

# Brokerage Agreement

## Commercial Details

Item	Description		
1	Parties	Principal	Healthcare Australia Pty Ltd
		Contractor	[Insert details of service provider]
2	Client	The client named on the relevant Order Request, to which the Contractor will be providing the Goods or Services.	
3	Commencement Date	The date on which this Agreement is executed by both parties	
4	Term	Until Further Notice or Terms of Agreement are changed, or Agreement is Terminated	
5	Services	As set out in Attachment A	
6	Goods	As set out in Attachment A	
7	Order Request	A written request from the Principal to the Contractor for the supply of Goods and Services (as applicable) for a Client.	
8	Fees	As set out in Attachment B	
9	Payment Terms	30 Days	
10	Insurance	[insert if differs from clause 6.1]	

## Executed as an Agreement

**EXECUTED** for and on behalf of Healthcare Australia  
Pty Ltd ABN/ACN 95 108 180 589 in accordance with  
Section 127 of the *Corporations Act 2001* (Cth):



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Signature of authorised representative

Stuart Webster

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Name (please print)

16/9/22

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Date

Chief Operating Officer

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Position

**EXECUTED** for and on behalf of  
ABN/ACN                      in accordance with Section 127  
of the *Corporations Act 2001* (Cth):

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Signature of authorised representative

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Date

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Name (please print)

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Position

## Brokerage Agreement

### 1. Appointment and Orders

- 1.1 The Principal appoints the Contractor to provide the Goods and Service to the Client, during the Term, subject to the terms of this Agreement.
- 1.2 The Principal may issue the Contractor with an Order Request for the Goods or Services.
- 1.3 The Contractor must respond to an Order Request within 2 business days confirming its acceptance of the Goods or Services.
- 1.4 In an emergency, Goods or Services may be requested and accepted orally between the parties. A completed Order Request must be subsequently emailed to the Contractor as soon as reasonably practicable, after which the Contractor must respond in accordance with clause 1.3
- 1.5 The Principal may cancel a scheduled Service by giving not less than 24 hours' written notice to the Contractor prior to the scheduled Service, and will not incur any Fees.
- 1.6 In the event of any inconsistency between this Agreement and an Order Request, the terms of this Agreement will prevail.

### 2. Goods and Services

- 2.1 The Contractor must provide the Services and must supply the Goods (if any) in accordance with the Order Request and this Agreement in the following manner:
  - a) in a timely, efficient, proper and workmanlike manner using reasonable care, skill and diligence;
  - b) using a sufficient number of suitably trained, qualified, skilled and experienced Personnel; and
  - c) in accordance with good industry practice, all applicable laws and the reasonable directions of the Principal.
- 2.2 The Contractor is at all times responsible for the quality assurance of all of the Goods and Services provided under or in connection with this Agreement.
- 2.3 Without limiting clause 2.2 **Error! Reference source not found.**, the Contractor must:
  - a) ensure that its Personnel obtain, and provide to Principal on request, a police certificate and/or statutory declaration as required by the *Aged Care Act 1997* (Cth) or by Principal policy;
  - b) notify the Principal of the vaccination status of Personnel who inform the Contractor of their vaccination status, whether voluntarily, as required by a Contractor or Principal's policy, or as required under applicable law. The information provided must comply with

applicable laws and regulations, including information about any exemptions relied on for non-compliance with vaccination requirements; and

- c) maintain records of its compliance with this clause 2.3.
- 2.4 The Principal may direct the Contractor to cease to use any member of Personnel for the performance of the Services in circumstances where the person is incompatible with or unacceptable to the Principal or the Client. On receiving such a direction, the Contractor will take immediate steps to remove that person, provide an alternate acceptable person and ensure there is no interruption to the provision of the Services.
- 2.5 The Principal may at any time request that the Goods or Services being provided to any Client need to be changed (**Change Request**), and in which case the Contractor must respond to any such request within 2 business days from the day on which it receives the request.
- 2.6 The Contractor must:
  - a) respond with any change in Fees for the Change Request (**Fee Review**), if reasonable to reflect a Change Request; or
  - b) where no such Fee Review is applicable, respond with confirmation to the Change Request.
- 2.7 If the Contractor provides the Principal with a Fee Review, the Principal may either accept the Fee Review or direct the Contractor to continue to provide the Goods or Services unmodified.
- 3. Fees and Payment Terms
  - 3.1 In consideration of the Contractor providing the Services and supplying the Goods (if any), the Principal must pay to the Contractor the Fees.
  - 3.2 By no later than 7 days of the end of the week in which the Services and Goods (if any) are provided, the Contractor must provide the Principal with a tax invoice for the Services and Goods (if any) it has provided.
  - 3.3 Notwithstanding clause 3.2, the Contractor must not invoice Principal for Goods or travel related expenses unless the Contractor has obtained the Principal's prior written approval.
  - 3.4 Subject to the Contractor performing its obligations under this Agreement, the Principal will pay each undisputed invoice which has been properly issued by the Contractor, within 30 days from receipt of such invoice.
  - 3.5 If Principal disputes the correctness of any invoice (or disagrees with any amount invoiced for any reason), it may withhold payment of the disputed sum, and the Principal will pay any newly issued invoice from the Contractor for the undisputed amount. If the Contractor

disagrees with the Principal's assessment, it may refer the matter for resolution under clause 7.

- 3.6 If there are any changes to the Fees, the Contractor must provide the Principal with no less than 2 months' notice, and in response to which, the Principal may either accept the new fees (which will apply 2 months from the date of notice) or terminate the Agreement.

#### **4. Warranties**

- 4.1 The Contractor represents, warrants and undertakes to the Principal that:

- a) it has full power and authority to enter into this Agreement;
- b) all of its Personnel are suitably qualified and experienced to perform their role in respect of the Services;
- c) it has and will, and its Personnel have and will, maintain all necessary approvals, licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
- d) none of its directors or officers are "disqualified individuals" as defined in the *Aged Care Quality and Safety Commission Act 2018* (Cth); and
- e) the Goods, and any equipment used to provide the Services, are fit for purpose, well maintained and in proper working order.

- 4.2 In relation to any Goods supplied, the Contractor represents and warrants that:

- a) it is capable of passing title in the Goods (if any) free from Security Interests and all other adverse interests at the time they are supplied to Principal; and
- b) the Goods are fit for the purpose for which items of the same kind are commonly supplied.

- 4.3 The Contractor must not do anything which would adversely affect or damage the reputation, operations or commercial viability of Principal or its Personnel.

- 4.4 The Contractor must ensure that the health and safety of the Principal and the Clients are not put at risk from work carried out by the Contractor or its Personnel in the provision of Goods or Services.

- 4.5 The Contractor must comply with the WH&S Laws including ensuring, so far as is reasonably practicable, the health and safety of Personnel while Personnel are at work in the Contractor's business or undertaking.

- 4.6 The Contractor must:

- a) immediately give the Principal notice of any accident, notifiable incident (being an incident which is notifiable under WH&S Laws), injury or property damage which occurs during or in respect of the provision of the Services;

- b) within 10 business days of the Principal's written request, provide a written report to Principal giving complete details of the accident, incident, injury or damage, including results of investigations into the cause of the accident, incident, injury or damage and strategies for future prevention; and
- c) cooperate with Principal in providing copies of any notices, entry reports, charges or other documents received from the relevant regulator in respect of the provision of the Services.

#### **5. Delivery, Risk and Title**

- 5.1 The Contractor must deliver the Goods on the delivery date and to the location specified in an applicable Order Request.

- 5.2 The Contractor must notify the Principal immediately of any actual or anticipated delay in delivery, and must take all reasonable steps to mitigate any such delay.

- 5.3 Title to, and the risk of loss or damage to, the Goods (if any) passes to the Client on delivery of the Goods to the Client.

- 5.4 The Contractor warrants that it has, and will maintain, reasonable systems and processes for identifying, and addressing lost or damaged Goods.

- 5.5 If the Contractor fails to supply the Goods in accordance with this Agreement, the Principal may:

- a) refuse to accept the Goods;
- b) require expedited delivery (at no additional cost to the Principal);
- c) require a refund of any Fees paid for the defective Goods, or a replacement;
- d) recover from the Contractor any expenses the Principal has incurred as a result of such failure; and/or
- e) require the Contractor to reduce the Fees for the Goods by a reasonable percentage.

#### **6. Insurance**

- 6.1 Unless stated otherwise, the Contractor must, at its cost, effect and maintain at all times during the Term sufficient insurance coverage applicable to the supply of Goods and Services (as applicable), and the performance of the Contractor's obligations under this Agreement.

- 6.2 The Contractor must:

- a) Provide to the Principal, upon request, evidence of the currency of the insurance policies it is required to maintain; and
- b) immediately notify the Principal of an insurance policy changing, lapsing or being cancelled.

#### **7. Resolution of Disputes**

- 7.1 A party must not commence court proceedings in relation to a dispute arising under this Agreement until it

has exhausted the procedures in this clause 7, unless the party seeks urgent injunctive or interlocutory relief.

7.2 If a dispute arises between the parties, either party may give notice of the dispute (**Dispute Notice**) to the other party. If a Dispute Notice is given:

- a) the parties must meet to negotiate as soon as possible in an effort to resolve the dispute; and
- b) if the dispute is not resolved within 21 days of the Dispute Notice being given, the parties must instruct the NSW Law Society to appoint an independent mediator to attempt to resolve the dispute by mediation and the parties must participate in the mediation in good faith. The costs of the mediation must be equally shared by the parties.

## 8. Termination

8.1 Either party may terminate this Agreement with immediate effect by providing written notice to the other party (the **Relevant party**) if the Relevant party:

- a) commits a material breach of an Agreement which is incapable of being remedied or, if the material breach is capable of being remedied, the Relevant party fails to remedy the breach within 14 days after being required in writing to do so; or
- b) is or represents that it is insolvent, or has an administrator, liquidator or receiver appointed, or the Relevant party enters or threatens to enter into bankruptcy.

8.2 The Principal may terminate this Agreement for convenience at any time by giving the Contractor at least 30 days' prior written notice.

8.3 The Principal may terminate this Agreement with immediate effect by providing written notice to the Contractor, if the Contractor acts or omits to act in a manner likely to cause harm to a Client or does anything to cause a material adverse impact on the Principal or its business or interests, including a manner likely to bring Principal into disrepute.

8.4 On termination of this Agreement for any reason:

- a) the Contractor will cease providing the Services and supply the Goods to all Clients, and deliver to the Principal, at its own costs, all material and property concerning or belonging to the Principal, including any Client list, names, and all of forms, procedures and documents of the Principal, in the possession or control of the Contractor or its Personnel. The Contractor must not retain any copies (in any form) of such material (except copies which it is required by law to retain);
- b) the parties must take all reasonable steps to ensure the orderly transition of Goods or Services to alternative arrangements, where required; and

- c) the Principal will pay all undisputed Fees owed to the Contractor within 30 days of receive of a valid tax invoice.

## 9. Liability and Indemnity

9.1 The Contractor must indemnify and hold harmless the Principal and its Personnel against all Losses sustained, incurred or suffered by the Principal or its Personnel as a result of:

- a) property damage, personal injury or death, relating to the Principal or a Client;
- b) the Contractor's breach of this Agreement or applicable law; and
- c) any unlawful or negligent act or omission, or wilful misconduct of the Contractor or any of its Personnel in connection with this Agreement

9.2 Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, the Principal will not be liable for any consequential, indirect or special losses or damages of any kind suffered by the Contractor as a result of any act or omission whatsoever of the Principal, its officers, employees or agents (including loss of profits, loss of revenue, loss of opportunity, business interruption or punitive or exemplary damages).

9.3 Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

## 10. Confidentiality

10.1 Each party must not disclose to any person (other than to the Contractor's officers, employees and professional advisers on a strict "need-to-know" basis or as may be required by applicable law) any Confidential Information about the other party without its prior written consent, unless required by law to do so.

## 11. General

11.1 **Variation:** This Agreement may only be varied by a document executed by the parties.

11.2 **Counterparts:** This Agreement may be executed in counterparts, all of which taken together constitute one document.

11.3 **Entire agreement:** The terms and conditions of this Agreement contain the entire Agreement concluded between the parties, and supersede and replace any prior representations, negotiations, or agreements, in respect of that subject matter. Any standard terms or conditions of the Contractor are specifically excluded and superseded, whether or not they are inconsistent with the terms of this Agreement.

11.4 **Waiver:** The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.

- 11.5 **Assignment:** The Contractor must not assign, novate, transfer, or otherwise dispose of any or all of its rights and/or obligations under this Agreement without the prior written consent of Principal (which may be withheld in Principal's absolute discretion). Principal may transfer, novate, delegate or assign any right or obligation under this Agreement to any person.
- 11.6 **Subcontracting:** Subject to notifying the Principal, the Contractor may subcontract the supply of the Goods or Services, and the Contractor will remain liable for the supply of the Goods or Services and any act or omission of the subcontractor, as if it were an act or omission of the Contractor under this Agreement.
- 11.7 **Relationship of the parties:** Nothing in this Agreement is to be treated as creating any employer and employee relationship, agency arrangement, partnership or joint venture between the Principal and the Contractor.
- 11.8 **Governing Law:** This Agreement is governed by the law applying in New South Wales and the parties submit to the exclusive jurisdiction of the courts of that jurisdiction.
- 11.9 **Survival:** Clauses 4, 7, 8, 9, and 10 survive the expiry or termination of this Agreement.

## 12. Definitions

In this Agreement the following abbreviations, words and phrases have the following meanings, unless the context requires otherwise:

**Agreement** means these terms and conditions, the Commercial Details, any Attachments, and any Order Request (in each case, as amended from time to time).

**Confidential Information** means any information relating to the past, present or future business of a party that comes to the knowledge of the other party and includes: the existence, terms and subject matter of this Agreement; financial, budgetary, marketing and business plan information; the terms of any contract, agreement or business arrangement with third parties; trade secrets, know-how and related information; client lists and supplier lists; third party information disclosed in confidence; Personal Information; and any other information the disclosure or use of which may be detrimental to the interests of a party or of any other person who has provided it to that party on a confidential basis. Confidential Information does not include information in the public domain (unless the information is in the public domain due to a breach of confidentiality by any person or is Personal Information).

**Law** includes:

- (a) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (a) the common law and the law of equity;
- (b) any binding court order, judgment or decree;
- (c) any applicable industry code, policy or standard, whether or not enforceable by law;

- (d) Modern Slavery Act 2018 (Cth); and
- (e) any applicable direction, policy, rule or order that is given in writing by a Government Agency, whether or not enforceable by law.

**Loss** includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses) however caused whether based in tort, contract or otherwise.

**Personal Information** has the meaning given in the Privacy Laws.

**Personnel** means, in relation to a party, that party's officers and employees.

**Security Interest** has the meaning given in the *Personal Property Securities Act 2009* (Cth).

**WH&S Laws** means applicable laws in respect of the health and safety of workers and workplaces of the State or Territory in which the services are being provided and includes the *Occupational Health and Safety Act 2004* (Vic); *Workplace Health and Safety Act 2011* (NSW); *Workplace Health and Safety Act 2011* (ACT); *Workplace Health and Safety (National Uniform Legislation) Act 2011* (NT); *Workplace Health and Safety Act 2011* (Qld); *Workplace Health and Safety Act 2012* (SA); *Workplace Health and Safety Act 2012* (Tas); *Occupational Safety and Health Act 1984* (WA) and associated regulations, standards and codes of practice.

## **Attachment A**

**Services**

**Goods**

## **Attachment B**

**Fees**