

Client Service Agreement FOR THE INTRODUCTION OF PERMANENT STAFF

Version: CDC1512PPS

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1 Application

1.1 These terms apply if you:

- (a) tell us you have accepted them; or
- (b) ask us for help to fill a position after you have received a copy of them;
- (c) disclose personal information about our candidate without our consent.

1.2 These terms apply to your engagement of our placement services:

- (a) on a basis (i.e. where we are paid a fee if one of our candidates whom we have presented to you obtains a position with you)

1.3 Once they are in operation, these terms remain in force for all future engagements of our placement services unless they have been varied in writing.

2 INTERPRETATION

Annualised Gross Remuneration ("AGR") means the annualised sum of all remuneration payable to a candidate placed (or sought for placement) in accordance with these terms (and if part time, calculated as though on a full time basis), including allowances, superannuation contributions, superannuation guarantee payments, salary sacrificed components and the value of any motor vehicle, telephone, computer, internet, travel, accommodation, reduced interest loan provision, conference or education allowance; or other benefit that forms part of the consideration payable to the candidate for the placement;

Contract means the contract of employment or other engagement, whether in writing or not, between you and our candidate in relation to the placement;

Our candidate/s means anyone:

- (a) who is seeking a position through us; or
- (b) whom we have identified as a person:
 - (i) who might consider seeking a position through us; and
 - (ii) about whom we are able to provide relevant information regarding that person's suitability for a position.

Placement means the filling of a position that you require to be filled and, where the context so requires, includes a position that a third party requires to be filled;

Schedule means the schedule included with these terms, which may be substituted as provided from time to time;

Third party means a person or entity that is not a party to this Agreement;

Us, our or we refers to the supplier named in item 1 of the Schedule;

You or your refers to the client named in item 2 of the Schedule.

3 PRESENTATION OF OUR CANDIDATES

- 3.1 The presentation of one of our candidates commences when we initially forward to you any information about the candidate whether on an identified, anonymous, or pseudonymous basis.

4 OUR RESPONSIBILITIES

- 4.1 If we present a candidate :

- (a) We will ensure that we have the candidate's permission to present that candidate to you;
- (b) we will take reasonable steps to present only candidates who, in our opinion, are potentially suitable for placement with a view to short-listing or assessing them for your consideration.
- (c) we will :
 - (i) when short listing or evaluating our candidates take reasonable steps to:
 - 1 validate relevant information which we collect from our candidates
 - 2 ensure so far as practicable that the information we provide when short-listing our candidates is substantially accurate, relevant, complete and up to date;
 - 3 alert you to those relevant aspects of our short-listed candidate's information that we have not been able to satisfy ourselves are substantially accurate, complete or up to date;
 - (ii) arrange interviews with selected candidates, involving our staff, and you if necessary;
 - (iii) make our short listing or evaluation observations to you;
 - (iv) subject to negotiating fees and charges, such further tasks as are specifically agreed in writing;

5 YOUR RESPONSIBILITIES

5.1 You agree:

- (a) to notify us immediately of:
 - (i) the outcome of any interview between you and our candidate;
 - (ii) any offer (or acceptance of any offer) in relation to the placement of our candidate with you, or a person on whose behalf or for whose benefit you may be acting, or to whom you have communicated any personal information about our candidate. Your notification must include details of the remuneration or benefits offered;
 - (iii) your employment or engagement of our candidate.
- (b) to provide us with a copy of the contract or an accurate summary of its contents within seven days of its being agreed by both you and the candidate;
- (c) to include the following information in the contract or summary:
 - (i) the name of the candidate;
 - (ii) the name of the person or entity engaging the candidate;
 - (iii) status of the placement – whether casual or non-casual and whether as an employment or in some other capacity;
 - (iv) the location of the job;
 - (v) the start date for the placement;
 - (vi) the hours the candidate is to work per week;
 - (vii) a job description describing the work that the candidate will be expected to perform;
 - (viii) the experience, training and qualifications required of the candidate;
 - (ix) details of any authorisation required by law or any other professional body in order for the candidate to undertake the placement (including but not limited to professional registration or validation); and
 - (x) the candidate's remuneration;
- (d) to pay us our fee for the placement or our candidate if you breach any contract for the employment or engagement of our candidate before the placement is complete and the contract terminates for that reason;
- (e) that you are responsible for satisfying yourself:
 - (i) that our candidate has the qualifications, training, and experience necessary to undertake the placement and
 - (ii) that our candidate meets any suitability, security, trade, professional, or occupational health and safety requirements imposed by law in order to work in the placement;
 - (iii) that our candidate meets any other inherent requirements of the placement;
- (f) that you are responsible for obtaining work permits or the appropriate authorisation for the candidate to work, including the provision of any required documentation about the placement that our candidate requires in order to apply for any necessary work permit, work authorisation, visa or entry clearance including certification of suitability to work with any special population;
- (g) that you will not require us to act in a way that would result in our (or our consultants) breaching Recruitment & Consulting Services Association Limited's ("RCSA") Code for Professional Conduct ("the Code")¹ whilst the Code continues to bind us.

6 OUR FEES AND CHARGES

6.1 When engaged, we will charge you the fees for our services as set out in item 3 of the Schedule.

6.2 If any component of our fee is calculated in whole (or in part) as a percentage of AGR AND AGR has not been agreed with the successful candidate at the time when we may invoice you for payment, AGR will be calculated on the basis of the highest AGR advised to us by you at any time up to invoicing.

¹ http://www.rcsa.com.au/documents/cfpc/RCSA_Code_for_Professional_Conduct_15082008.pdf

- 6.3 If we present one of our candidates for a placement that attracts commission or earned bonuses as part of the remuneration AND our fee is calculated in whole or in part as a percentage of AGR:
- (a) we will provide to you our estimate of the AGR inclusive of the commission and earned bonus and attempt to agree it with you;
 - (b) AGR for the purpose of calculating our fees:
 - (i) will be calculated having regard to the estimated commission/bonus earnings indicated by any position description, authorised job advertisement, or key performance indicators that may be available;
 - (ii) if our estimate is disputed in writing within one business day of its being provided to you, will be the amount determined by a person nominated by the CEO for the time being of RCSA, who shall act as an expert and not as an arbitrator;
 - (iii) if not disputed in the manner set out at sub paragraph (ii) above, will be deemed to be the amount provided in our estimate.
- 6.4 We will notify you of our anticipated charges for advertising and any other services provided by third parties **that you expressly authorise us in writing to incur.**
- 6.5 All fees and charges quoted by us are exclusive of GST. GST at the prevailing rate will be added to our tax invoices.
- 6.6 You must pay our fees and charges (including any GST component), within 14 days. If you do not pay our fees and charges by the due date you must pay us the amount outstanding together with interest calculated at the rate (Reserve cash rate% + 2%).
- 6.7 If, after an offer of Engagement has been made to the candidate, you decide for any reason to withdraw it, you shall be liable to pay us a minimum fee of one thirteenth of the full fee or Aus\$200 which ever is the greatest.
- 6.8 We will provide a receipt to you when we receive the full payment of the placement fee.
- 6.9 You indemnify us for any costs (including legal costs on a solicitor and client basis) that we incur in taking any lawful steps to obtain overdue payment. You agree that we may recover the amount of those costs from you as a debt upon production of an invoice, which shall be sufficient proof of their amount.

7 REPLACEMENT

- 7.1 If within the replacement period, one of our short listed candidates whom we have placed with you:
- (a) performs unsatisfactorily in the placement for which he or she was presented and the placement is terminated for that reason; or
 - (b) terminates the contract
- then, subject to clause 7.2 and 7.3, we will use our best endeavours to present a replacement candidate at no extra fee.
- 7.2 Our obligations under clause 7.1 arise if and only if:
- (a) the candidate was short-listed for the placement under clause 4.1
 - (b) the candidate was not already a replacement candidate presented under clause 7.1;
 - (c) you pay or have paid our invoice by its due date;
 - (d) you notify us immediately of any circumstance that may result in our being required to perform our obligations under this clause 7;
 - (e) you have provided accurate information on a regular basis during the replacement period so that we can conduct confidential and timely performance checks (and counselling) with you and with the candidate for our own benefit and at our discretion. You release us from any obligation to pass on to you any information we collect from the candidate;
 - (f) you notify us in writing of the termination of the employment, engagement or contract promptly, stating the date and reason(s) for termination;
 - (g) you have made a reasonable attempt to induct and orient the candidate into the workplace;
 - (h) you have fulfilled all you other obligations arising under this agreement in respect of the placement;
 - (i) the termination of the candidate's placement is not due to:
 - (i) any false or misleading representation made to the successful candidate in connection with the placement;

- (ii) redundancy, retrenchment, or your operational requirements;
 - (iii) any action on your part which might make the termination of the successful candidate's employment or engagement unlawful, harsh, unjust or unreasonable; or
 - (iv) any breach by you of the terms of the contract with the successful candidate; and
- (j) you agree to pay any advertising or additional charges which you authorise us to incur in locating another suitable candidate.

7.3 The provisions of clauses 4, 5, 8 and 11 of these terms apply to the presentation of a replacement candidate.

7.4 If a replacement candidate is placed under this clause 7 at a higher AGR than the original candidate AND our fee was calculated in whole or in part as a percentage of AGR, we may claim an additional fee referable to the increased AGR. However, no refund or credit will be paid by reason only that the AGR referable to the replacement candidate is lower than that of the original candidate.

7.5 If we are unable to present a suitable replacement candidate within a reasonable time, we will refund a percentage of the placement fee as set out in item 4 of the Schedule less any other charges agreed to as in Clause 7.

8 EXCLUSIONS

8.1 Because you are ultimately responsible for your decision to employ or engage our candidates and because once they are employed or engaged they work under your control, supervision and direction:

- (a) We make no representation or guarantee that they will achieve a certain level of performance, achieve a certain outcome, solve a particular problem, or attain a specific goal;
 - (i) Subject to sub-paragraph (ii) of this sub-clause, we will not be liable to you for, and you will hold us harmless against any liability for, damage, loss or injury of whatsoever nature or kind, however caused whether directly or indirectly and whether by our negligence or that of one of our workers (including their servants or agents) whilst they are working under your control, supervision or direction.
 - (ii) Sub-paragraph (i) of this sub-clause does not reduce our liability, directly incurred, to the extent to which it may have contributed to any such damage, loss or injury; and
- (b) Our liability for any breach of a term implied in this agreement by any Act of Parliament will be limited, at our option, to providing, or paying the costs of providing, the services again.

9 TERMINATION

9.1 We can terminate this agreement by providing you with 14 days written notice.

9.2 We can terminate this Agreement immediately and without incurring any liability to you as a result, due to:

- (a) any failure by you to pay any amounts outstanding to us; and/or
- (b) a breach of clause 5 or 11 of these terms.

9.3 You can terminate this Agreement by providing us with 14 days written notice, on the condition that you pay the amount of any outstanding (including unbilled) placement fees and charges and GST.

10 DISPUTE RESOLUTION

10.1 If any dispute between the parties arises about the terms of this agreement or its effect the parties will firstly try to resolve the dispute by negotiation, mediation or expert appraisal. If, after a reasonable time, the dispute has not been resolved, the parties will refer the dispute to a process of dispute resolution agreed between them and, failing agreement, to a process of commercial arbitration by a person nominated by the CEO for the time being of RCSA.

10.2 If you are met with claims for a placement fee from more than one placement services supplier in respect of the same candidate and the same placement we agree to participate in having the claims resolved in accordance with the processes set out in RCSA's fee dispute resolution model attached and marked "A".

11 PRIVACY & CONFIDENTIALITY

- 11.1 You agree to preserve the privacy of personal information concerning any of our candidates whose personal information has been provided to you, or accessed by you, to a standard not less than that prescribed by the *Privacy Act 1988* (Commonwealth); and additionally to hold yourself as a trustee of the promise to do so for the benefit of our candidate.
- 11.2 So far as the law allows, you must maintain the confidentiality of any information that we communicate to you and identify as being confidential (including the fact that one of our candidates may be seeking a new position). You must not use or disclose confidential information that we communicate to you without our written consent.
- 11.3 You must identify any information that you require us to keep confidential. If you do not properly and expressly identify information that you communicate to us as being confidential we may use and disclose it as we think fit for the purpose of providing or offering our placement services to you; and you must indemnify us against any claims (including costs) for breach of confidentiality that may flow from our use or disclosure of it.
- 11.4 For the purposes of clause 11.3 the following information is expressly identified as being confidential, namely information about:
- (a) your current staff;
 - (b) your human resources strategies;
- We will not use or disclose it without your consent.

12 WAIVER

- 12.1 If we do not take action to enforce or require strict compliance with your obligations and responsibilities under these terms, or if we grant you any extension or indulgence in the performance of your obligations, we may still exercise all our rights as though they were fully available to us.

13 JURISDICTION

- 13.1 These terms are governed by and will take effect in accordance with the laws in force in NSW.

14 SEVERANCE

- 14.1 If any of these terms is held to be invalid in any way, or unenforceable, it will be severed, and the remaining terms will not be affected or impaired ; but will be construed so as to most nearly give effect to the intent of the parties at the time it was originally executed.

15 ENTIRE AGREEMENT

- 15.1 These terms represent the entire agreement between us and you in relation to its subject matter. By telling us that you accept the terms set out in this document, or asking us for help to fill a position after you have received a copy of them, you acknowledge that neither we, nor anyone acting on our behalf, has made any warranty or representation to you in relation to the matters covered by this agreement which is not fully set out in these terms, that you have not relied upon any such warranty or representation, that you have read these terms together with the Schedule, and that you have understood them.

SCHEDULE

Item 1: **Supplier:** Commercial Design Consolidated (NSW) Pty Ltd

Supplier Company Name: Commercial Design Consolidated (NSW) Pty Ltd

ABN: 56 465 099 042

Office: 11/82- 86 Pacific Highway, St Leonards NSW 2065

Mail Address: P.O. Box 209, St Leonards NSW 1590

Contact Person:

Item 2 **Client**

Client Company Name:

ABN:

Office Address:

Mail Address:

Item 3 **Fee for placement (exclusive of GST)**

The fee payable for an Introduction resulting in an Engagement is calculated on the following sliding scale:

up to Aus\$59,999.99	at	8%
next Aus\$60,000 to Aus\$99,999.99	at	12.5%
next Aus\$100,000 and above	at	18%

example: \$110,000.00 placement will attract a fee of \$11,600.00

of the AGR applicable during the first 12 months of the Engagement. GST will be charged on the fee as applicable. The provision of a motor vehicle to a candidate by you will be included in AGR on the basis that it represents an annualised remuneration of \$15,000.00

Item 4 **Refund Guarantees**

In order to qualify for the following guarantees, the Client must pay the Company's fee within 14 days of the date of invoice and must notify the Company in writing of the termination of the Engagement within 7 days of its termination.

If the Engagement terminates before the expiry of 13 weeks from the commencement of the Engagement (except where the Applicant is made redundant) a pro rata rebate will be allowed against the Company's fee for each complete week of the initial 13 week period not worked by the Applicant.

If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Company a minimum fee of one thirteenth of the full fee or Aus\$200 which ever is the greatest.