

# Bespoke Career Management Pty Ltd

ABN 24 139 307 734 of Suite 6, Level 3, 2-12 Foveaux Street, Surry Hills NSW 2010 ("the Employment Business").

## Standard Terms of Business Introduction of Candidates to Clients for Permanent Placement via Direct Employment/Engagement

### 1. Definitions

In these Terms -

- 1.1 **"Client"** means the person, firm or corporate body to whom the Employment Business Introduces a Candidate;
- 1.2 **"Candidate"** means the person Introduced by the Employment Business to the Client for an Engagement including, but not limited to, any officer or employee of the Candidate if the Candidate is a company, any member or employee of the Candidate if the Candidate is a partnership, and members of the Employment Business's own staff;
- 1.3 **"Engagement"** means the engagement, employment or use of the Candidate by the Client or by any Third Party to whom or to which the Candidate was Introduced by the Client (whether with or without the Employment Business's knowledge or consent) on a permanent or temporary basis, howsoever engaged (whether directly or indirectly) and **"Engages"** and **"Engaged"** shall be construed accordingly;
- 1.4 **"Introduction"** means
  - a) the interview of a Candidate by the Client in person or by telephone; or
  - b) the passing of a curriculum vitae or information about the Candidate by the Employment Business to the Client. The time of the Introduction shall be taken to be the earlier of (a) and (b) above; and **"Introduced"** and **"Introduces"** shall be construed accordingly;
- 1.5 **"Remuneration"** includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, superannuation, allowances, inducement payments, shift allowances, location weighting and call-out allowances, the benefit of a company car and all other payments or emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client. Where the Client provides a company car, a notional amount of AUD10,000 will be added to the salary in order to calculate the Employment Business's fee;
- 1.6 **"Terms"** means these Standard Terms of Business;
- 1.7 **"Third Party"** means any company or person who is not the Client, and includes any related body corporate (as defined in the *Corporations Act 2001* (Cth)) of the Client.

### 2. These Terms

- 2.1 These Terms constitute the entire agreement between the Employment Business and the Client in relation to the subject matter hereof and are deemed to be accepted by the Client and to apply by virtue of the occurrence of the earlier of the following:
  - a) the Introduction to the Client of, or the Engagement by the Client of, a Candidate;
  - b) the passing of information about the Candidate by the Client to any Third Party;
  - c) the Client's request to interview a Candidate;
  - d) the Client's signature on the Client Account Details form; and
  - e) any other written expressed acceptance of these Terms by the Client.

For the avoidance of doubt, these Terms apply whether or not the Candidate is Engaged by the Client for the same type of work as that for which the Introduction was originally effected.

- 2.2 These Terms supersede all previous agreements between the parties in relation to the subject matter hereof.
  - 2.3 These Terms prevail over any other terms of business, purchase order terms, purchase conditions or other terms put forward by the Client ("**Client Terms**"). The parties acknowledge and agree that any Client Terms are of no effect and do not apply in relation to the subject matter of these Terms.
  - 2.4 These Terms shall constitute the entire agreement between the Employment Business and the Client in all of the circumstances set out in clause 2.1 above, whether or not they are signed by the Employment Business and/or the Client.
  - 2.5 The Client authorises the Employment Business to act on its behalf in seeking Candidates and shall advertise for such Candidates through various methods as determined by the Employment Business.
- ### 3. Obligations of the Employment Business
- 3.1 The Employment Business shall use reasonable endeavours to introduce one or more suitable Candidates to meet the requirements of the Client for any particular vacancy. The Employment Business cannot guarantee to find a suitable Candidate for each vacancy.
  - 3.2 The Employment Business accepts no responsibility in respect of matters outside its knowledge and the Client must satisfy itself as to the suitability of the Candidate.

#### 4. Client Obligations

- 4.1 The Client shall satisfy itself as to the suitability of the Candidate. The Client is responsible for obtaining work permits, any required work visas and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate, and satisfying other requirements, qualifications or permission required by law of the country in which the Candidate is engaged to work.
- 4.2 To enable the Employment Business to comply with its obligations under clause 3 the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the type of work that the Candidate would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks.
- 4.3 The Client shall provide details of the date the Client requires the Candidate to commence work, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Candidate would be entitled to give and receive to terminate the employment with the Client.
- 4.4 The Client shall inform the Employment Business of any information it has that suggests it would be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the position which the Client seeks to fill.
- 4.5 The Client shall inform the Employment Business within 1 business day where it receives details of a Candidate from the Employment Business which it has already received from another agency in relation to the same vacancy. If no such notification is given by the Client then, in the event of an Engagement, the Client agrees the Employment Business is entitled to charge a fee in accordance with clause 5.2.
- 4.6 The Client agrees to:
- notify the Employment Business as soon as possible (and in any event, not later than 7 days from the date of the offer or from the date the Engagement takes effect; whichever is earlier) of any offer of an Engagement which it makes to the Candidate;
  - notify the Employment Business immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration;
  - pay the Employment Business's fee within the period set out under clause 6.2; and
  - comply with all applicable laws in relation to the Engagement of the Candidate.

- 4.7 The Client shall not, and shall not seek to cause the Employment Business to, unlawfully discriminate in relation to the services provided by the Employment Business to the Client in connection with these Terms and shall disclose any and all information requested by the Employment Business in the event a Candidate makes a complaint to the Employment Business.

#### 5. Charges/Fees

- 5.1 Introductions of Candidates are confidential. Where the Client discloses to a Third Party any details regarding a Candidate Introduced to the Client by the Employment Business and that Third Party subsequently Engages the Candidate within 12 months from the date of the Introduction, the Client shall pay the Employment Business's introduction fee as set out in clause 5.3 and, notwithstanding any other provision of these Terms, there shall be no entitlement to any rebate or refund to the Client or Third Party.
- 5.2 The Client shall pay the Employment Business an introduction fee calculated in accordance with clause 5.3 where it Engages, whether directly or indirectly, any Candidate Introduced by or through the Employment Business within 12 months from the date of the Employment Business's Introduction.
- 5.3 The introduction fee shall be calculated as a percentage of the Candidate's Remuneration applicable during the first 12 months of the Engagement as set out in the table below, subject at all times to a minimum fee of AUD\$5,000. The Employment Business will charge GST (as defined in clause 5.7) on the introduction fee where applicable.

Candidate's annual Remuneration	Percentage payable as the introduction fee
Up to AUD\$120,000 (inclusive of superannuation)	18%
Above AUD\$120,000 (inclusive of superannuation)	18%

- 5.4 Where the amount of the actual Remuneration is not known or disclosed, the Employment Business will charge an introduction fee calculated in accordance with clause 5.3 on the maximum level of remuneration applicable for the position or type of position the Candidate had been originally submitted to the Client for and/or a comparable position in the general marketplace as determined by the Employment Business in its discretion.
- 5.5 Where the Engagement is for a fixed term of between 6 and 12 months, the introduction fee in clause 5.3 will apply pro-rata. Where the Engagement is extended beyond the initial fixed term or where the Client re-Engages the Candidate within 12 months from the date of the planned or actual termination of the first Engagement, the Client shall pay a further introduction fee based on the Remuneration applicable for the

period of Engagement following the initial fixed term period up to the termination of the second Engagement or until the Candidate has been engaged for a total of 12 months.

- 5.6 Charges incurred by the Employment Business at the Client's written request in respect of advertising or any other matters will be charged to the Client in addition to the introduction fee and such charges will be payable whether or not the Candidate is Engaged.
- 5.7 Words or expressions used in this clause 5.7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause 5.7. Any consideration payable or to be provided for a supply made under or in connection with these Terms does not include any amount on account of GST. If GST is payable, to any extent, on any supply made under or in connection with these Terms, the recipient of the supply must pay, to the supplier, an additional amount equal to the GST payable on the supply, and the supplier must give the recipient a tax invoice for the supply, in each case on or before the date on which the consideration for that supply is due. If a payment to a party under these Terms is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 6. Invoices

- 6.1 Except in the circumstances set out in clause 5.1, no introduction fee is incurred by the Client until the Candidate commences the Engagement; whereupon the Employment Business will render an invoice to the Client for its introduction fees.
- 6.2 The Employment Business shall raise invoices in respect of the fees and charges payable and the Client agrees to pay the amount due within 30 days of the date of the invoice.
- 6.3 All invoices will be deemed to be accepted in full by the Client in accordance with the payment terms stated within clause 6.2 unless the Client notifies the Employment Business in writing within 5 days of the amount the Client disputes and the reason the Client disputes that amount. In the event the Client does so notify the Employment Business that it wishes to dispute part of an invoice, the Client shall pay the undisputed part of the invoice within the time period specified in clause 6.2 and shall co-operate fully with the Employment Business in order to resolve the dispute as quickly as possible.
- 6.4 The Employment Business reserves the right to charge interest on invoiced amounts overdue at the rate of 8.5% per month on the outstanding amount until payment is made.

## 7. Rebates

- 7.1 If the Engagement of the Candidate is terminated by the Client or the Candidate within the time periods specified below, and the conditions qualifying the

Client for a rebate in clause 7.2 are met, the Client shall be entitled to a rebate of the introduction fee paid to the Employment Business (to be provided by way of a credit against any future introduction fee) less an amount to be retained by the Employment Business calculated as follows,

Week in which the Applicant leaves	Amount of the introduction fee to be retained by the Employment Business
less than 3 weeks	= (Fee(\$)) ÷ 52) × 2
3 to 4 weeks	= (Fee(\$)) ÷ 52) × 4
5 to 6 weeks	= (Fee(\$)) ÷ 52) × 6
7 to 8 weeks	= (Fee(\$)) ÷ 52) × 8
9 to 10 weeks	= (Fee(\$)) ÷ 52) × 10
11 to 12 weeks	= (Fee(\$)) ÷ 52) × 12
more than 12weeks	No rebate

- 7.2 All of the following conditions must be met in order for the Client to qualify for a rebate:
- the Client must notify the Employment Business that the Candidate's Engagement has ended within 7 days of the Engagement ending or within 7 days of notice being given to end the Engagement; whichever is earlier;
  - the Employment Business's invoice for the introduction fee must have been paid within the time period specified in clause 6.2;
  - the Candidate's Engagement is not terminated by reason of redundancy or re-organisation or change in strategy of the Client;
  - the Candidate did not leave the Engagement because he/she reasonably believed that the nature of the actual work was substantially different from the information the Client provided prior to the Candidate's acceptance of the Engagement;
  - the Candidate did not leave the Engagement as a result of discrimination or other unlawful acts against the Candidate; and
  - the Candidate was not at any time in the 12 months prior to the start of the Engagement employed or hired (whether on a permanent or contract basis) by the Client.

- 7.3 Where the Client re-engages the Candidate either on an employment or indirect basis, any rebate provided to the Client under clause 7.1 in respect of that Candidate, and deducted from a future introduction fee, shall be immediately paid to the Employment Business by the Client.

## 8. Liability and Indemnity

### 8.1 Limitation of liability

- a) In this clause:

"**Australian Consumer Law**" has the meaning given to that term in section 4 of the *Competition and Consumer Act 2010 (Cth)*;

"Consumer" has the meaning given to that term in section 3 of the Australian Consumer Law;

"Losses" means any liabilities, losses, damages, costs and expenses (including legal costs and expenses, regardless of whether incurred or awarded) arising in contract, tort (including negligence) or otherwise; and

"PDH Services" means services of a kind ordinarily acquired for personal, domestic or household use or consumption.

- b) Under the Australian Consumer Law (and other similar legislation of Australian states and territories), certain statutory guarantees are conferred in relation to the supply of services to a Consumer ("**Consumer Guarantees**"). Where the Client as a Consumer acquires services under the Terms from the Employment Business as a supplier and:
- i) the services are PDH Services, the operation of the Consumer Guarantees cannot be, and are not, excluded, restricted or modified; or
  - ii) the services are not PDH Goods or Services, the Employment Business limits its liability for a failure to comply with any Consumer Guarantee (other than where to do so would otherwise cause all or part of this clause to be void) to (at the Employment Business's option) re-supplying the services or paying the cost of having the services re-supplied, and the Employment Business does not exclude or limit the operation of the Consumer Guarantees under any other provision of the Terms or in any other manner and the parties agree it is fair and reasonable in all the circumstances for the Employment Business's liability to be so limited.
- c) To the extent permitted by law, apart from the express provisions of the Terms and (where applicable) the Consumer Guarantees, the Employment Business gives no other representations, guarantees, warranties or conditions, express or implied, in relation to any services supplied under these Terms, or any other rights provided by the Employment Business under these Terms. The Employment Business excludes from these Terms all representations, guarantees, conditions, warranties, rights, remedies, liabilities and other terms that may be conferred or implied by statute, general law or custom, except any guarantee or right conferred under any legislation (including the Australian Consumer Law), the exclusion of which would contravene legislation or cause part or all of the clause purporting to exclude that guarantee or term to be void.

- d) Except as provided under paragraphs b) to c) above and clause 8.2 below, the Employment Business shall not be liable under any circumstances for any Losses which may be suffered or incurred by the Client arising from or in any way connected with the Employment Business seeking a Candidate for the Client or from the Introduction or Engagement of any Candidate by the Client or from the failure of the Employment Business to introduce any Candidate or from the Client's disclosure to a Third Party of any details regarding a Candidate.

- 8.2 The Employment Business shall not be liable for failure to perform its obligations under these Terms if such failure results by reason of any cause beyond its reasonable control.
- 8.3 The Client shall indemnify and keep indemnified the Employment Business against any costs (including legal costs), claims or liabilities incurred directly or indirectly by the Employment Business arising out of or in connection with these Terms including (without limitation) as a result of:
- a) any breach of these Terms by the Client or by its employees or agents; and/or
  - b) any breach by the Client or Third Party, or any of its employees or agents, of any applicable statutory provisions (including, without limitation, any statutory provisions prohibiting or restricting discrimination or other inequality of opportunity and immigration legislation); and/or
  - c) any unauthorised disclosure of a Candidate's details by the Client or Third Party, or any of its employees or agents.

## 9. Termination

- 9.1 These Terms may be terminated by either party by giving to the other immediate notice in the event that either the Employment Business or the Client goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or has a receiver or administrator appointed or where the Employment Business has reasonable grounds to believe the Client will not pay the Employment Business's invoice within the payment terms agreed within clause 6.2. For the avoidance of doubt, the Client must pay all outstanding fees notwithstanding any such termination.

## 10. Equal Opportunities

- 10.1 The Employment Business is committed to equal opportunities and expects the Client to comply with all anti-discrimination legislation as regards the selection and treatment of Candidates.

## 11. Confidentiality

- 11.1 All information contained within these Terms shall remain confidential and the Client shall not divulge it to any Third Party save for its own employees and professional advisers and as may be required by law.
- 11.2 The Client shall not without the prior written consent of the Employment Business provide any information in respect of the Candidate to any Third Party whether for employment purposes or otherwise.

11.3 The Client agrees to comply with the *Privacy Act 1988* (Cth) and any code approved by the Privacy Commissioner under the *Privacy Act 1988* (Cth) which binds the Employment Business or the Client or to which the Employment Business and the Client agree to be bound; and any laws giving rise to an actionable right of privacy (“**Privacy Laws**”) and shall not cause or seek to cause the Employment Business to breach any Privacy Laws in connection with these Terms and shall provide any and all information requested by the Employment Business in a timely manner to assist the Employment Business to respond to individuals' requests for access to personal information.

## 12. General

12.1 Any failure by the Employment Business to enforce at any particular time any one or more of these Terms shall not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.

12.2 Headings contained in these Terms are for reference purposes only and shall not affect the intended meanings of the clauses to which they relate.

12.3 If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of these Terms shall remain in full force and effect to the extent permitted by law.

12.4 Any reference to legislation, statute, act or regulation shall include any revisions, re-enactments or amendments that may be made from time to time.

12.5 These Terms may be executed in counterparts. All executed counterparts constitute one document.

## 13. Notices

13.1 Any notice required to be given under these Terms (including the delivery of any information or invoice) shall be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in these Terms (or as otherwise notified from time to time to the sender by the recipient for the purposes of these Terms).

13.2 Notices shall be deemed to have been given and served,

- a) if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10.00am on the next business day after the day of delivery; or
- b) if sent by facsimile or e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form; or
- c) if sent by prepaid first class post, 48 hours from the time of posting.

13.3 For the avoidance of doubt and for the purpose of these Terms, a “business day” shall mean any day excluding Saturday, Sunday and public holidays in the applicable state.

## 14. Variation

14.1 No variation or alteration of these Terms shall be valid unless approved in writing by the Client and the Employment Business.

## 15. Applicable Law

15.1 These Terms shall be governed by the law of New South Wales / Victoria.

## 16. Retained Search Assignment

16.1 In relation to retained search assignments, all provisions of these Terms apply to such assignments as stated, with exception of the following: assignment fees shall be calculated as set out in the table in clause 5.3. The assignment fee is payable in two instalments:

- a) an initial fixed fee of AUD\$7,500 upon acceptance of assignment. (Non-refundable)
- b) The remaining part of the assignment fee is due when Candidate commences the Engagement.

16.2 Standard rebate terms as stated in clause 7.1 will apply to the remaining part of the assignment fee referred to in clause 16.1 b).



# Bespoke Career Management Pty Ltd

ABN 24 139 307 734 of Suite 6, Level 3, 2-12 Foveaux Street, Surry Hills NSW 2010 (“the Employment Business”).

## Standard Terms of Business Supply of PAYG Temporary Workers/Independent Contractors (casual employees or contractors) to Clients

### 1. Definitions

#### In these Terms -

- 1.1. “**Alternative Hire Period**” means the period agreed and set out within the relevant area of a Client Acknowledgment Order;
- 1.2. “**Assignment**” means the period during which the Temp is supplied by the Employment Business to render the Services to the Client and includes, where applicable, an Alternative Hire Period;
- 1.3. “**Candidate**” means the person Introduced by the Employment Business to the Client including, but not limited to, any officer or employee of the Candidate if the Candidate is a company, any member or employee of the Candidate if the Candidate is a partnership and members of the Employment Business' own staff;
- 1.4. “**Client**” means the entity stated within the relevant area of the Client Acknowledgment Order;
- 1.5. “**Client Acknowledgment Order**” means the schedule given by the Employment Business to the Client confirming the details of each Assignment;
- 1.6. “**Client Group**” means the Client and each of its related bodies corporate(as defined in the *Corporations Act 2001* (Cth));
- 1.7. “**Engagement**” means the engagement, employment or use (other than on Assignment) of the Candidate and/or Temp by the Client or by any Third Party to whom or to which the Candidate and/or Temp was introduced by the Client (whether with or without the Employment Business's knowledge or consent) on a permanent or temporary basis, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement; or through any other engagement directly or through a company of which the Candidate is an officer or employee or through a partnership of which the Candidate and/or Temp is a member or employee; or indirectly through another employment business or company which holds itself out as such and “**Engage**” and “**Engaged**” shall be construed accordingly;
- 1.8. “**Introduction Fee**” means the fee calculated as follows: 18% of the Remuneration payable to the Candidate / Temp during the first 12 months of Engagement. Where the amount of the actual Remuneration is not known or disclosed, the Employment Business will charge the fee on the maximum level of remuneration applicable for the position or type of position the Candidate had been originally submitted to the Client for and/or a comparable position in the general marketplace as determined by the Employment Business in its discretion.
- 1.9. “**Introduced**” means -
  - a) the Client's interview of a Candidate in person or by telephone or by any other audio or visual means; or
  - b) the Employment Business' passing to the Client of a curriculum vitae or information about the Candidate.The time of the Introduction shall be taken to be the earlier of a) and b) above; and “**Introduced**” and “**Introduces**” shall be construed accordingly;
- 1.10. “**Quarantine Period**” means a period of 12 months commencing upon the conclusion of the Assignment;
- 1.11. “**Remuneration**” includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, superannuation, allowances, inducement payments, shift allowances, location weighting and call-out allowances, the benefit of a company car and all other payments or emoluments payable to or receivable by a Candidate / Temp for services rendered to a Client or Third Party. Where the Client or Third Party provides a company car to the Candidate / Temp, a notional amount of AUD10,000 will be added to the salary in order to calculate the Employment Business's fee;
- 1.12. “**Services**” means the work to be performed by the Temp pursuant to these Terms and as described within the relevant area of the Client Acknowledgment Order;
- 1.13. “**Temp**” means the Candidate whose name or details are recorded in the relevant area of the Client Acknowledgment Order and includes any officer or employee of the Temp if the Temp is a company and any member or employee of the Temp if the Temp is a partnership;
- 1.14. “**Terms**” means these Standard Terms of Business and shall include any Client Acknowledgment Orders issued pursuant to these Standard Terms of Business;
- 1.15. “**Third Party**” means any company or person who is not the Client, and includes any related

body corporate (as defined in the *Corporations Act 2001* (Cth)) of the Client; and.

- 1.16. **“Transfer Fee”** means the fee calculated as follows: 18% of the Remuneration payable to the Temp during the first 12 months of their Assignment (or the annualised amount where the Assignment lasts for less than 12 months) less any fee rebate in accordance with the following:

Transfer Fee Rebates (Applicable to full fee ONLY. Not applicable to any agreed reduced fees)			
No of months of the Temp's Assignment prior to the last date of the Assignment.	0-6 months	6-12 months	12 months+
Transfer Fee Rebate (as a % of the Fee set out in clause 1.16	0	1%	2%

## 2. These Terms

- 2.1. These Terms constitute the entire agreement between the Employment Business and the Client in relation to the subject matter hereof and are deemed to be accepted by the Client and to apply by virtue of the occurrence of the earlier of the following:

- a) the Introduction to the Client of, or the Engagement of a Candidate;
- b) the passing of information about the Candidate by the Client to any Third Party;
- c) the Client's request to interview a Candidate;
- d) the Client's signature on the Client Account Details form;
- e) any other written, expressed acceptance of these Terms by the Client; and
- f) the signature by the Client of a timesheet relating to services performed by a Temp.

For the avoidance of doubt, these Terms apply whether or not the Candidate is Engaged by the Client or Third Party for the same type of work as that for which the Introduction was originally effected.

- 2.2. These Terms contain the entire agreement between the parties in relation to the subject matter hereof and, unless otherwise agreed in writing, these Terms prevail over any previous terms of business, purchase order terms, purchase conditions, agreement, purchase conditions or any other terms put forward by the Client (**“Client Terms”**). The parties acknowledge and agree that any Client Terms are of no effect and do not apply in relation to the subject matter of these Terms.

- 2.3. These Terms shall constitute the entire agreement between the Employment Business and the Client in all of the circumstances set out in clause 2.1 above, whether or not they are signed by the Employment Business and/or the Client.

- 2.4 The Client authorises the Employment Business to act on its behalf in seeking Candidates and shall advertise for such Candidates through various methods as determined by the Employment Business.

## 3. Client Obligations

- 3.1. The Client shall be responsible for providing any necessary resources and facilities for the Temp.

- 3.2. These Terms are personal to the Client and shall not be assigned by it without the prior written consent of the Employment Business. For the avoidance of doubt, this restriction shall include any assignment to any member of the Client Group.

- 3.3. The Client shall provide the Employment Business with details of any specific health and safety risks in relation to the Services, together with details of any steps taken to prevent or control such risks.

- 3.4. The Client:

- a) acknowledges that the Temp will work under the supervision, direction and control of the Client;
- b) is responsible for all acts, errors or omissions of the Temp, whether wilful, negligent or otherwise;
- c) must ensure that the Temp works in a safe environment in accordance with a safe system of work and that the Client complies with all relevant health and safety legislation and regulations and adheres to industry best practice;
- d) must to the extent reasonably practicable, ensure the health and safety of the Temp;
- e) must ensure that the Temp undertakes appropriate induction and is appropriately trained and supervised;
- f) must provide adequate public liability insurance cover for the Temp during all Assignments;
- g) ensure that the Temp does not undertake any work during the Assignment which is hazardous without first conducting a risk assessment, informing the Employment Business and the Temp of the outcome of that risk assessment and steps taken (or to be taken) to reduce the risk;
- h) must notify the Employment Business immediately if there is or is likely to be a change in the Temp's responsibilities, workplace, job description, location or working environment.

- 3.5. Without limiting clause 11, the Client shall indemnify and keep indemnified the Employment Business from and against all loss or liability suffered or incurred by the Employment Business as a result of any claim by the Temp arising out of any injury or damage to his/her person and/or property suffered in the course of performing the Services.
- 3.6. The Client warrants and confirms that it has given the Employment Business sufficient information to properly consider the suitability of the Candidate and undertakes to confirm in writing to the Employment Business:
- a) the date upon which the Candidate/Temp is required to commence the provision of the Services; and
  - b) the expected duration of the Assignment; and
  - c) the nature of and/or specifics of the Services required to be provided by the Candidate/Temp; and
  - d) the location/s the Candidate/Temp is expected to deliver the Services; and
  - e) the number of hours/days and any specific time-keeping and time recording requirements that the Client expects of the Candidate/Temp; and
  - f) any experience, training, qualifications, professional body authorisations the Client, the law or any relevant professional body requires the Candidate/Temp to possess to provide the Services; and
  - g) any expenses payable by or to the Candidate/Temp; and
  - h) any site regulations, IT access/security/usage policies, any other procedures or policies the Client requires the Candidate/Temp to adhere to and shall provide copies of any such policies/procedure to the Employment Business; and
  - i) the identity of the Client; and
  - j) any health and safety risks and any steps taken to address those risks.
- 3.7. The Client undertakes to notify the Employment Business immediately of its, or any member of the Client Group's or Third Party's, intention to:
- a) Engage a Candidate Introduced by the Employment Business; or
  - b) extend an Assignment of a Temp or otherwise Engage directly or indirectly a Candidate and/or Temp Introduced or supplied by the Employment Business.
- 3.8. The Client shall inform the Employment Business in good time of any significant issues in relation to the Temp or where the Client is dissatisfied with any Temp in any respect.
- 3.9. The Client warrants and undertakes that all information it provides to the Employment

Business under these Terms shall be true and accurate.

#### **4. The Employment Business's Obligations**

- 4.1. The Employment Business shall use reasonable endeavours to introduce Candidates to the Client who meet the Client's stated requirements.
- 4.2. Where the Employment Business and the Client have agreed that the Employment Business will supply the Client with the services of a Candidate/Temp, the Employment Business shall give the Client a Client Acknowledgment Order confirming the name of the Temp, the agreed charge rate(s), term of the Assignment, description of the Services, notice periods and any other relevant details communicated and agreed between the parties.
- 4.3. The Employment Business shall use reasonable endeavours to ensure that the Temp co-operates with the Client and complies with all the Client's reasonable and lawful instructions.
- 4.4. The Employment Business shall use reasonable endeavours to ensure that the Temp enters into an agreement which contains an obligation on the Temp to assign to the Client, the Temp's intellectual property rights of whatever nature and, if registrable, whether registered or not, in all documents or other material and data or other information and devices or processes provided or created by the Temp in the provision of the Services.
- 4.5. The Employment Business shall use reasonable endeavours to ensure that the Temp enters into an agreement which contains an obligation on the Temp to keep confidential all confidential information of the Client obtained during the Assignment. For the purposes of this clause, confidential information is confidential if it is clearly marked confidential or if the Client states it is confidential clearly in writing to the Temp.
- 4.6. The Employment Business may substitute the Temp with another suitably qualified and similarly skilled individual with reasonable notice at its absolute discretion.
- #### **5. Charges/Fees**
- 5.1. The Client agrees to pay the Employment Business's charges for the Introduction and the services of Temps/Candidates as per the Client Acknowledgement Order or these Terms.
- 5.2. The Client agrees to pay the charges set out in clause 5.1 above for the number of hours worked by the Temp.
- 5.3. Signature by, or on behalf of, the Client of timesheets or other verification of hours worked is conclusive evidence of the amount of time worked by the Temp. Failure to sign the



timesheet does not absolve the Client of its obligation to pay the charges set out within these Terms and the applicable Client Acknowledgement Order.

- 5.4. If the Client is unable to sign a timesheet (or other agreed method of verification of hours/days) produced for authentication by the Temp because the Client disputes the amount of time claimed, then the Client shall notify the Employment Business within two business days from presentation to the client of the claimed hours/days for verification and shall co-operate fully and in a timely fashion with the Employment Business, including providing documentary evidence of the hours/days worked by the Temp, to enable the Employment Business to establish what periods of time, if any, the Temp worked.
- 5.5. There are no refunds or rebates payable by the Employment Business to the Client (or to Client Group where applicable) in respect of the Employment Business's charges.
- 5.6. The Client shall pay the Employment Business all reasonable business expenses incurred by the Temp in the provision of the Services (whether set out in the Client Acknowledgment Order or not).
- 5.7. The Client acknowledges and agrees that the Employment Business may, upon notice, increase the charge rate under these Terms, including clause 5.1 (or as set out in the relevant Client Acknowledgment Order if applicable) in order to comply with applicable law or awards.
- 5.8. The Client acknowledges that it has no right to set-off, withhold or deduct monies from sums due to the Employment Business under these Terms.
- 5.9. The Employment Business will not be liable for fraudulent timesheets.
- 5.10. The Client acknowledges the Employment Business may increase its charges where the cost of the supply of the services of the Temp increases due to a change in legislation.
- 5.11. Words or expressions used in this clause 5.11 which are defined in in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 5.11. Any consideration payable or to be provided for a supply made under or in connection with these Terms does not include any amount on account of GST. If GST is payable, to any extent, on any supply made under or in connection with these Terms, the recipient of the supply must pay, to the supplier, an additional amount equal to the GST payable on the supply, and the supplier must give the recipient a tax invoice for the supply, in each case on or before the date on which the consideration for that supply is due. If

a payment to a party under these Terms is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 6. Invoices

- 6.1. The Employment Business shall be entitled to raise invoices weekly in respect of the charges payable under these Terms and the applicable Client Acknowledgment Order and shall be paid by the Client within seven (7) days of the date of the invoice, unless otherwise agreed and set out within the relevant area of the Client Acknowledgment Order.
- 6.2. All invoices will be deemed to be accepted in full by the Client in accordance with the payment terms stated within clause 6.1 above unless the Client notifies the Employment Business in writing within five days of the amount the Client disputes and the reason the Client disputes that amount. In the event the Client does so notify the Employment Business that it wishes to dispute part of an invoice, the Client shall pay the undisputed part of the invoice within the time period specified in clause 6 and shall co-operate fully with the Employment Business in order to resolve the dispute as quickly as possible.
- 6.3. The Employment Business reserves the right to charge interest on invoiced amounts overdue at the rate of 8.5% per week on the outstanding amount until payment is made.

## 7. Termination of Assignments

- 7.1. The Client may, subject to clause 7.2 below, instruct the Employment Business by written notice, to end the Services of the Temp immediately where the Client reasonably determines that the Temp has committed an act of serious misconduct or is substantially failing to perform the Services, provided that the Client provides detailed, written confirmation of the non-performance and/or misconduct.
- 7.2. The Client shall inform the Employment Business promptly of any significant issues in relation to the Temp or where the Client is dissatisfied with any Temp in any respect.
- 7.3. The Employment Business may end any and/or all Assignments immediately by giving the Client notice in writing if the Client is in material breach of these Terms.
- 7.4. When notice of termination of an Assignment is served by the Client, payment for actual hours worked by the Temp, shall be made by the Client in accordance with clauses 5 and 6 above.
- 7.5. In any event of termination of an Assignment pursuant to clause 7.1 above, the Employment

Business shall use reasonable endeavours to provide an alternative Temp within fourteen days that in the reasonable opinion of the Employment Business is suitable to provide the Services.

- 7.6. These Terms may be terminated by either party by giving to the other immediate notice in the event that either party goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or has a receiver or administrator appointed or where the Employment Business has reasonable grounds to believe the Client will not pay the Employment Business's invoice within the payment terms agreed in accordance with clauses 5 and 6. For the avoidance of doubt, the Client must pay all outstanding fees notwithstanding any such termination.
- 7.7. Notwithstanding clause 4.6, the Employment Business may, at its absolute discretion and at any time, terminate the Assignment upon immediate notice where in the opinion of the Employment Business the Temp is no longer suitable, willing or able to provide the Service.

## **8. Engagement of Temps by Client or Third Parties**

- 8.1. Subject to clause 9.1, when the Client or a Third Party (including any member of the Client Group or any client of the Client) with whom the Temp has/had contact, Engages a Temp (other than through the Employment Business) during the Assignment or within the Quarantine Period, the Client shall notify the Employment Business of that Engagement and shall pay the Employment Business the Transfer Fee irrespective of the planned duration of the Engagement. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. GST (as defined in clause 5.13) is payable in addition to any fee due.
- 8.2. Where there has been an Introduction of a Candidate to the Client which does not immediately result in an Assignment, but which later leads to an Engagement of the Candidate by the Client or any Third Party (including a member of the Client Group or any client of the Client) with whom the Candidate has/had contact, whether directly or indirectly, within 12 months from the date of Introduction, the Client shall notify the Employment Business of that Engagement and shall be liable to pay an Introduction Fee irrespective of the planned duration of the Engagement. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. GST (as defined in clause 5.13) is payable in addition to any fee due.
- 8.3. All Introductions are confidential. If during the Assignment, the Quarantine Period or within 12 months from the date of an Introduction, the

Client passes details of a Candidate and/or Temp to any Third Party resulting in the Engagement of that Candidate and/or Temp, then the Client shall be liable to pay an Introduction Fee to the Employment Business.

## **9. Alternative Hire Period**

- 9.1. As an alternative to the Transfer Fee agreed in clause 8.1, the Client may provide the Employment Business with written notice as contemplated in clause 7.4 above and require the Employment Business to supply the services of the Temp for a further period agreed and set out within the relevant area of the Client Acknowledgement Order as the Alternative Hire Period, during which period the Client shall pay the charges agreed pursuant to clause 5.1, and all other conditions will be the same as for initial Assignment.

## **10. Liability**

- 10.1. The Employment Business shall not be liable for any loss, expense, damage or delay arising from and in connection with any failure on the part of the Temp to perform the Services nor for any negligence whether wilful or otherwise, dishonesty, fraud, acts or omissions, misconduct or lack of skill of the Temp howsoever arising.
- 10.2. All Temps are engaged under contracts for services by the Employment Business or are casual employees of the Employment Business.
- 10.3. The Client will comply in all respects with all relevant statutes, by-laws and legal requirements including provision of adequate public liability insurance in respect of the Temp. The Client shall allow and reasonably assist the Employment Business in complying with its legal obligations regarding the supply of service by Temps. Where it is foreseeable that the Temp will work more than 38 hours per week, the Client shall provide written notice to the Employment Business in good time prior to the commencement of the Assignment.
- 10.4. Except as provided under clause 10.5, the Employment Business shall not be liable, whether in contract, tort (including negligence) or otherwise, for:
- any Losses (as defined in clause 10.5) suffered by a party that cannot reasonably be considered to arise naturally from a breach of these Terms or the event(s) giving rise to Losses;
  - any and all actual or anticipated loss of profits, revenue, goodwill, savings, data, business opportunity, or expectation; or
  - any and all indirect, special, consequential, punitive or exemplary Losses.
- 10.5. Limitation of liability
- In this clause:

"**Australian Consumer Law**" has the meaning given to that term in section 4 of the *Competition and Consumer Act 2010* (Cth);

"**Consumer**" has the meaning given to that term in section 3 of the Australian Consumer Law;

"**Losses**" means any liabilities, losses, damages, costs and expenses (including legal costs and expenses, regardless of whether incurred or awarded) arising in contract, tort (including negligence) or otherwise; and

"**PDH Services**" means services of a kind ordinarily acquired for personal, domestic or household use or consumption.

- b) Under the Australian Consumer Law (and other similar legislation of Australian states and territories), certain statutory guarantees are conferred in relation to the supply of services to a Consumer ("**Consumer Guarantees**"). Where the Client as a Consumer acquires services under the Terms from the Employment Business as a supplier and:

i) the services are PDH Services, the operation of the Consumer Guarantees cannot be, and are not, excluded, restricted or modified; or

ii) the services are not PDH Goods or Services, the Employment Business limits its liability for a failure to comply with any Consumer Guarantee (other than where to do so would otherwise cause all or part of this clause to be void) to (at the Employment Business' option) re-supplying the services or paying the cost of having the services re-supplied, and the Employment Business does not exclude or limit the operation of the Consumer Guarantees under any other provision of the Terms or in any other manner and the parties agree it is fair and reasonable in all the circumstances for the Employment Business' liability to be so limited.

- c) To the extent permitted by law, apart from the express provisions of the Terms and (where applicable) the Consumer Guarantees, the Employment Business gives no other representations, guarantees, warranties or conditions, express or implied, in relation to any services supplied under these Terms, or any other rights provided by the Employment Business under these Terms. The Employment Business excludes from these Terms all representations, guarantees, conditions,

warranties, rights, remedies, liabilities and other terms that may be conferred or implied by statute, general law or custom, except any guarantee or right conferred under any legislation (including the Australian Consumer Law), the exclusion of which would contravene legislation or cause part or all of the clause purporting to exclude that guarantee or term to be void.

- d) Except as provided under paragraphs b) and c) above, the Employment Business shall have no liability to the Client in connection with these Terms.

10.6. Except as provided under clause 10.5, the sole aggregate liability of the Employment Business to the Client arising under or in connection with these Terms shall be limited to AUD\$10,000.

## 11. Indemnity

11.1. The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred directly or indirectly by the Employment Business arising out of or in connection with any Assignment and these Terms including (without limitation) as a result of:

- a) any breach of these Terms by the Client;
- b) all acts, errors or omissions of the Temp, whether wilful, negligent or otherwise; and
- c) any breach by the Client, or any of its employees or agents, of any applicable statutory provisions (including, without limitation, any statutory provisions prohibiting or restricting discrimination or other inequality of opportunity).

## 12. Privacy

12.1. The Client warrants that:

- a) any personal information relating to the Candidate /Temp, whether provided by the Employment Business or by the Candidate /Temp, shall be used, processed and recorded, whether by the Client or any party the Client allows (or fails to prevent) access to, in accordance with:
- i) the *Privacy Act 1988* (Cth) (as amended);
- ii) any code approved by the Privacy Commissioner under the *Privacy Act 1988* (Cth) which binds the Employment Business or the Client or to which the Employment Business and the Client agree to be bound; and
- iii) any laws giving rise to an actionable right of privacy, (jointly "**Privacy Laws**"); and
- b) it shall not cause or seek to cause the Employment Business to breach any Privacy Laws in connection with these Terms.

12.2 The Client shall provide evidence of compliance with clause 12.1 upon request from the Employment Business.

12.3 The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred directly or indirectly by the Employment Business arising out of or in connection with any failure to comply with clause 12.1 above.

### 13. General

13.1 Any Failure by the Employment Business to enforce at any particular time any one or more of these Terms shall not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.

13.2 Headings contained in these Terms are for reference purposes only and shall not affect the intended meanings of the clauses to which they relate.

13.3 If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal, or otherwise unenforceable by any judicial body, the remaining provisions of these Terms shall remain in full force and effect to the extent permitted by law.

13.4 Notwithstanding clause 2.2, whereupon these Terms including the relevant Client Acknowledgment Order are executed by the signature of duly authorised representatives of the parties this forms a binding agreement and shall supersede all previous agreements or representations whether written or oral including without limitation all Client Terms (as defined in clause 2.3) with respect to the provision of the Services of the Temp.

13.5 These Terms may not be modified or amended except in writing and signed by a duly authorised representative of the Employment Business.

13.6 These Terms may be executed in counterparts. All executed counterparts constitute one document.

### 14. Notices

14.1 Any notice required to be given under these Terms (including the delivery of any timesheet or invoice) shall be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in these Terms (or as otherwise notified from time to time to the sender by the recipient for the purpose of these Terms).

14.2 Notices in connection with these Terms shall be deemed to have been given and served, if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10.00am on the next business day after the day of delivery;

- a) if sent by facsimile or by e-mail, at the time of despatch if despatched on a business day before 5.00pm or in any other case at 10.00am on the next business day after the day of dispatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the authorised recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form; or
- b) if sent by prepaid first class post, 48 hours from the time of posting.

14.3 For the avoidance of doubt and for the purpose of this clause 14.2, a "business day" shall mean any day excluding Saturday, Sunday and public holidays in the applicable state.

### 15. Governing Law

15.1 These Terms shall be governed and construed in accordance with the law of New South Wales / Victoria.

**Signed for Bespoke Career Management Pty Ltd (ABN 24 139 307 734) by an authorised officer**

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Signature of officer

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Name of officer (print)

Date: