

## TERMS AND CONDITIONS

These terms and conditions are between the parties described in the Schedule, together the **Parties** and each a **Party**. These terms and conditions and the Schedule form the entire agreement under which we will provide the Services to you (together, the **Agreement**).

### 1. ACCEPTANCE

- 1.1 You have requested the Services set out in the Schedule, and accept this Agreement by:
- (a) signing and returning this Agreement;
  - (b) sending an email accepting this Agreement (expressly or impliedly); or
  - (c) instructing us to proceed with the Services or making any payment of the Fees (including any deposit).
- 1.2 If anything in these terms and conditions is inconsistent with the Schedule, these terms and conditions take precedence, unless the Schedule specifically amends any of them.

### 2. SERVICES

- 2.1 The Services will commence on the Start Date and end once the Candidate has been placed or unless terminated in accordance with this Agreement.
- 2.2 We will perform the Services with reasonable skill and care and in accordance with this Agreement and all relevant laws.
- 2.3 INA will ensure the following documentation is obtained prior to the Candidate being placed: working with children's check, police clearance within the last 12 months, first aid certification, drivers licence and other appropriate background checks. We are not required to ensure this information is kept up to date once a Candidate has been placed.
- 2.4 You acknowledge and agree that any dates for completion notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery or milestone date.
- 2.5 Either we or you may request a change to the Services or the Agreement. A change will be effective only when agreed in writing, including any variation to the fees.

### 3. YOUR RESPONSIBILITIES

- 3.1 In order for us to advise you properly you will make sure that (i) any information, documentation and access given to us by you, or anyone else working with or for you, is (a) given promptly, (b) accurate and (c) complete.
- 3.2 You agree that:
- (a) by offering employment or any business arrangement to a Candidate, you agree that you have interviewed that Candidate and you have selected that Candidate for the position;
  - (b) you will comply with all applicable laws and regulations relevant to the receipt of the Services;

- (c) you will not infringe any third party rights in working with us and receiving the Services; and
- (d) you are responsible for engaging the Candidate as an employee and payment of all wages, employee entitlements and taxes.

- 3.3 Our performance depends on you performing your obligations under the Agreement. We are not liable for any loss arising from you not fulfilling your obligations.

### 4. FEES, EXPENSES AND PAYMENT

- 4.1 You agree to pay us the Fees and all other reasonable expenses or disbursements properly incurred by us in the provision of the Services, in accordance with the Payment Terms.
- 4.2 If you do not pay an invoice on time we may charge you interest at the rate set by law. We may further suspend the provision of the Services until we receive payment.
- 4.3 If the Client requests to advertise a particular position, the form of media used and the copy, layout and total cost of the advertising will be approved by the Client in advance and billed to them at cost with all volume advertising discounts being passed on. An Invoice will be sent upon approval and is payable 14 days from the date of publication. INA will pay the cost of advertising on its own database.
- 4.4 All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated). You must pay us the Fees, plus any applicable GST or other taxes without deduction or set off.
- ### 5. PLACEMENT GUARANTEE
- 5.1 In the event that a placed Candidate leaves the Client's employment within the Placement Guarantee Period outlined in the Schedule, for reasons based solely on the Candidate's performance (i.e., not due to a change in days/hours, position description or other changes implemented by you), INA will endeavour to locate a replacement Candidate. The replacement must be for an identical role and this replacement process will be undertaken once only without any additional cost to the Client other than agreed advertising and out-of-pocket expenses. Where the total annual remuneration package of the replacement Candidate differs from that of the original Candidate, the final invoice will be adjusted accordingly. If an additional replacement is required thereafter, another full fee applies.
- 5.2 If INA is unable to provide the Client with a replacement Candidate within a reasonable period of time (90 days or otherwise agreed), the Client will be given a credit note for 75% of the original fee. This credit note can be used against future permanent or contract

- placements and remains valid for a period of 12 months from the original Candidate's commencement date.
- 5.3 The Client must notify INA of their intention to terminate the Candidate prior to the Candidate's employment being termination for the Placement Guarantee to be valid. The Placement Guarantee only applies when INA is given an exclusive opportunity and a reasonable amount of time to source a replacement Candidate. The Placement Guarantee will be void if the Client has misrepresented any facts.
- 5.4 Where a replacement Candidate is recruited, the Placement Guarantee is not applicable to the replacement Candidate.
- 5.5 The Placement Guarantee will not apply if our invoice has not been paid in full within the payment terms.
- 5.6 Where a Candidate's employment has been terminated and the Client subsequently re-engage the Candidate in any manner, within twelve (12) calendar months from the date of termination, the Client will be liable to pay the Fees that would otherwise be payable for the placement. The Placement Guarantee for the re-employment of this Candidate is void.
- 5.7 We may in our sole discretion, offer a refund instead of the Placement Guarantee on certain engagements. We will determine the amount of refund issued.
- 6. ENGAGEMENT OF CANDIDATES**
- 6.1 You are responsible for engaging the Candidate as an employee. You must ensure you have an appropriate employment contract and adhere to all legislative requirements as an employer.
- 6.2 If you engage a Candidate introduced by INA whether as an employee or in any other capacity, within 12 (twelve) months of the initial introduction, you will be liable to pay a Fee for that Candidate.
- 6.3 The Client is required to notify INA immediately upon any offer being accepted by a Candidate. Upon request, the Client agrees to supply INA copies of all letters, memoranda, etc. from the Client to the Candidate, or vice versa, and all letters to and from any third parties concerning the Candidate.
- 6.4 Should a Candidate who is introduced to the Client be passed on to a third party by the Client, or should a third party engage a Candidate in any capacity as a result of the actions of the Client, then the client will be liable for payment of the Fee.
- 7. CONFIDENTIALITY & PRIVACY**
- 7.1 We and you agree to use each other's Confidential Information only in relation to the Services, and not to disclose it without prior written consent, except where required by law or regulation.
- 7.2 However, we may give Confidential Information to relevant subcontractors, or our service providers as long as they are bound by confidentiality obligations, and to your professional advisers who are involved in the relevant matter.
- 7.3 The above will not apply to information which (i) is publicly available, or (ii) has been received from someone else who owes no duty of confidence in relation to it, or (iii) was already known by the receiving party.
- 7.4 You agree to comply with the legal requirements of the Australian Privacy Principles as set out in the Privacy Act 1988 (Cth) ("Privacy Act") (as if you were an "APP entity" as defined in the Privacy Act 1988 (Cth)).
- 7.5 In accordance with the Privacy Act, the Client must not, under any circumstance during the interview process approach companies, that a Candidate is, or has ever been employed for the purpose of a reference, without prior consent from the Candidate.
- 8. INTELLECTUAL PROPERTY**
- 8.1 As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of us or our Personnel in connection with this Agreement or the provision of the Services, will at all times vest, or remain vested, in us.
- 8.2 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of this Agreement, to use your and your Personnel's Intellectual Property for the performance of our obligations under this Agreement.
- 9. TERMINATION**
- 9.1 Either Party may terminate this Agreement if the other Party breaches a material term of this Agreement, and that breach has not been remedied within 10 business days of being notified by the relevant Party.
- 9.2 Either we or you may end the Agreement on 30 calendar days' written notice for any reason.
- 9.3 On termination or expiry of this Agreement, you agree that:
- (a) any amounts paid for Services rendered by us are non-refundable;
  - (b) you agree to pay us all amounts due and payable to us under this Agreement (including for all Services provided by us) up to the date of termination, as a debt immediately due and payable; and
  - (c) you agree to return or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and to give us or our Personnel such rights of access necessary to exercise our rights under this clause.

9.4 The accrued rights, obligations and remedies of the Parties are not affected by termination of this Agreement.

## 10. LIABILITY

10.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) we will not be liable for any Consequential Loss;
- (b) loss or corruption of data; and
- (c) our maximum aggregate Liability in relation to the provision of the Services or this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you in the 12 month period preceding the date of the incident giving rise to the Liability.

10.2 Nothing in the Agreement will limit a person's liability for: (a) death or personal injury caused by that person's negligence; (b) that person's fraud; or (c) anything else that cannot be limited by law.

10.3 We endeavour to ensure that any Candidate is of the highest standard both in terms of skills and integrity. However, INA does not warrant the accuracy of all information contained in a Candidates resume, or the standard of work, which is to be performed by any Candidate. INA accepts no Liability for any loss or damage, costs or expenses, whatsoever or injury arising directly or indirectly or in connection with any act or omission of any Candidate introduced by it or from delays in placing a Candidate with the Client.

## 11. GENERAL

11.1 **Governing law:** This Agreement is governed by the laws of the State. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in the State and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

11.2 **Relationship of the parties:** The parties acknowledge that: (a) we are engaged by you as an independent contractor and nothing in this Agreement creates or constitutes a relationship of employer and employee, principal and agent or of partnership or joint venture; and (b) we are responsible for the payment of all taxes and taxation obligations in respect of the remuneration we receive for the performance of the Services.

11.3 **Assignment:**— Unless the Agreement expressly provides otherwise, no party may assign, transfer or deal with their rights or obligations under the Agreement without the prior written consent of the other party. Such consent must not be unreasonably withheld.

11.4 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email.

11.5 **Severability** - Any provision of this Agreement which is void, illegal or otherwise unenforceable will be severed to the extent permitted by law without affecting any other provision of this Agreement.

11.6 **Waiver** - The failure or omission of a party at any time to enforce or require compliance with any provision of this Agreement or exercise any right, election or discretion under this Agreement shall not operate as a waiver of that right, election or discretion.

11.7 **Survival:** Clauses 5, 6, 8, 9, 10.3 and 10.2 will survive the termination or expiry of this Agreement.

## 12. INTERPRETATION & DEFINITIONS

12.1 In this Agreement capitalised terms have the following meaning:

**Candidate** means any person, firm or company who has any form of contact with the Client which is brought about either directly or indirectly by INA in relation to employment.

**Confidential Information** includes information which:

- (a) All introductions of Candidates;
- (b) is disclosed to you in connection with this Agreement at any time;
- (c) is prepared or produced under or in connection with this Agreement at any time;
- (d) relates to our business, assets or affairs;
- (e) Is contained in a system or software we may have access to, including any usernames or passwords; or
- (f) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever you receive that information.

**Consequential Loss** includes any consequential, special or indirect loss, damage or expense including any real or anticipated loss of revenue, loss of profit, loss of use, loss of occupation, loss of benefit, loss of financial opportunity, or economic loss whether arising out of a breach of this Agreement, at law, under any statute, in equity, or in tort (including negligence).

**Intellectual Property** means any copyright, registered or unregistered design, patent or trade mark rights, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any

improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

**Schedule** means the schedule to which this Agreement is attached.