

# Aeromedical Solutions - Terms and Conditions (Client Agreement)

## Parties

**Six Point Enterprises Pty Ltd (ABN 31 630 582 491), trading as Aeromedical Solutions** of 493 Swan Street, Richmond, Victoria 3121, Australia (**Aeromedical Solutions**)

and

The **Client** as defined in **clause 1.3**.

## The parties agree that:

### 1. GENERAL

- 1.1 These Terms and Conditions together with the Client's Application constitute the entire agreement (the **Agreement**) between Aeromedical Solutions and its successors, transferees or related companies and the Client for the supply of Services. No other Terms and Conditions will apply unless stipulated in writing by Aeromedical Solutions. The Agreement cannot be varied unless Aeromedical Solutions and the Client agree to vary it in writing.
- 1.2 Aeromedical Solutions agrees to provide the Client, and the Client agrees to engage Aeromedical Solutions to provide, the Services in accordance with these Terms and Conditions.
- 1.3 In these Terms and Conditions, unless the context otherwise requires:
  - 1.3.1 **Agreement** means these Terms and Conditions together with the Client's Application.
  - 1.3.2 **Application** means an application placed by the Client for Services in accordance with these Terms and Conditions.
  - 1.3.3 **Australian Consumer Law** means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding provisions of state or territory fair trading legislation or the *Australian Securities and Investments Commission Act 2001* (Cth).
  - 1.3.4 **Client** means the person who engages Aeromedical Solutions to provide the Services pursuant to the Agreement, specified as follows:
    - 1.3.4.1 if a person has executed these Terms and Conditions pursuant to **clause 12**, that person named as the Client in **clause 12** is the Client; or
    - 1.3.4.2 if **clause 1.3.4.1** does not apply, but a person has communicated electronically or by any other method in writing to Aeromedical Solutions stating or confirming that they agree to the Agreement and identifying themselves, that person who made the communication is the Client.
  - 1.3.5 **GST** has the same meaning as within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
  - 1.3.6 **Health information** has the same meaning as within the Privacy Act.
  - 1.3.7 **Non Excludable Rights** means rights under the Australian Consumer Law or other rights the Client may have in relation to the provision of the Services that cannot lawfully be excluded by Aeromedical Solutions.
  - 1.3.8 **Medical Services Provider** means a person, organisation or company sourced by Aeromedical Solutions on behalf of the Client to provide Medical Services to the Patient.
  - 1.3.9 **Medical Services** means medical treatment or attention, medical services, international or domestic transportation (including transportation to a nominated medical facility) and other associated services and medical related services provided by a Medical Services Provider.
  - 1.3.10 **Patient** means any injured, unwell or ill Australian resident who is situated in Australia or overseas (i.e. not located in Australia) and requires Medical Services, which may include the Client personally but in any event is the individual with respect to whom the Client has engaged Aeromedical Solutions to source a Medical Services Provider to provide the Medical Services.

- 1.3.11 **Person** includes any natural person, organisation, company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.3.12 **Personal information** has the same meaning as within the Privacy Act, and includes health information.
- 1.3.13 **Privacy Act** means the *Privacy Act 1988* (Cth).
- 1.3.14 **Services** means services provided by Aeromedical Solutions to or on behalf of the Client including the services outlined in **clause 2**, and any additional services outlined in the Application which are expressly agreed to by Aeromedical Solutions.
- 1.3.15 **Terms and Conditions** means this terms and conditions document, and any other documents attached or expressly incorporated by this document.
- 1.3.16 A reference to an amount payable is a reference to an amount payable in Australian dollars unless otherwise expressly stated.
- 1.3.17 A word which denotes the singular denotes the plural and vice versa.

## **2. SERVICES**

- 2.1 Aeromedical Solutions sources Medical Services Providers to deliver and provide Medical Services to Patients who require Medical Services. The Patient is often, but not necessarily, a relative or close friend of the Client and may, in some instances, be the Patient themselves.
- 2.2 Pursuant to the Agreement, the Client engages and Aeromedical Solutions accepts such engagement to act as the Client's agent to source a Medical Services Provider to deliver and provide Medical Services to the Patient and provide the Services described in this **clause 2**.
- 2.3 Based upon information provided to it by the Client in an Application in accordance with **clause 5**, Aeromedical Solutions will seek to obtain one or more quote(s) for the provision of Medical Services by Medical Services Providers (each quote an **Option**) and present any Options to the Client in accordance with **clause 5**. Aeromedical Solutions does not guarantee that Options will be available for each Application, as this depends on the particular circumstances and context of each Application.
- 2.4 All Medical Services Providers that Aeromedical Solutions sources to provide Medical Services are vetted by Aeromedical Solutions to ensure the quality and appropriateness of Medical Services provision. Most Medical Services Providers sourced by Aeromedical Solutions will meet the provider vetting, credentialing or registration requirements of Aero-Plan, International Assistance Group or EURAMI. All other Medical Services Providers sourced by Aeromedical Solutions will only be sourced for Patients with low acuity conditions or who have minimal assistance needs (e.g. mobility assistance only), and in those cases Aeromedical Solutions will still ensure that these Medical Service Providers have been vetted on the basis of their ability to provide quality and appropriate Medical Services in accordance with all relevant standards.
- 2.5 Should a Client decide to proceed with any of the Options presented, the parties agree that:
  - 2.5.1 subject to **clause 2.5.2**, the Client and/or the Patient may be required to enter into a separate and independent agreement with the chosen Medical Services Provider for the provision of Medical Services to the Patient (**Provider-Client Agreement**). Aeromedical Solutions will use reasonable endeavours to facilitate the provision of any such Provider-Client Agreement from the Medical Services Provider to the Client;
  - 2.5.2 Aeromedical Solutions, acting as the Client's agent, will pay the chosen Medical Services Provider directly all fees (inclusive of any GST) payable by the Client for the provision of Medical Services to the Patient whether payable under any Provider-Client Agreement or otherwise (**Medical Services Fees**);
  - 2.5.3 the Client must reimburse Aeromedical Solutions the full amount of the Medical Services Fees (without any right of set-off or deduction) prior to the Client proceeding with its chosen Medical Services Provider for the provision of Medical Services to the Patient; and
  - 2.5.4 any reimbursement amounts received from the Client by Aeromedical Solutions which are received in advance of Aeromedical Solutions paying the Medical Services Fees to the Medical Services Provider as the Client's agent will be held on trust for the Client and will only be used for the specific purpose of paying the Medical Services Fees to the Medical Services Provider.

- 2.6 The Client acknowledges and agrees that:
- 2.6.1 in providing the Services and acting as the Client's agent, Aeromedical Solutions acts as an intermediary between the Client and Medical Services Providers in arranging Medical Services for the Patient;
  - 2.6.2 Aeromedical Solutions is not responsible for, and will not (and cannot) provide, Medical Services, and these Terms and Conditions do not constitute an agreement for the provision of Medical Services by Aeromedical Solutions to the Patient;
  - 2.6.3 the Medical Services Provider chosen by the Client will be solely responsible for the provision of the Medical Services and standard of care in providing the Medical Services, subject to the Client's and/or the Patient's Provider-Client Agreement (if any) with that chosen Medical Services Provider; and
  - 2.6.4 if the Client is not the Patient, the Client is a legally authorised representative of the Patient and is permitted to enter into the Agreement on behalf of the Patient.
- 2.7 If the Client proceeds to engage a Medical Services Provider, Aeromedical Solutions at its sole discretion may provide non-Medical Services assistance to the Client including liaising with the Medical Services Provider and providing general welfare checks with the Client to determine if it or the patient requires additional assistance.

### **3. AGREEMENTS WITH MEDICAL SERVICES PROVIDERS**

- 3.1 The Client acknowledges that the Medical Services Provider will provide Medical Services on such terms and conditions as the Client and/or the Patient agree with the Medical Services Provider in any Provider-Client Agreement or otherwise.
- 3.2 The Client acknowledges and agrees that:
- 3.2.1 Aeromedical Solutions, acting as the Client's agent only, will pay the Medical Services Fees due pursuant to **clause 2.5.2**; and
  - 3.2.2 Aeromedical Solutions is not and will not be a party to any Provider-Client Agreement and is not bound by, or liable under, any Provider-Client Agreement.
- 3.3 The Client agrees that Aeromedical Solutions does not act as the Client's or the Patient's agent where the Client or Patient seeks a refund of Medical Services Fees or makes any claim against the Medical Services Provider.
- 3.4 The Client understands and acknowledges that delays may occur throughout the provision of Medical Services for various reasons and that Aeromedical Solutions is not liable whatsoever for any delay in the provision of Medical Services.
- 3.5 Medical Services Providers and Medical Services are subject to availability and can be withdrawn without notice by Medical Services Providers. Medical Services may also change at any time in accordance with the Terms and Conditions agreed between the Client (and/or the Patient) and the Medical Services Provider and the Terms and Conditions upon which the Medical Services Provider agrees to provide Medical Services.

### **4. AEROMEDICAL SOLUTIONS' RELATIONSHIP WITH MEDICAL SERVICES PROVIDERS**

- 4.1 The Client acknowledges that Medical Services Providers may pay Aeromedical Solutions a fee where the Client agrees to engage a Medical Services Provider to provide Medical Services to the Patient pursuant to the Agreement (**Commission Fee**).
- 4.2 Any Commission Fee payable by the Medical Services Provider to Aeromedical Solutions will be calculated with reference to one or more of the following:
- 4.2.1 the Medical Services Fees payable by the Client to the Medical Services Provider;
  - 4.2.2 a fixed fee amount agreed between Aeromedical Solutions and the relevant Medical Services Provider;
  - 4.2.3 a percentage of the total amount paid or payable by the Client to the Medical Services Provider;
  - 4.2.4 on an ad hoc basis; or
  - 4.2.5 as otherwise determined and agreed between the Medical Services Provider and Aeromedical Solutions.
- 4.3 The Client acknowledges and agrees that the quantum of any Commission Fee payable or paid by a Medical Services Provider to Aeromedical Solutions and the basis upon which any Commission Fee is calculated is confidential as between Aeromedical Solutions and the relevant Medical Services Provider

and that neither Aeromedical Solutions nor the Medical Services Provider is under any obligation to disclose this information to the Client or the Patient.

## **5. APPLICATIONS**

- 5.1 To make an Application, the Client must complete and submit an application form to Aeromedical Solutions in a form approved by Aeromedical Solutions and otherwise in accordance with the terms of the Agreement (**Application Form**). Aeromedical Solutions will provide the Client with the form of Application Form. The completed Application Form must be submitted by the Client to Aeromedical Solutions by email (to the email address provided by Aeromedical Solutions), or by any other method as advised by Aeromedical Solutions. Alternatively, at Aeromedical Solutions' discretion, it may assist the Client with completion of the Application Form over the phone.
- 5.2 By submitting an Application to Aeromedical Solutions, the Client makes an offer to engage Aeromedical Solutions to provide the Services and agrees to be bound by the Agreement. Aeromedical Solutions has the right to not accept the offer at its absolute discretion.
- 5.3 Aeromedical Solutions will use all reasonable endeavours to obtain at least one Option as soon as practicable once an Application is received by it in accordance with the terms of the Agreement.
- 5.4 Upon receipt of an Application, Aeromedical Solutions will endeavour to notify the Client via email within 48 hours of receiving the Application that it will commence seeking Options from Medical Services Providers.
- 5.5 Aeromedical Solutions provides no warranties or guarantees regarding the length of time it will take to obtain Options for the Client.
- 5.6 When submitting an Application and completing an Application Form, the Client must enter details, including any requested details regarding the Patient, correctly and according to any identification documentation requested by Aeromedical Solutions. Aeromedical Solutions has no responsibility for any loss or damage arising from the incorrect provision of information or details by the Client or the Patient.
- 5.7 It is the Client's responsibility to ensure that all details contained in the Application are true, accurate and correct before submitting the Application to Aeromedical Solutions and proceeding to engage a Medical Services Provider.
- 5.8 The Client acknowledges and agrees that Aeromedical Solutions is not required to conduct any due diligence checks on, or verify, or make any investigations regarding any information provided to it with respect to a Patient or otherwise contained in an Application and that Aeromedical Solutions relies entirely upon the information provided to it by the Client with respect to a Patient when seeking Options from Medical Services Providers and submitting Options to the Client.
- 5.9 The Client acknowledges that Aeromedical Solutions cannot and does not guarantee that an Option can or will be obtained for any given Application. Availability of Options depends on various factors including, but not limited to, the geographic location of the Patient, the laws of the state or country in which the Patient is located, Medical Services Provider availability and capacity to provide Medical Services in the requested timeframes, and the climate and weather conditions in the state or country in which the Patient is located or to which the Patient is to be transported.
- 5.10 Aeromedical Solutions will send any Options it obtains to the Client's nominated email address, or discuss such Options with the Client over the phone.
- 5.11 All Applications, once accepted by Aeromedical Solutions, are final. No Application may be cancelled or varied except with Aeromedical Solutions' prior written consent (which may be granted or withheld by Aeromedical Solutions in its absolute discretion) and on terms whereby the Client agrees to indemnify Aeromedical Solutions against any and all losses incurred by Aeromedical Solutions as a consequence of any cancellation or variation. The Client acknowledges that the extent to which an Application may be modified or cancelled, if at all, will depend on the type of Service, the stage which the Application has reached in Aeromedical Solutions' system and any representations made by Aeromedical Solutions to a Medical Services Provider in reliance upon the Application.

## **6. LIMITATION OF LIABILITY AND RELEASE**

- 6.1 The Client acknowledges and agrees that, unless otherwise expressly stated under the Agreement, Aeromedical Solutions does not provide any guarantee or warranty as to the competency, fitness or suitability to provide the Medical Services, workmanship or performance of the Medical Services Providers, or any Medical Services.
- 6.2 To the extent permitted by law, Aeromedical Solutions is not in any way responsible for, and the Client releases (and will procure that the Patient releases) Aeromedical Solutions from all liability (including in negligence) in respect of any costs, damages, losses, expenses, demands, death and injury to person or

property, incurred or suffered directly or indirectly in connection with the Medical Services, any act or omission of the Medical Services Provider, and/or any resultant Provider-Client Agreement entered into with respect to the Patient.

- 6.3 With the exception of any Non Excludable Rights and any express written warranty provided by Aeromedical Solutions, and notwithstanding any other provision of the Agreement, the liability of Aeromedical Solutions to the Client and the Patient, whether arising under or in connection with the Agreement, or the performance or non-performance of or anything incidental to the Agreement, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:
- 6.3.1 Aeromedical Solutions will not have any liability whatsoever to the Client and/or the Patient for any loss, injury or death of persons occasioned directly or indirectly by any claim of any kind in connection with the time it takes to obtain Options for the Client, or any Medical Services obtained under, pursuant to or in furtherance of the Options;
- 6.3.2 Aeromedical Solutions will not have any liability whatsoever for any loss, injury, death or damage due to delay, cancellation, or disruption in any manner caused by laws, regulations, acts or failures to act, demands, orders, or interpositions of any government or any subdivision or agent of any government, or by acts of God, strikes, fire, flood, war, rebellion, terrorism, insurrection, sickness, quarantine, epidemics, theft, or any other cause(s) beyond the reasonable control of Aeromedical Solutions; and
- 6.3.3 the total aggregate liability of Aeromedical Solutions under the Agreement is at all times limited to the amount equal to the price paid by the Client to Aeromedical Solutions for the Services provided by Aeromedical Solutions under the Agreement.
- 6.4 Aeromedical Solutions will bear no liability to the Client or any third party in any circumstances for any indirect, special or consequential loss, injury or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of data, loss of contract or loss of profit howsoever arising and whether in an action in contract, tort, in equity, under statute, or on any other basis.
- 6.5 Any advice, recommendation, information or representation provided by Aeromedical Solutions as to the quality or performance of the Services, the identification of any Medical Services Providers, the Medical Services or their suitability is given in good faith.
- 6.6 The Client acknowledges and agrees that:
- 6.6.1 pursuant to **clause 2**, Aeromedical Solutions acts as the Client's agent only to source a Medical Services Provider to deliver and provide Medical Services to the Patient and any other services or goods which the Medical Services Provider may provide to the Patient or for the Client; and
- 6.6.2 the Client's chosen Medical Services Provider is solely responsible and liable for the provision of the Medical Services and standard of care in providing the Medical Services and any other services which it may agree from time to time to provide to the Client and/or the Patient, subject to the Client's and/or the Patient's separate and independent agreement/s with the Client's chosen Medical Services Provider.

## **7. THE CLIENT'S WARRANTY**

- 7.1 The Client represents and warrants that, the Application and any other representations made by it to Aeromedical Solutions for the purposes of the Agreement are accurate and not misleading, and the Client acknowledges and agrees that Aeromedical Solutions will rely upon such representations.

## **8. INDEMNITY**

- 8.1 The Client indemnifies Aeromedical Solutions and its officers, employees, agents and assigns, regardless of any negligence on the part of Aeromedical Solutions, on a full indemnity basis, from and against any and all costs, liability, damage, loss, expense or demand arising directly or indirectly from:
- 8.1.1 a breach of the Agreement by the Client including but not limited to a breach of any representation or warranty given by the Client under the Agreement and/or in an Application;
- 8.1.2 Medical Services provided to the Patient;
- 8.1.3 any claim whatsoever made by the Patient against Aeromedical Solutions with respect to the Medical Services, the Medical Services Provider or any resultant Provider-Client Agreement entered into with respect to the Patient;
- 8.1.4 a breach by the Client or the Patient of any Provider-Client Agreement; and

- 8.1.5 any false, misleading or deceptive representation or statement made by the Client in respect of the Services to any person or otherwise to the Medical Services Provider.

## 9. PRIVACY

- 9.1 The privacy and security of the Client's and Patient's personal information is important to Aeromedical Solutions. In performing the Agreement, Aeromedical Solutions will comply with all applicable Commonwealth, State and Territory privacy legislation, including the Privacy Act.
- 9.2 The Aeromedical Solutions Privacy Policy (**Privacy Policy**) will be made available to the Client and is incorporated into these Terms and Conditions. To the extent there is a conflict between the terms of the Privacy Policy and these Terms and Conditions, these Terms and Conditions govern.
- 9.3 The Privacy Policy describes the data that Aeromedical Solutions gathers about or from the Client, or about a Patient, and how it processes, uses and shares that data. By making an Application, the Client consents to all actions that Aeromedical Solutions may take with respect to the Client's data consistent with the Privacy Policy.
- 9.4 Without limiting the remaining provisions of this **clause 9**:
- 9.4.1 the Client consents to Aeromedical Solutions collecting the Client's and Patient's personal information which the Client and/or Patient provide to Aeromedical Solutions pursuant to the Agreement, and the Client consents to Aeromedical Solutions using that personal information:
- 9.4.1.1 for the purpose of Aeromedical Solutions performing the Agreement; and
- 9.4.1.2 for purposes which are directly related to Aeromedical Solutions performing the Agreement, in circumstances where the Client and Patient would reasonably expect Aeromedical Solutions to use the information, such as for registration and administration purposes;
- 9.4.2 the Client consents to Aeromedical Solutions disclosing the Client's and Patient's personal information to:
- 9.4.2.1 Medical Services Providers for the purposes of providing the Patient with Medical Services;
- 9.4.2.2 to other health and medical service providers that are responsible for the Patient's health care, to enable the continuity of health care of the Patient;
- 9.4.2.3 to any legally authorised substitute medical decision maker of the Patient (such as a person holding a medical power of attorney); and
- 9.4.2.4 to any contact person/s nominated in writing by the Client in the Application or otherwise; and
- 9.4.3 if the Client is not the Patient, the Client warrants that the Client is legally authorised to provide consent on behalf of the Patient, or has obtained all required consents from the Patient, for the handling of the Patient's personal information as described in this **clause 9.4**.
- 9.5 The Client agrees (and will procure the Patient's agreement) that any medical records concerning the Patient that Aeromedical Solutions generates while performing the Agreement will be owned by Aeromedical Solutions. However, the Client and Patient will have a right to access such records in accordance with the Privacy Act and other applicable privacy legislation.

## 10. GST

- 10.1 Terms used in this **clause 10**, have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 10.2 If GST is payable on any supply under the Agreement, the fee payable for the supply will be considered exclusive of GST. Unless the parties otherwise agree in writing, the party receiving the supply undertakes to pay the supplying party the amount of such GST in addition to any fee for that supply of the time the fee is payable or at such later time when the amount of the GST becomes known, subject to the supplying party issuing a valid tax invoice to the party receiving the supply in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 11. GENERAL

- 11.1 The Agreement (including these Terms and Conditions) is governed by and will be construed in accordance with the laws for the time being in force in the State of Victoria, Australia.
- 11.2 Should any part of the Agreement be held to be void or unlawful, such part is to be read and enforced as if the void or unlawful part had been deleted.

- 11.3 Aeromedical Solutions may update these Terms and Conditions by notification to the Client or by providing an updated version on its website.
- 11.4 No Application between Aeromedical Solutions and the Client may be assigned by the Client without Aeromedical Solutions' prior written consent, which may be given or withheld in Aeromedical Solutions' absolute discretion.
- 11.5 If no method of notice or communication is stipulated under the Agreement then notices or communications must be made by email or by certified or registered mail with postage prepaid, by hand delivery, or such other address or person as a party may specify by notice in writing to the other. All such notices or communications shall be deemed to have been duly given or made:
- 11.5.1 if sent by email, when sent to the addressee;
  - 11.5.2 when delivered by hand; and
  - 11.5.3 in the normal course of post, after being deposited in the mail with postage prepaid.
- 11.6 The Agreement and all communications between Aeromedical Solutions and the Client relating to the subject matter of the Agreement are and shall remain confidential.
- 11.7 Unless otherwise expressly provided in the Agreement, Aeromedical Solutions and the Client do not intend to create any form of partnership, agency, or trust arrangement with each other.
- 11.8 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.
- 11.9 The Client acknowledges and agrees that it may agree to the terms of the Agreement (including these Terms and Conditions) in the following ways:
- 11.9.1 by executing these Terms and Conditions pursuant to **clause 12**; or
  - 11.9.2 by communicating electronically or by any other method in writing to Aeromedical Solutions stating or confirming that they agree to the Agreement and identifying themselves in that communication.
- 11.10 In agreeing to the Agreement pursuant to **clause 11.9**, the Client warrants that it has read, understood and approved the Agreement.

12. EXECUTION

**Executed as an agreement**

**EXECUTED** for and on behalf of **Six Point Enterprises Pty Ltd (ABN 31 630 582 491), trading as Aeromedical Solutions** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature Director

\_\_\_\_\_  
Signature Director/Secretary

\_\_\_\_\_  
NAME [print name in BLOCK letters]

\_\_\_\_\_  
NAME [print name in BLOCK letters]

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date:

**EXECUTED** for and on behalf of the Client:

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
NAME of Client [print name in BLOCK letters]

\_\_\_\_\_  
NAME of Witness [print name in BLOCK letters]

\_\_\_\_\_  
Date: