct and complete and is not misleading in any way;
  - (d) you are responsible for all tax liabilities, for obtaining and maintaining all relevant medical registrations and medical indemnity insurance and for compliance with all other statutory requirements;
  - (e) you are a registered health professional available from time to time to accept locum placement arranged by us with our Clients;
  - (f) you wish to be registered as a locum health professional through our Site;
  - (g) you will inform us immediately of any changes to the Relevant Information;
  - (h) you will observe and adhere to the employment agreement signed between you and the Client;
  - (i) you will observe and adhere to the policies, rules and regulations of the Client, including compliance with the Client's health and safety policies,
  - (j) each of the referees that you provide to us worked with you directly at supervisory level, has extensive experience in the relevant area of medical practice and is not related to you in any way, except in a professional capacity;
  - (k) any references or details of referees you provide to us may be shared by us with Clients
  - (l) you will not infringe any third party rights in working with us and receiving the Services;
  - (m) you will inform us if you have reasonable concerns relating to our provision of Services under the Terms, with the aim that we and you will use all reasonable efforts to resolve the concerns;
  - (n) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
  - (o) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
  - (p) if applicable, you have a valid ABN which has been advised to us; and
  - (q) if applicable, you are registered for GST purposes.

## 6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

- 6.1 You agree to provide information including Intellectual Property to us to enable us to provide the Services. You:

- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
  - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use the Intellectual Property in any way we require to provide the Services to you; and
  - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
  - (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
  - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
  - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.

## 7. CONFIDENTIAL INFORMATION

- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party except for the purposes of performing the Services. We agree to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information, or any Confidential Information relating to our Client, to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 7.3 These obligations do not apply to Confidential Information that:
- (a) is authorised to be disclosed;
  - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
  - (c) is received from a third party, except where there has been a breach of confidence; or
  - (d) must be disclosed by law or by a regulatory authority including under subpoena.

- 7.4 The obligations under this clause will survive termination of these Terms.

## 8. PLACEMENTS WITH CLIENTS

- 8.1 We have no control over, or responsibility for, the behaviour, actions or omissions of our Clients.

- 8.2 We may not be successful in finding you work and will have no liability to you in the event that it is unable to do so.
- 8.3 If a placement for you is arranged, we will provide you with details of the Client and the likely duration of, and remuneration for, the placement. You will be under no obligation to accept any placement offered unless and until you agree with us to do so.
- 8.4 If you accept a placement with a Client, your rights and obligations (apart from those set out in this Agreement) will be governed by the agreement between you and the Client. Such an agreement will either involve you as an employee of, or independent contractor to, the Client.
- 8.5 If you are engaged by the Client as an employee, all remuneration to which you are entitled will be paid directly to you by the Client in accordance with the terms of your employment with the Client. If you are engaged as a contractor, the Client will pay all fees due to you upon receipt of an invoice. You irrevocably authorise us to issue such invoices to the Client on your behalf.
- 8.6 All pay rates provided to you from us are inclusive of GST.
- 8.7 You agree to provide us, upon request, with all details of the hours worked and duties performed by you and any payments made by the Client to you or on your behalf ("**Locum Contract Details**") in respect of any placement arranged by us. You irrevocably authorise any of our Clients to provide us with any Locum Contract Details it may require from time to time in respect of any placements made by Breeze and you agree to sign any written direction to this effect as may be required by us from time to time.
- 8.8 In the case of cancellation or variation of a placement by a Client, we will endeavour to give you 48 hours notice.
- 8.9 You agree that you will not make any claim against us in respect of a variation or cancellation of a placement by a Client.
- 9. FEEDBACK AND DISPUTE RESOLUTION**
- 9.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of our staff.
- 9.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure.
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The

mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

- 9.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

**10. TERMINATION**

- 10.1 This Agreement shall continue in effect throughout the period of any placements we arrange for you and otherwise until termination of this Agreement in accordance with this clause.
- 10.2 Either party may terminate this Agreement with seven days' notice to the other party. Notice of termination may be provided via email, our email address is available on the Site and we shall use the email address you provided at registration.
- 10.3 In case of material breach, either party may terminate the Terms, subject to following the dispute resolution procedure.
- 10.4 We may terminate the Terms immediately, in our sole discretion, if:
- (a) we consider that you have damaged our reputation in any way, whether due to your suspension or termination of employment by a Client or otherwise;
- (b) we consider that our working relationship has broken down including a loss of confidence and trust; or
- (c) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe.
- 10.5 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 10.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 10.7 On completion of the Services, we will retain your documents (including copies) as required by law or regularity requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 10.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 11. DISCLAIMERS**
- 11.1 We do not guarantee that you and/or your services will be requested or required by any of our Clients and that you will be able to find suitable work or job offers from our Services.

11.2 We will not be responsible nor liable for any harm, damage or loss suffered by you, directly or indirectly caused by the use of our Services. This includes, without limitation:

- (a) any financial loss, including loss of any present or future earnings;
- (b) loss of employment or advancement in any current roles; or
- (c) loss resulting from the withdrawal of any offers of employment.

## 12. LIMITATION OF LIABILITY

12.1 **ACL:** Certain legislation including the Australian Consumer Law (ACL) in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).

12.2 Our liability is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.

12.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

12.4 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.

12.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.

12.6 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.

12.7 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees, warranties and terms relating to the

Services and this agreement, except those set out in this agreement, including but not limited to:

- (a) implied or express guarantees, warranties, representations or conditions of any kind, which are not stated in the Terms;
- (b) our Services being unavailable; and
- (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with the inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

12.8 **Limitation:** Our total liability arising out of or in connection with our Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.

12.9 This clause will survive termination of these Terms.

## 13. INDEMNITY

13.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information, including all Relevant Information, that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of these Terms, including any of the warranties in clause 5;
- (c) termination of this Agreement by you;
- (d) any placement we arrange for you with a Client; and
- (e) any misuse of the Services from or by you, your employees, contractors or agents.

13.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

13.3 The obligations under this clause will survive termination of these Terms.

## 14. GENERAL

14.1 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that

document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

14.2 **Relationship of parties:** The Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

14.3 **Assignment:** The Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

14.4 **Severance:** If any provision (or part of it) of the Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of the Terms are valid and enforceable.

14.5 **Notices:** Any notice required or permitted to be given by either party to the other under these conditions will be in writing addressed to you at the address you have provided us with. Our address is set out on the Site. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

14.6 **Jurisdiction & Governing Law:** These Terms are governed by the laws of Queensland and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.

## 15. DEFINITIONS

15.1 **Confidential Information** includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

15.2 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

15.3 **Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit

layouts, trade names, trade secrets, business names, company names or internet domain names.

### Contact details:

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