

# Client Terms & Conditions of Business - Health & Social Care

## The WorkPac System

### 1. INTERPRETATION

Unless the contrary intention appears: -

**Agreement:** means these Standard Terms & Conditions of Business including its special conditions and amendments.

**Cancellation Fee:** means the fee which is payable by the Client in the circumstances set out in clause 3.4.

**Candidate:** means the Permanent Candidates, the Temp Candidates, the Single Shift Candidates and any other party referred, introduced and or placed by our brands Prime Medical Placements, BRC Recruitment and WorkPac Health and Social Care (WorkPac HSC) with the Client for an engagement.

**Client:** means the client of WorkPac HSC (you) or its representative.

**Contract:** means every acceptance of Services by the Client including but not limited to each Job Order Confirmation/SLA or other contract between WorkPac HSC and the Client

**Event of Default:** means any of the following events:

- (i) the Client is in breach of this Agreement;
- (ii) if the Client is a company:-
  - (a) an order is made or a resolution is passed for winding up the Client;
  - (b) a receiver, liquidator or an administrator is appointed;
  - (c) the Client goes into liquidation or enters into an arrangement with its creditors;
  - (d) the Client stops payment or is unable to pay its debts;
- (iii) if the Client is a natural person:-
  - (a) the Client becomes bankrupt or enters administration;
  - (b) the Client dies or becomes incapable of managing its affairs;
  - (c) the Client ceases or threatens to cease carrying on business.

**GST:** means any goods and services tax which applies to the provision of the Services under any legislation.

**Job Order Confirmation/Service Level agreement (SLA):** means the documentation setting out the Client's instructions and requirements regarding Services and provided to the Client by WorkPac HSC.

**Permanent Candidate:** means a candidate who is offered or accepts a permanent position of employment with the Client.

**Services:** includes the resting, introduction and provision of Candidates to the Client and all associated services.

**Service Fee:** means the fee payable by the Client to WorkPac HSC for the Services calculated in accordance with clause 3.5.

**Temporary and Single Shift Candidates:** means a candidate employed by WorkPac HSC or related entity who is offered or accepts a temporary assignment with the Client or a singular or short-term shift arrangement where the end of the shift is recognised by the Candidate and the WorkPac HSC as a termination of engagement with the Client.

**WorkPac HSC:** means WorkPac Health and Social Care Pty Ltd (which includes trading under the business names BRC Recruitment, Prime Medical Placements and IMR LocumBank), unless otherwise agreed.

### 2. INCORPORATION OF TERMS

2.1 The terms of this Agreement apply to every Contract entered into after the date of this Agreement.

2.2 If the Client accepts a Candidate from an entity within WorkPac but does not receive a copy of the terms and conditions applicable to that entity prior to accepting the Candidate, this Agreement applies to the provision of that Candidate as if that entity was WorkPac HSC until that entity's terms and conditions are provided to the Client.

### 3. SERVICE FEES

3.1 The Service Fees will be set out in the Job Order Confirmation/SLA and or WorkPac HSC's schedule of fees that WorkPac HSC provides to the Client.

3.2 **Liability to Pay:** WorkPac HSC and the Client will agree when the Service Fees become payable. This will be set out in the Job Order Confirmation/SLA and or Contract.

3.3 Despite anything else in this Agreement, Service Fees will be payable where:-

3.3.1 a Candidate obtains employment with the Client or a third party to whom the Client refers the Candidate within twelve (12) months of:-

3.3.1.1 WorkPac HSC providing the Services; or

3.3.1.2 the expiry or termination of that Candidate's last engagement with the Client which resulted from the provision of the Services;

3.3.2 the Client accepts a particular Candidate,

and in such case, the Client agrees that the engagement is governed by the Contract under which those Services were originally provided to the Client except that the Service Fee payable will be at WorkPac HSC's current rates, set out in the current schedule of fees.

### 3.4 Cancellation Fee:-

3.4.1 **Permanent Candidates:** If WorkPac HSC has performed the Services but the Client elects not to engage a Permanent Candidate for any reason, WorkPac HSC may charge the Client a Cancellation Fee equal to one third of the Service Fee that would have been payable by the Client if the Permanent Candidate had been engaged

3.4.2 **Temporary and Single shift Candidates:** If WorkPac HSC has performed the Services and:-

3.4.2.1 the Client accepts a Temporary or single shift Candidate but the Client cancels a booked shift less than two (2) hours before that booked shift is due to commence, then the Client must pay a Cancellation Fee calculated by multiplying the Service Fee hourly rate plus GST by 2 (i.e. \$45.00 per hour x 2 = \$90.00);

3.4.2.2 the Client accepts a Temporary or Single Shift Candidate and the Candidate arrives at the Client's premises for a booked shift but the Client cancels the shift:-

3.4.2.2.1 15 minutes or less prior to the start of their shift, the Client must pay a Cancellation Fee calculated by multiplying the Service Fee hourly rate plus GST by 4 (i.e. \$45.00 per hour x 4 = \$180.00).

3.5 **Calculation of Service Fees:** Unless otherwise agreed in writing, the Service Fees will be:-

3.5.1 **For Permanent Candidates:** a percentage (as specified in the Job Order Confirmation/SLA) of the total annual salary package which the Client agrees to pay the Permanent Candidate including superannuation and all non-cash benefits; and

3.5.2 **Temporary and Single Shift Candidates:** charged on a 'per-hour' basis, for a minimum of four (4) hours per shift and will include overtime rates (as specified in the Job Order Confirmation/SLA) which must be paid to Candidates.

### 3.6 Temporary and Single Shift Candidates - Service Fees (Miscellaneous)

3.6.1 If WorkPac HSC is required by law to pay a Temporary or Single Shift Candidate an increased rate, the Services Fees will automatically increase to reflect the increased rate from the date the increased rate comes into effect (including backdating) and the Client must pay any shortfall in Service Fees already invoiced. WorkPac HSC will advise the Client of the increased rate in writing as soon as reasonably practicable after becoming aware of it.

3.6.2 If the Client converts a Temporary or Single Shift Candidate to a Permanent Candidate, the Client must pay further Service Fees in accordance with clause 3.5.1 and failing agreement, in accordance with WorkPac HSC's current schedule of fees.

3.7 **Invoices:** WorkPac HSC will issue tax invoices to the Client:-

3.7.1 **For Permanent Candidates,** at agreed intervals as set out in the Job Order Confirmation/SLA; and

3.7.2 **For Temporary and Single Shift Candidates,** on a weekly basis.

3.8 **GST:** All tax invoices will include an additional amount for GST.

3.9 **Invoice Period:** The Client must pay each tax invoice within fourteen (14) days from the invoice date. WorkPac HSC will charge the Client default interest on amounts not paid within fourteen (14) days at a rate equivalent to the reference rate charged by WorkPac HSC's principal bankers plus 2% from the invoice date until paid in full.

3.10 **Invoice Queries:** All queries regarding invoices must be raised by the Client with WorkPac HSC within fourteen (14) days of the invoice date, failing which, the Client will be deemed to have agreed to the invoice. The Client must provide all information and co-operation to WorkPac HSC to enable legitimate queries to be resolved promptly. Nothing in this clause affects the Client's liability to pay full invoice amounts and applicable interest.

3.11 **Credit:** WorkPac HSC at its discretion may extend trade credit to the Client on terms satisfactory to WorkPac HSC. WorkPac HSC may at any time vary or cease extending any credit granted to the Client as is reasonable in the circumstances or may require security or personal guarantees for any credit provided.

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3.12 **Merchant Fees:** The Client must pay any applicable merchant fees incurred by WorkPac HSC for payment methods used by the Client and any duty and other government charge relating to the establishment or operation of the Client's account.

### 4. ENGAGEMENTS

#### 4.1 General

- 4.1.1 If the Client requires the services of a Candidate who has previously worked for the Client or has been introduced to the Client through WorkPac HSC, the Client must request their services through WorkPac HSC and must not contact the Candidate directly.
- 4.1.2 The Client must not refer any Candidate to any third party. All referrals must be directed to and through WorkPac HSC.

4.2 **Permanent Candidates:** The Client is solely responsible for payment of wages, superannuation, income taxation, GST and any other obligation incidental to the employment of Permanent Candidates.

#### 4.3 Temporary and Single Shift Candidates:

- 4.3.1 If the Client wishes to negotiate a variation to the status of a Temporary/Single Shift Candidate currently working with the Client, the Client must contact WorkPac HSC and must not negotiate directly with the Candidate.
- 4.3.2 WorkPac HSC is solely responsible for payment of wages, superannuation, income taxation, GST, any other obligation incidental to the services provided by the Temporary and Single Shift Candidates.
- 4.3.3 If the Client wishes to change the Temporary/Single Shift Candidates' original duties, the Client, before the work is undertaken, must notify WorkPac HSC and such change will be conditional upon WorkPac HSC verifying with the Candidate, and notifying the Client in writing, that the Candidate is qualified, competent and willing to perform the changed duties.
- 4.3.4 WorkPac HSC's invoices for Service Fees will be based on timesheets completed by Temporary and Single Shift Candidates including overtime rates payable for overtime worked by Candidates. The Client must ensure Candidates forward copies of their timesheets (detailing exact hours worked) to WorkPac HSC weekly. Where no timesheet is provided, the Client must provide to WorkPac HSC in writing the Candidates' hours.
- 4.3.5 The Client must approve Temporary and Single Shift Candidates' timesheets which will be confirmation by the Client that the hours and time allocations shown on those timesheets are correct and Service Fees will be invoiced based on the timesheets. The Client warrants to WorkPac HSC that the timesheet signatory has authority to bind the Client. The Client must process and approve Temporary and Single Shift Candidates' timesheets on the morning of the first workday following the last day of the pay week. If no signed timesheet is received by WorkPac HSC, WorkPac HSC will contact the Client in writing setting out the hours which the Temporary/Single Shift Candidate worked. If the Client does not respond within 2 business days, the Client will be deemed to have accepted those hours, unless the Client raises a query in relation to the hours worked.
- 4.3.6 Subject to the requirement to pay Service Fees and Cancellation Fees, either party may terminate the engagement of a Temporary/Single Shift Candidate by giving two (2) hour's written notice to the other party. WorkPac HSC will give Temporary Candidates notice of termination upon receipt of a notice from the Client.
- 4.3.7 Where a Temporary or Single Shift Candidate is required to travel, the Client must pay all travel expenses.

### 5. OCCUPATIONAL HEALTH AND SAFETY

- 5.1 **General:** The Client must provide a safe work environment for Candidates in accordance with all laws, regulations and requirements of applicable authorities.
- 5.2 **Permanent Candidates:** The Client has a duty of care and is solely responsible for ensuring that Permanent Candidates work in a healthy and safe environment.
- 5.3 **Temporary and Single Shift Candidates**
- 5.3.1 The Client and WorkPac HSC jointly have a duty of care and obligations to Temporary and Single Shift Candidates regarding occupational health and safety (OH&S). WorkPac HSC has its own OH&S procedures.

5.3.2 The Client must provide and ensure that Temporary and Single Shift Candidates attend an induction/job familiarisation prior to Temporary and Single Shift Candidates commencing work for the Client. The Client must provide WorkPac HSC with records verifying that site-specific and/or job specific inductions have been provided and attended by Temporary and Single Shift Candidates.

5.3.3 If there are differences between the Client's OH&S policies and WorkPac HSC's OH&S policies, WorkPac HSC and the Client must consult with each other in good faith to resolve them to remove any unacceptable risks to Temporary and Single Shift Candidates.

5.3.4 WorkPac HSC and the Client must use best endeavours to cause Temporary and Single Shift Candidates to comply with their OH&S policies and to assist each other in doing so, including providing full documentation of each other's policies when requested. The Client must allow WorkPac HSC to enter the Client's premises to conduct inspections, incident investigations and audits relating to the OH&S of the Temporary and Single Shift Candidates.

5.3.5 If a Temporary or Single Shift Candidate is injured, the Client:-

5.3.5.1 must notify WorkPac HSC as soon as practicable upon becoming aware of the incident; and

5.3.5.2 has a joint responsibility with WorkPac HSC for rehabilitating the injured Temporary or Single Shift Candidate. The Client agrees to provide suitable duties for the rehabilitating Temporary and Single Shift Candidate to perform under the treating medical practitioner's advice.

5.3.6 If an injured Temporary or Single Shift Candidate is unable to perform the duties set out in the Job Order Confirmation/SLA, the Service Fees will be reduced to the extent to which the Temporary or Single Shift Candidate cannot perform its duties.

5.3.7 If the Client requests a Temporary or Single Shift Candidate to supply its own equipment, the Client must inspect it and ensure the suitability and safety of such equipment.

5.3.8 The provision of personal protective equipment is the responsibility of the Client.

5.3.9 The Client must give WorkPac HSC prior notice if the Client requires a Temporary or Single Shift Candidate to:

5.3.9.1 work in excess of 10 hours per shift (Award relevant); or

5.3.9.2 work more than 10 continuous shifts (Award relevant); or

5.3.9.3 have a rest period of less than 10 hours between shifts.

5.3.10 The Client must provide WorkPac HSC with all information necessary for job safety analyses to be carried out to determine the level of risk which Temporary and Single Shift Candidates could be exposed as a result of the Client's requirements set out above which will include:

5.3.10.1 the level of supervision the Temporary and Single Shift Candidate will receive during the extended work hours;

5.3.10.2 special conditions that will apply to eliminate the Temp and Single Shift Candidate's fatigue and the possibility of an incident; and

5.3.10.3 appropriate measures to be implemented to ensure the health and safety of the Temporary and Single Shift Candidate.

5.3.11 WorkPac HSC may refuse to supply Temporary and Single Shift Candidates to the Client where, in WorkPac HSC's opinion, the circumstances pose an unacceptable OH&S risk to the Temporary and Single Shift Candidates.

### 6. VARIATION, SUSPENSION AND TERMINATION

- 6.1 WorkPac HSC may cease or suspend supplying Services to the Client.
- 6.2 If an Event of Default occurs, WorkPac HSC may provide written notice to the Client notifying them of the Event of Default and where such Event of Default is capable of remedy, require the Client to remedy such Event of Default within a reasonable period stated in the notice. Where the Client fails to remedy such Event of Default (where the Event of Default is capable of remedy), then, without prejudice to its other rights, WorkPac HSC may call up moneys owed to it by the Client cease providing further Services and recover from the Client all loss suffered by WorkPac HSC based on breach of contract by the Client.

### 7. WORKPAC HSC'S OBLIGATIONS

- 7.1 WorkPac HSC must:
- 7.1.1 Hold a copy of the qualifications that a Candidate must hold to undertake the duties;
- 7.1.2 Obtain two (2) independent favourable references for Candidates from previous employers regarding work performed by the Candidate

which is similar in nature to the work for which the Client requires the Candidate to perform;

- 7.1.3 Conduct, and submit the results of, all skill and psychometric testing of the Candidates as requested by the Client as described in the Job Order Confirmation / SLA;
- 7.1.4 Interview the Candidates; and
- 7.1.5 In respect of Temporary and Single Shift Candidates only, provide Candidates with a basic safety induction.
- 7.2 Where the Client instructs WorkPac HSC to forgo any part of its obligations under clause 7.1, WorkPac HSC will record those instructions in WorkPac HSC's computer system and will rely on that as evidence that WorkPac HSC was not required to perform the relevant obligation/s.
- 7.3 WorkPac HSC warrants that it has, and will maintain, all forms of insurance which WorkPac HSC is required by law to maintain in relation to the supply of Candidates.

### 8. CLIENT OBLIGATIONS

- 8.1 The Client must:-
  - 8.1.1 comply with the terms of this Agreement;
  - 8.1.2 always act in good faith;
  - 8.1.3 comply with all laws, regulations and rules of applicable authorities; and
  - 8.1.4 have and maintain, and warrants that it has and will maintain, liability insurance which provides cover for all activities carried out by the Client, including against liability for work carried out by all Candidates to the fullest extent possible.

### 9. ACKNOWLEDGEMENTS & LIMITATION OF LIABILITY

- 9.1 The Client acknowledges that WorkPac HSC:-
  - 9.1.1 is not responsible for and does not provide any form of insurance whatsoever for or on behalf of the Client or Permanent Candidates;
  - 9.1.2 is not performing any of the Candidates' duties or obligations to the Client;
  - 9.1.3 duties are to provide Candidates who reasonably appear to be qualified to perform the work described in the relevant Job Order Confirmation/SLA based on WorkPac HSC's investigations under clause 7;
  - 9.1.4 will facilitate the introduction and engagement of Candidates who have provided reasonable evidence to WorkPac HSC that they are qualified to perform the work described in the relevant Job Order Confirmation/SLA;
  - 9.1.5 is not responsible or liable for any misinformation that is received from a Candidate, a Candidate's referee or any other source which is subsequently communicated to the Client;
  - 9.1.6 does not guarantee the quality of performance of Permanent Candidates to any extent;
  - 9.1.7 is not liable to the Client under any circumstances in respect of any damage, loss, claim, injury or negligence of whatsoever nature or kind, which is caused by or contributed to by the acts or omissions of any Candidate;
  - 9.1.8 is not a registered migration agent and does not offer any migration, work permit or residency related advice either to the Client or Candidates; and
- 9.2 Despite every reasonable effort and care being made and taken by WorkPac HSC:-
  - 9.2.1 to ensure the suitability of Candidates, the Client must satisfy itself that Candidates are suitable for the work the Client required to be performed. The Client relies on its own assessment in this regard;
  - 9.2.2 when verifying information provided by Candidates and collecting references, WorkPac HSC does not guarantee references or information concerning Candidates' skills, qualifications, experience or integrity.

### 10. REPLACEMENT GUARANTEE

- 10.1 **Permanent Candidates.** If a Permanent Candidate commences working for the Client but the Client or the Permanent Candidate terminates the engagement within twelve (12) weeks of the date the Permanent Candidate commenced working for the Client, clause 10.2 applies.
- 10.2 If this clause applies, WorkPac HSC agrees to:-
  - 10.2.1 provide further Services to the Client to attempt to secure a replacement Candidate for a position requiring the same or

substantially similar qualifications as the set out in the original Job Order Confirmation/SLA;

- 10.2.2 apply any monies paid by the Client to WorkPac HSC (for Services Fees for securing the original Candidate) as a service credit in favour of the Client for up to 6 months from the original Candidate's commencement date; and
- 10.2.3 apply the service credit toward Service Fees for securing a replacement Candidate.
- 10.3 If the Service Fees payable for securing the replacement Candidate (less the service credit) are greater than the Service Fees which were payable for securing the original Candidate, WorkPac HSC may require the Client to pay an additional amount to make up the difference.
- 10.4 Despite anything to the contrary in this clause, clause 10.2 does not apply where:-
  - 10.4.1 the Client does not pay any invoice on time; or
  - 10.4.2 the Candidate's engagement is ended due to:-
    - 10.4.2.1 retrenchment;
    - 10.4.2.2 unwarranted dismissal; or
    - 10.4.2.3 if the client materially changes the conditions of employment.
- 10.5 If WorkPac HSC has complied with its obligations under clause 10.2, where a replacement Candidate is not secured by the Client within 6 months of the original Candidate's commencement date, WorkPac HSC is entitled to all monies held pursuant to clause 10.2.2.
- 10.6 The Client will be liable to pay all direct costs incurred by WorkPac HSC in complying with this clause 10 including advertising.
- 10.7 This replacement guarantee does not apply to replacement Candidates.

### 11. VARIATIONS

- 11.1 No variation of this document will be valid or binding unless recorded in writing and executed by both parties.

### 12. INDEMNITIES

- 12.1 The Client fully indemnifies WorkPac HSC against all loss, damage, claims of any kind suffered by any party resulting or arising from the Client's failure to comply with any of its obligations under this Agreement, except to the extent of WorkPac HSC's fraud, negligence or wilful misconduct or the fraud, negligence or wilful misconduct of its employees, officers, contractors, agents or appointed receivers.
- 12.2 WorkPac HSC indemnifies the Client against the loss of a Candidate but only to the extent set out in clause 10.

### 13. GENERAL CONDITIONS

- 13.1 The Client must pay to WorkPac HSC any costs, charges and expenses incurred by WorkPac HSC in connection with the entry into or enforcement of this Agreement. The Client is liable for all transactions involving the Client's credit account, including fraudulent use of that account by the Client or its employees, officers, contractors, agents or appointed receivers.
- 13.2 If the Client enters into this Agreement as a trustee, this Agreement binds the Client personally and as trustee and the Client will make the assets of the trust available to meet payment of its account.
- 13.3 This Agreement is governed by the laws of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Brisbane Central Courts of Queensland.
- 13.4 Any of the Client's usual or standard terms of trade do not apply to this Agreement, any Job Order Confirmation/SLA or any Contract.
- 13.5 All WorkPac HSC's intellectual property and details about Candidates are confidential. The Client must keep all such intellectual property and details confidential at all times.
- 13.6 If the Client:-
  - 13.6.1 undertakes a Candidate interview;
  - 13.6.2 instructs WorkPac HSC to issue a Job Order Confirmation/SLA;
  - 13.6.3 makes any payment for Service Fees; or
  - 13.6.4 accepts or engages a Candidate,
 the Client will be deemed to have agreed to the terms of this Agreement.
- 13.7 Subject to clause 2.2, this Agreement only binds WorkPac HSC and the Client.

