

**TERMS AND CONDITIONS (attached to Proposal)****1. ACCEPTANCE**

- 1.1 This Agreement is between Breeze Medical Recruitment (ABN 71 152 397 620) (referred to as “we”, “us” or “our”), and the Client described in the Proposal (referred to as “you” or “your”), and collectively the Parties.
- 1.2 You have requested the services set out in the attached Proposal (**Services**). You agree and accept that our Services are provided to you on these Terms and Conditions (**Terms**).
- 1.3 You accept our Proposal and Terms by:
- (a) signing and returning the Proposal;
  - (b) confirming by email that you accept the Proposal;
  - (c) instructing us to proceed with the Services; or
  - (d) making part or full payment for the Services, by the methods set out in our Proposal or our tax invoice to you (**Invoice**).

**2. SERVICES**

- 2.1 We agree to perform the Services set out in the Proposal with due care and skill.
- 2.2 The estimated period for us to perform the Services is set out in our Proposal.
- 2.3 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.4 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. CANDIDATE'S INFORMATION**

- 3.1 Our Privacy Policy forms part of these Terms.
- 3.2 We shall provide information, documentation regarding the Candidate, including the Candidate's Curriculum Vitae, references, AHPRA registration details, signed copies of primary and fellowship qualifications and current credentialing and scope of clinical practice and medical practice.
- 3.3 We are not responsible for, and we are not liable for false, dishonest or misleading information or documentation which is provided, supplied or otherwise communicated to us or you by the Candidate or by any third party in respect of a Candidate.
- 3.4 You agree to handle all Candidates' personal information in accordance with our Privacy Policy.

**4. PLACEMENT AND PAYMENT OF THE RATE**

- 4.1 Although we will perform the Services with due care and skill, you acknowledge that the ultimate decision to accept and employ the Candidate remains solely with you.

- 4.2 The offer of employment to a Candidate, employment of a Candidate and the consequences thereof following our introduction to you are entirely at your own risk.
- 4.3 We may not be successful in finding a suitable Candidate for you and will have no liability to you in the event that we are unable to do so.
- 4.4 You will be responsible for payment of the Rate to us for the duration of the placement, including for any extension or renewal of the placement.
- 4.5 We will issue you invoices for payment of the Rate upon receipt of signed timesheets from the Candidate. As set out in Clause 5 of these Terms, invoices must be paid within the Invoice Terms.
- 4.6 Upon receipt of the Rate, we will:
- (a) remit to the Candidate any agreed expenses and allowances;
  - (b) pay to the Candidate the remuneration which has been agreed in advance of commencement of the placement; and
  - (c) retain a proportion of the Rates as compensation for our Services.
- 4.7 The Rate excludes GST and in respect of reimbursement of expenses, fringe benefits tax. You agree to pay any GST and fringe benefits tax that applies to the Rate (including any expenses).
- 4.8 No rebate of the Rate shall be made.
- 4.9 The Rate may be varied by agreement in writing between us, you and the Candidate.
- 5. ADDITIONAL FEES, INVOICING AND PAYMENT**
- 5.1 **Cancellation Fee:** We may charge you a Cancellation Fee if you cancel or terminate a placement in respect of which we have found a Candidate you have accepted within 2 (two) weeks of the Commencement Date of such placement.
- 5.2 The Cancellation Fee will be ten (10) per cent. of the Rate multiplied by the duration of the placement.
- 5.3 **Renewal Fee:** You acknowledge that the Rate shall continue to apply and be payable by you in respect of any renewal or extension of a Candidate in respect of a placement. We will charge you a Renewal Fee to you which will become payable if you pay the Candidate remuneration directly without reference to us in respect of that extension or renewal of placement.
- 5.4 The Renewal Fee will be fifteen (15) per cent. of the Rate multiplied by the duration of the renewed or extended placement, up to a maximum of six (6) months.
- 5.5 **Permanent Recruitment Fee:** We will charge you a Permanent Recruitment Fee if following a placement with you, the Candidate is

- subsequently employed by you on a permanent basis within 12 months of completion of any placement with you.
- 5.6 The Permanent Recruitment Fee will be twenty (20) per cent. of the Candidate's total remuneration package it receives or will receive in the first six (6) months of employment with you. This total remuneration package will include base salary or wages, employer superannuation contributions (including compulsory contributions), general allowances, relocation and/or travel packages, inducement or sign-on payments, anticipated commission and bonus earnings and benefits in-kind such as provision of motor vehicle and accommodation. We shall determine the value of all benefits in kind, for the purposes of calculating the total remuneration package.
- 5.7 No rebate of the Cancellation Fee, Renewal Fee or Permanent Recruitment Fee shall be made.
- 5.8 You agree to pay our Invoices within the Invoice Terms.
- 5.9 We may charge interest at the rate of 2% per month on any amounts unpaid after the expiry the payment due date set out in the Invoice Terms.
- 5.10 If invoices are unpaid for 30 days after the payment date set out in the Invoice Terms, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 5.11 Our pricing structure, payment methods and these Terms may be amended from time to time in our discretion.
- 6. YOUR ACKNOWLEDGMENTS, OBLIGATIONS AND WARRANTIES**
- 6.1 You may not, and you agree that you will not, use our Services and then complete, or assist a third party to complete, an arrangement with any of the Candidates introduced to you independent of our Services in order to circumvent the payment of Fees or to remove us as a party to any subsequent arrangement or agreements between you and our Candidates. This clause does not apply to situations where the Candidate is introduced to you by one or more other recruitment services, and you choose to employ or engage that Candidate through that other recruitment service.
- 6.2 You must not offer employment to Candidates introduced by us to you except with our written consent.
- 6.3 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 (including all Client Requirements) 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 information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) the Candidate you choose to accept and employ will be under your control and direction for the duration of the placement;
- (f) you have adequate and current Work Cover for the duration of the placement;
- (g) you shall inform the Candidate of all of your policies, practices and procedures upon commencement of the placement;
- (h) you are responsible for ensuring the health and safety of the Candidate whilst that Candidate is providing locum services to you, and you must satisfy all of your obligations in relation to the Candidate under applicable occupational health and safety and discrimination legislation (including, but not limited to, providing all necessary training and induction to the Candidate and only requiring the Candidate to perform those tasks the Candidate is skilled and trained to perform);
- (i) 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;
- (j) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (k) if applicable, you have a valid ABN which has been advised to us; and
- (l) if applicable, you are registered for GST purposes.
- 7. OUR INTELLECTUAL PROPERTY**
- 7.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.
- 7.2 You agree that, as between you and us, we own all intellectual property rights in our Materials, and that nothing in these Terms constitutes a transfer of any intellectual property ownership

- rights in our Materials, except as stated in these Terms or with our written permission.
- 7.3 Your use of our Materials does not grant you a licence, or act as a right of use, any of the intellectual property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 7.4 You must not breach our copyright or intellectual property rights by, including but not limited to:
- altering or modifying any of the Materials;
  - creating derivative works from the Materials; or
  - using our Materials for commercial purposes such as onsale to third parties.
- 7.5 We do not offer a trademark search as part of our service and we are not responsible for any copyright infringement or liability.
- 8. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 8.1 You agree to provide information including Intellectual Property to us to enable us to provide the Services. You:
- warrant that you have all necessary rights to provide the Intellectual Property to us;
  - 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
  - consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 8.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
- irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
  - irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
  - agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
  - 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.
- 9. CONFIDENTIAL INFORMATION**
- 9.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party; 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.
- 9.2 You, including your employees and contractors, agree not to disclose our Confidential Information or the Confidential Information of a Candidate 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 or the Candidate to you, and not for any other purpose.
- 9.3 These obligations do not apply to Confidential Information that:
- is authorised to be disclosed;
  - is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
  - is received from a third party, except where there has been a breach of confidence; or
  - must be disclosed by law or by a regulatory authority including under subpoena.
- 9.4 The obligations under this clause will survive termination of these Terms.
- 10. FEEDBACK AND DISPUTE RESOLUTION**
- 10.1 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.
- 10.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure.
- 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**).
  - 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 Queensland 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.
- 10.3 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.
- 11. TERMINATION**

- 11.1 The Parties may terminate the Terms by mutual agreement, by notice per the Notice Period in writing including by email.
- 11.2 Either party may terminate the Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 11.3 We may terminate the Terms immediately, in our sole discretion, if:
- we consider that a request for a Service is inappropriate, improper or unlawful;
  - you fail to provide us with clear or timely instructions to enable us to provide the Services;
  - we consider that our working relationship has broken down including a loss of confidence and trust;
  - for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
  - you fail to pay an Invoice within the Invoice Terms.
- 11.4 On termination of these Terms you agree that any payments made are not refundable to you, and you are to pay all invoices for Services rendered to you.
- 11.5 If you terminate this Agreement early, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been billed to you.
- 11.6 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.
- 11.7 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.
- 11.8 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory 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.
- 11.9 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 12. DISCLAIMERS**
- 12.1 We do not guarantee that we will be able to find suitable Candidates for placement with you.
- 12.2 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, including in relation to your employment of Candidates.
- 13. LIMITATION OF LIABILITY AND DISCLAIMERS**
- 13.1 **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).
- 13.2 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.
- 13.3 **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.
- 13.4 **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.
- 13.5 **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.
- 13.6 **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 (including in relation to a Candidate), 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.

13.7 **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.

13.8 This clause will survive termination of these Terms.

#### 14. INDEMNITY

14.1 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 that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of these Terms;
- (c) the employment or otherwise engagement by you of the Candidate;
- (d) any misuse of the Services from or by you, your employees, contractors or agents.

14.2 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.

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

#### 15. GENERAL

15.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

15.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.

15.3 **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.

15.4 **GST:** If and when applicable, GST payable on our Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.

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

15.6 **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).

15.7 **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.

15.8 **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 in the Proposal. Our address is set out in the Proposal. 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.

15.9 **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.

**16. DEFINITIONS**

- 16.1 **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".
- 16.2 **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.
- 16.3 **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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