

## **1. Services Available**

1.1. Our Service Providers provide a variety of health-related services. These Services may include:

Health Expos  
Health Consultations  
Health Checks  
Mental Health Training  
Ergonomic Assessments and Training  
Manual Handling Assessments and Training  
Injury Prevention Services  
Job Dictionaries  
Group Exercise Classes  
Health Seminars  
Health Campaigns  
Flu Vaccinations  
Cooking Demonstrations

## **2. Minimum Service Periods**

2.1. For some Services you will be required to book the Service for a minimum period.  
2.2. The minimum Service period will be stipulated in the individual proposal. Should a booking be for less than the minimum timeframe, the associated fee for the minimum timeframe will still apply.  
2.3. Flu Vaccinations have separate minimum service period and other requirements: refer to [terms and conditions for Flu Vaccinations](#).

## **3. Normal Working Hours**

3.1. The staff and contractors of our Service Providers generally work between 8.00 am and 6.00 pm Monday through Friday (excluding public holidays).  
3.2. The hourly rates quoted are based on Services being delivered during those working hours. By arrangement our Service Providers can offer Services outside the normal working hours, additional charges may apply.

## **4. Service Implementation**

4.1. To allow us to plan and implement the Services to the standards we demand, a minimum of 28 days is required from the date we receive your acceptance of our Proposal to the date you request the Services delivered.  
4.2. If you require any Service delivered within less than the 28-day notice period, we will endeavour to meet your requirements, but cannot guarantee delivery of the Service in that time. Where the Service is provided in this period, additional charges may apply.  
4.3. If included as part of our Service Agreement, we will aim to complete and deliver a summary report on the Services to you within 30 days from the date we complete the Services.

## **5. Disbursements**

5.1. The Fees quoted in our Proposal cover incidental use of photocopiers, telephones, facsimiles and the like. The Fees do not cover additional specific expenses which we incur because of you engaging us to deliver the Services including but not limited to the printing of any promotional documents, delivery of material to you by courier (other than where the need for an urgent delivery is our fault), Service-related travel, accommodation and like costs. These costs will be listed in the proposal and passed on to you in accordance with clause 4.3 of the Terms and Conditions.

5.2. Our staff and contractors will generally travel to your Venue by car because of the need to carry materials or equipment with them. It is expected that you will be able to provide suitable parking adjacent to the Venue at no cost, but where they do incur parking charges these costs will be passed on to you as a disbursement.

## **6. Additional Costs and Disruptions**

6.1. We reserve the right to recover from you the unexpected costs which we incur in delivering the Services. Typically, these costs can arise where:  
a) your staff arrive late for their appointment, resulting in us having to work longer hours than quoted for in the Proposal; and/or  
b) more of your staff than predicted attend to participate in the Services, resulting in us having to work longer hours than we quoted in the Proposal.  
6.2. Where we anticipate that the Services in question will run for longer than contemplated by the Proposal, we will (where practicable) seek the approval of your representative nominated under our Service Agreement. We will keep a record of any additional hours worked.  
6.3. In the event that circumstances beyond our control arise, Healthworks reserves the right to reschedule or modify the agreed-upon service dates or times. Such circumstances may include, but are not limited to, acts of nature, extreme weather conditions, equipment failure, illness, accidents, or other unforeseen events that prevent us from fulfilling our obligations as scheduled. Healthworks agrees to use their best endeavours to reschedule the service within a reasonable timeframe. If an alternative time cannot be agreed, then Healthworks will reduce the Agreed Fee by an amount commensurate with the Fee attributable to the service cancelled by Healthworks.

## **7. Insurances**

7.1. We maintain the following insurance coverage:  
a) Public Liability insurance cover to a minimum of \$20,000,000; and  
b) Professional Indemnity insurance to a minimum of \$10,000,000.  
require from time to time.

## 1. Definitions

1.1. In these Terms and Conditions (including as used in our Service Information above):

- a) **ACL** means the Australian Consumer Law contained in Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- b) **Consumer** has the same meaning as in the ACL.
- c) **Consumer Rights** means your rights if you are a Consumer contained in the ACL.
- d) **Fees** means the fees payable by you for the provision of the Services.
- e) **IP** means
  - i) patents, trademarks, service marks, and design rights (whether registered or unregistered and including any applications for these rights).
  - ii) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
  - iii) trade or business names; and
  - iv) know-how, confidential information and trade secrets, and any other similar rights or obligations whether registrable or not in any country.
- f) **Personal Information**: means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
  - i) whether the information or opinion is true or not; and
  - ii) whether the information or opinion is recorded in a material form or not
- g) **Privacy Act** means the Privacy Act 1988 (Cth).
- h) **Proposal** means the document or letter we send to you in which we describe the Services we offer to you and the amounts we will charge for providing those services.
- i) **Services** means each or all of those of our services specified in the Proposal.
- j) **Service Agreement** means the contract between you and us created by your acceptance of our Proposal, incorporating these terms and conditions.
- k) **Service Information** means details of the Services being provided as described in Clause 1.1 of Part A of this document.
- l) **Service Period** means the period over which the Services are to be provided in accordance with the Proposal.
- m) **Service Providers** being:
  - Bodycare Health and Wellbeing Pty Ltd (ABN 19 624 842 351 trading as Healthworks Corporate®, and/or
  - Bodycare Injury Management Pty Ltd Trading As (Bodycare Workplace Solutions (ABN 15 120 104 985)
- n) **Third Party** means a person or corporation other than you or us.
- o) **Trademark** means Healthworks®.

p) **We/us/our** means Service Providers detailed in section l) of these Terms and Conditions

q) **You/your** means the person, company or organisation to which our Proposal is addressed.

r) **Venue** means the premises at which we will provide the Services.

## 2. Proposal

2.1. These Terms and Conditions form part of our Proposal and will govern our supply of the Services to you.

2.2. A Service Agreement, as a binding contract for the provision of the Services incorporating these Terms and Conditions, will come into existence when you accept our Proposal. You must accept the Proposal in the manner indicated in the Proposal.

2.3. Unless specified otherwise in the Proposal, our Proposal will remain open for acceptance for a period of 90 days from the date of the Proposal.

2.4. By accepting our Proposal:

- a) you acknowledge that you have read the Proposal, and Service Information and accept all details of the Services required;
- b) you acknowledge you have read these Terms and Conditions and agree to be bound by them; and
- c) the person signing the acceptance warrants to us that he/she is authorised to accept the Proposal on your behalf.

## 3. Service Delivery

3.1. We will deliver or manage the delivery of the Services to you as indicated in our Proposal.

3.2. To facilitate delivery of the Services, you will appoint (by giving us notice in writing) a representative with appropriate authority to enable our delivery of the Services in a timely manner.

3.3. Your representative will have primary responsibility for overseeing our delivery of the Services in your organisation, including:

- a) receiving the resources used in the delivery of the Services in advance of the delivery date;
- b) promoting the availability of the Services within your organisation;
- c) communicating our requirements to your staff; and
- d) making and implementing decisions for you in conjunction with us.

3.4. We need your co-operation for us to provide the Services. Without limiting the generality of this obligation, you undertake that you will:

- a) print and distribute to your staff, in line with our instructions, any promotional material we supply;
- b) encourage your staff to take advantage of the Services offered;

- c) ensure the Venue is a safe and suitable work environment for purposes of the Services;
- d) allow us to visit and inspect the Venue at least two weeks prior to the scheduled date for delivery of the Services or, if this cannot be arranged, supply maps showing the location and layout of the Venue in adequate detail;
- e) give us access to the Venue during the scheduled times for delivery of the Services and for up to 2 hours prior to the starting time for the delivery (for set-up) and for at least 2 hours after delivery (for pack-up);
- f) ensure that we are fully inducted into your Venue and receive information including but not limited to:
  - (i) incident and hazard reporting guidelines; control methods utilised on site;
  - (iii) first aid procedures and contact personnel;
  - (iv) emergency and evacuation procedures;
  - (v) any personal protective equipment required by the site.
- g) provide us with facilities and furniture at the Venue as appropriate for the delivery of the Services;
- h) provide us with other facilities and resources (if any) specified in the Proposal;
- i) provide us with access to your staff that we reasonably require for purposes of preparing for the delivery of, or delivering the Services;
- j) arrange for your staff, who will receive the benefit of the Service delivery, to sign such consents and waiver forms as we may reasonably require consistent with any Consumer Rights or Privacy Act obligations;
- k) provide access to information and resources under your control that we reasonably require for purposes of preparing for the delivery of or delivering the Services;
- l) notify us of any additional activities you may undertake in conjunction with the delivery of the Services that may impact on the Services we are providing; and
- m) notify us immediately of any changes or additions you want to make to the Services that you have contracted us to provide.

3.5. Our provision of the Services is at all times based upon your complying with these obligations. If our Service delivery is adversely affected by your failure to do so, we will remain entitled to receive our Fees for the Services even where your inability to comply with these obligations arises from events beyond your control.

3.6. You acknowledge that we will rely on all information and documents provided to you and we will not be responsible for the accuracy or verification of any such information or document.

## 4. Fees and Disbursements

4.1. The amounts you will pay us for providing the Services comprise:

- a) the amounts specified in our Proposal for delivery of the Services; and
- b) the disbursements (if any) we incur in delivering the Services and which we are entitled to recover from you in accordance with these Terms and Conditions; and
- c) the costs (if any) of sourcing products from Third Party suppliers; and
- d) the additional charges (if any) which we are entitled to invoice you in accordance with these Terms and Conditions.

4.2. All Fees quoted to you in our Proposal are quoted exclusive of GST unless otherwise stated.

4.3. Any disbursements we incur in preparing for the delivery of, or delivering, the Services to you will be invoiced to you at cost with a 20% administration fee. A disbursement is any expense we incur in delivering the Services, other than the incidental use of photocopiers, telephones, facsimiles and the like, which is not stated in the Proposal as being absorbed in our Fee. Where practicable, we will seek to identify and give you an estimate of any material disbursements we anticipate incurring in our Proposal, but our failure to do so will not prevent us from recovering from you any disbursements we do incur in delivering the Services to you.

4.4. Products used as incentives in the delivery of our Services are sourced from Third Party suppliers. Consistent with paragraph 4.3, where our Proposal specifies that we will supply such products (and unless we state that the cost of such products will be absorbed within the Fee) we will:

- a) provide a good faith estimate of the cost of supplying the products in the Proposal based on Third Party supplier information known to us but invoice you for the actual costs incurred in sourcing the products, plus a 20% handling fee.

Furthermore, the specifications of Third-Party suppliers' products may change without notice or may cease to be available. In such case, we will endeavour to deliver a similar replacement product, within the estimate provided. If we are unable to do so, we will notify you and seek to agree on an alternative option.

4.5. We reserve the right to invoice you further charges in addition to the Fees where circumstances arise that result in us doing additional work or incurring additional costs outside of the scope covered by the Fees specified in our Proposal. We will not invoice you for such further charges where the additional work or costs were caused by our fault, or where we have expressly stated in our Proposal that the specified Fees cover any additional work or costs.

4.6. Without limiting paragraph 4.5, the circumstances in which we reserve the right to invoice you further charges include:

- a) where our staff are required to work outside normal business hours;
- b) where you require amendments to our standard forms of promotional material, report formats or information materials to suit your requirements;
- c) where you request any changes to the Services after our Proposal is accepted by you; or
- d) where our Services are required for a longer period than that contemplated by our Proposal.

4.7. Where practicable we will discuss any further charges with you prior to the delivery of the Services which will result in those additional charges being invoiced to you. Any further charges will be calculated by reference to the time involved and to our prevailing rates for additional or out-of-scope work. Those rates may be noted in the Proposal, or are otherwise available from us on request.

## 5. Terms of Payment

5.1. Our Fees, subject to relevant adjustments (if any), will be invoiced upon completion of the service, or based on services delivered within the month if services are ongoing. All invoices (other than invoices for products sourced from Third Party suppliers) are due and payable within 30 days from the date of the invoice.

5.2. If payment of any of our invoices is outstanding beyond 60 days from the date of our invoice, we reserve the right to immediately suspend delivering, or preparing for the delivery of, the Services to you. We will notify you if we exercise this right. Upon notification of suspension to you for this reason, all amounts due to us in respect of the Services, as specified in our Proposal, may also be invoiced and, if so, become immediately due and payable.

5.3. If you do not pay us any amount, we have invoiced you by the due date for payment, finance fees may apply.

5.4. If services are paid for up front before service delivery, services must be scheduled and delivered within 12 months from the date of payment.

## 6. Cancellation/Rescheduling Policy

6.1. Circumstances may arise that require you to cancel or reschedule delivery of the Services before we have delivered or completed delivery of the Services.

6.2. If, after a Service has been contracted and scheduled, you seek to vary the time, place, nature, or size of that Service (reschedule) or cancel by providing written notice, the following may apply:

a) Where your notice of reschedule is received by us after we have agreed to the dates, times and locations of the service, an administrative charge of 15% of the total contract value will be charged or;

b) where your notice of cancellation or reschedule is received by us 7 to 21 days before the scheduled date for the delivery of the Services: you will pay us 25% of the Fees billable within the proposal; or

c) where your notice of cancellation or rescheduling is received less than 7 days to 48 hours before the scheduled date for delivery of the Services: you will be bound to pay us 50% of the Fee quoted and agreed upon as per the Proposal; or

d) where your notice of cancellation or rescheduling is received less than 48 hours before the scheduled date for delivery of the Services: you will be bound to pay us 100% of the Fee quoted and agreed upon as per the Proposal.

## 7. Non-Solicitation

7.1. Prior to the completion of the delivery, or to the cancellation, of the Services and for a period of 12 months thereafter, you will not (directly or indirectly) for any reason do any of the following:

- a) solicit or entice away any of our staff or contractors with whom you had contact during the delivery of the Services; or
- b) interfere with the dealings between us and any staff or contractor (or attempt to do the same); or
- c) counsel, procure or assist any third party to do any of these acts.

7.2. You acknowledge and agree that this condition is reasonable in its scope and duration and goes no further than is necessary to protect our interests.

## 8. Intellectual Property

8.1. Any IP created or licensed by us for or in respect of the Services is and remains our property or the property of the entity from which it has been licensed. Nothing within any of our documentation including but not limited to; our Service Agreement, Proposal, Service Information or by the disclosure of any information under either of these, operates as a sale, transfer, licence, assignment or other dealing with respect to that IP in any material, other than to confer a right to have the benefit of use of that material strictly for purposes of delivery of the Services in accordance with the Service Agreement.

8.2. All products, software, content, source code, recordable media, correspondence, reports, manuals, papers or other similar documents which are created, compiled, licensed or devised by us will remain our property.

8.3. Material provided by us by whatever means, including through our website, printed, or otherwise provided, is protected by Australian copyright legislation and by the copyright legislation applying in other countries.

8.4. Unless otherwise agreed for purposes of delivering the Services, you may make copies of portions of such

material solely for your own information, research, or study, provided you do not modify the copy from how it appears as provided by us and include a copyright notice consistent with paragraph 8.2 on the copy that you make.

8.5. Save for the foregoing, you must not reproduce, frame (by whatever means), link to or otherwise use any of such material without first obtaining our written permission under the Copyright Act 1968 (Cth) or similar copyright legislation.

8.6. Bodycare Health & Wellbeing Pty Ltd is the registered owner in Australia of each Trademark. It licences the Trademark to its subsidiaries and other entities for use while providing products and Services to our clients. Bodycare Health & Wellbeing Pty Ltd has used or permitted the use of the Trademark outside Australia and asserts its entitlement to do so at the exclusion of others.

8.7. A Trademark may not be used as a trademark or in connection with the supply of goods or services by any other person without our prior written permission. We have developed strict guidelines as to the way the Trademark is to be used by authorised users.

## 9. Confidentiality

9.1. We will keep confidential all information and materials which you provide to us and are so designated by you.

9.2. We will limit access to such information and materials to those persons or corporations with whom we need to deal in connection with the provision of Services. We may use your name and a factual description of the Services performed for you in proposals to Third Parties or our other promotional materials.

9.3. You will keep confidential all the information, materials and programs used by us to provide the Services.

9.4. You will limit access to all such information, materials and programs to those persons or corporations with whom you need to deal in connection with the provision of the Services.

## 10. Personal Information

10.1. For some Services, we may collect your personal and sensitive information. In accordance with relevant Privacy Laws, the way that we collect, store and use information is governed by our Privacy Policy, found here: <https://www.healthworks.com.au/privacy-policy/>

## 11. Limitation of Liability

11.1. We exclude all terms, conditions, warranties, guarantees, representations and obligations in relation to the Services which are implied or granted by statute or general law other than those that cannot be

excluded in accordance with applicable consumer-related laws.

11.2. Subject to paragraph 11.3, our liability for loss suffered or incurred by you is limited to us (at our election):

a) in respect of any products to be supplied as part of the Services under the Proposal:

- i) replacing the product or supplying equivalent goods;
- ii) repairing the product;
- iii) paying the cost of replacing the product or of acquiring equivalent goods; or
- iv) paying the cost of having the product repaired.

b) in respect of all other aspects of the Services to be supplied under the Proposal:

- i) resupplying the Services; or
- ii) paying the cost of having the Services supplied again.

11.3. If you are a Consumer, paragraph 11.2 does not apply:

a) where it is not fair or reasonable for us to rely on that clause;

b) where the products or other Services are of a kind ordinarily acquired for personal, domestic or household use or consumption; or

c) in relation to rights granted under sections 51, 52, and 53 of the ACL

11.4. Where we are liable to you in circumstances that are not covered by paragraph 11.2, then our total liability to you for all events and occurrences in respect of our Service Agreement, whether in contract, tort, under statute or otherwise, is limited to the total of all Fees paid by you under that agreement during the 3 months prior to the date on which the relevant event or circumstance arises.

11.5. Except for any Consumer Rights:

a) we will not be liable to you, your representatives, or any other person for any indirect, economic, special, or consequential loss or damage, loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit in respect of our service Agreement or the supply of any products and/or other Services;

b) you will indemnify us against any damage, expense, loss or liability we suffer or incur:

- i) to the extent caused by or contributed to by your negligence, breach of our Service Agreement, fraud or wilful default;
- ii) arising in relation to the ownership, possession or use of any product or material derived from our Services by you or any other person; or
- iii) in exercising any of our rights or remedies under our Service Agreement or which are available to us at law, in equity or under the statute.

11.6. Our obligations under our Service Agreement are suspended for any period that we are prevented from performing them by any force majeure event or other cause beyond our reasonable control.

## 12. General

12.1. We may appoint agents, Third Party contractors and sub-contractors to carry out any of our obligations to you under our Service Agreement without referring to you.

12.2. The Service Agreement contains the entire agreement between us with respect to the delivery of our Services.

12.3. The Service Agreement may not be modified except by a further written document signed by the duly authorised representatives of each of us.

12.4. If any provision of Service Agreement is found to be unlawful, invalid or unenforceable for any reason, our contract will remain in force apart from that provision which is deemed to be deleted.

12.5. The law of Victoria governs the Healthworks® Service Agreement and each of us submits to the non-exclusive jurisdiction of the Victorian courts.

12.6. By signing this agreement/proposal, you give The Occ Health Group and their associated entities ([www.theocchealthgroup.com](http://www.theocchealthgroup.com)) express permission to receive marketing emails or messages. To stop receiving marketing emails or messages from us, please email us at [marketing@bodycare.com.au](mailto:marketing@bodycare.com.au).

12.7. This permission includes, but is not limited to, the use of the Materials on the Company's website, social media platforms, presentations, case studies, print collateral, and other promotional materials.

12.8. The Occ Health Group maintains a marketing database, now or in the future, for the exchange of communications, marketing emails, or messages generally regarding your account(s) with The Occ Health Group. We will NEVER send you emails requesting confidential information such as Account numbers, usernames, or passwords and you should NEVER respond to any email requesting such information. If you receive such an email purportedly from The Occ Health Group, do not respond to the email and notify The Occ Health Group immediately by emailing us at [itsecurity@bodycare.com.au](mailto:itsecurity@bodycare.com.au).

12.9. You consent to The Occ Health Group using your company name, logo, and marks to identify you as a client on our website and other marketing materials. Please email us at [marketing@bodycare.com.au](mailto:marketing@bodycare.com.au) to be excluded from this option.

## 13. Flu Vaccination Quote Terms and Conditions

Please refer to the [Terms and Conditions](#) provided with your Flu Vaccination Proposal.