

TERMS OF BUSINESS – PERMANENT

You (“the Client”)

Date of Terms: Date as per Letter of Acknowledgement

advertising such as television and radio advertising);

IT IS AGREED BETWEEN THE PARTIES THAT

1. ABOUT THESE TERMS

- 1.1 These Terms apply to any request you make to us to find Candidates for you, unless otherwise agreed in writing between us.
- 1.2 By you requesting us to find Candidates for you, or you accepting a Candidate's resume from us, you are deemed to have accepted these Terms. These Terms will continue to apply until we agree on new terms with you.
- 1.3 We may vary these Terms from time to time, and you are deemed to have accepted the variations from the next request you make to us to find Candidates for you.
- 1.4 In these Terms, “\$” or “dollars” refers to New Zealand dollars and all amounts payable by you are to be paid in New Zealand currency.

- b) request, accept, review and consider resumes from Candidates;
- c) carry out preliminary interviews with Candidates (whether by phone, Skype or in person);
- d) provide you with a Candidate's resume, brief you on Candidates and introduce you to Candidates (whether by phone, Skype or in person); and
- e) once you have interviewed the Candidates and selected the successful Candidate, we can carry out reference checks and other suitability checks such as police checks before you make the offer of employment to the successful Candidate.

2.3 For the avoidance of any doubt, we will find you Candidates, but you are responsible for interviewing the Candidates, selecting the successful Candidate and making the offer of employment to the successful Candidate (including preparing any employment contract).

2. FINDING A CANDIDATE

- 2.1 You may notify us (verbally or in writing) of your requirements in relation to Candidates (the “Order”). You must provide us with all information reasonably required by us to complete your Order, including the position to be held by the Candidate, the nature and type of work to be carried out by the Candidate, any qualifications, special skills, experience or qualities required, and the employee entitlements to be offered to the Candidate (including the estimated remuneration package), together with hours of work and details of the workplace.
- 2.2 We will use reasonable commercial endeavors to find Candidates for you pursuant to the Order under clause 2.1. We may find one or more Candidates for you to interview. For the purpose of finding Candidates, we may do any of the following, and will use reasonable endeavors to keep you informed along the way:

2.4 You must promptly notify us once a successful Candidate has accepted your offer of employment, and the date the employed Candidate will commence work for you.

2.5 For at least a period of 12 months after the employed Candidate commences work for you, we shall not directly approach or induce or attempt to induce the employed Candidate to leave his or her employment with you or to enter into any employment with us or any other person. However, this clause 2.5 does not preclude us assisting the Candidate with any employment during this period if they approach us.

3. OUR GUARANTEE

- 3.1 If the employed Candidate resigns or their employment has been lawfully terminated by you within the first ninety (90) days of their employment where a 90 day trial period is applicable to that candidate, we will use reasonable commercial

endeavors to find a replacement Candidate, and will not charge you any additional fee to do so.

3.2 This guarantee is given only in respect of the original Candidate (and not any replacement Candidate), and does not apply when a Candidate's employment has been terminated for redundancy, relocation, merger, takeover or change of employment conditions.

3.3 If we are unable to find a replacement Candidate within a reasonable period of time, we will give you a credit note for the fees paid by you in relation to the unsuitable Candidate. The credit note is only valid for a period of six months from the date you gave us notice of the resignation or termination under clause 3.1, and may only be used for the same services (that is, requesting us to find a Candidate for you to employ in your business). For the avoidance of any doubt, we do not offer a refund of the fees paid by you.

4. FEE AND PAYMENT

4.1 The fee payable by you for us finding the employed Candidate will be calculated based on the remuneration package of the Candidate as set out in schedule 2 to these Terms. The package is described as basic salary, superannuation, total on target commissions and bonuses, allowance and benefits that represent cash in alternative forms and a company car which is valued at \$20,000 per annum.

4.2 The fee set out in clause 4.1 covers those things set out in clause 2.2. If you request that we take steps above and beyond what is set out in clause 2.2, we may charge you for any expenses incurred by us in doing so. For example, if you request that we carry out television or radio advertising or that we travel out of town to carry out a preliminary interview of the Candidates, we may charge you for any expenses incurred by us in doing so.

4.3 All fees are quoted exclusive of GST. You will pay GST to us at the same time and in the same manner as the payment of the supply to which the GST relates and at the rate applicable at the time of the invoice.

4.4 We will promptly issue our invoice to you once you have given notice to us under clause 2.4. You are required to make payment to us as set out in the invoice. Payment in full is due within fourteen days of the employed Candidate commencing work for you, without set-off, counterclaim or deduction of any kind. A surcharge may apply for payment made by credit card.

4.5 We may require you to pay interest on a compounding basis at a rate of 2.5% per calendar month, on all amounts remaining unpaid under this Agreement from the due date until the date of payment in full.

4.6 If you fail to pay any amount when required under the Agreement, we reserve the right to suspend delivery of any Order without incurring any liability whatsoever and all amounts owing by you become immediately payable. You shall be liable for all expenses and costs (including legal and debt collection) in relation to collection of outstanding amounts under this Agreement.

4.7 If payment is not received by the due date, you will not be able to rely on our guarantee given in clause 3.

5. CONFIDENTIAL AND PRIVATE INFORMATION

5.1 You agree:

- a) to treat all information which comes to your knowledge or into your possession in connection with these Terms and any Order as strictly private and confidential;
- b) not to divulge that information to any third party, other than to your consultants, advisers or employees who have a need to know, or as required by law;
- c) to return any information to us in relation to a Candidate which did not become the employed Candidate; and
- d) to otherwise comply with the Privacy Act 1993 at all times.

6. WARRANTIES

6.1 Other than the guarantee given in clause 3, all express or implied or other representations or warranties in relation to the Candidates are expressly excluded to the maximum extent permitted by law.

7. LIMITATION OF LIABILITY

7.1 Our total liability for a breach of the guarantee given in clause 3, or any other provision of these Terms, whether in contract, tort, negligence or in any other way, will not exceed the amount of the fee actually paid by you in relation to the Candidate giving rise to the breach.

7.2 In no event will we be liable to you, whether in contract, tort, negligence or in any other way, for any:

- a) loss, damage, cost or expense of any kind whatsoever in connection with any delay or failure to provide any Candidate for any Order;
- b) loss of profits or savings, loss of revenue, loss of goodwill or opportunity; or
- c) loss, damage, cost or expense of any kind whatsoever which is indirect,

consequential or of a special or punitive nature even if such loss, damage, cost or expense was reasonably foreseeable.

8. CANDIDATE INTRODUCTION

8.1 If we introduce or refer a Candidate to you, and at any time during the twelve months thereafter you (or any related person or company) employ that Candidate, you are deemed to have found the Candidate through us and you will be required to pay the fee set out in clause 4.1 to us.

8.2 For the avoidance of any doubt, the guarantee given in clause 3 does not apply to any Candidate employed by you under clause 8.1.

9. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

9.1 You agree to grant us a security interest in all your present and after acquired property so as to secure all monies owing by you to us for services provided under this Agreement. You agree to do all things necessary to enable us to register a financing statement on the Personal Property Securities Register and to ensure that the security interest is a first ranking perfected security interest over all the property.

9.2 You waive your right to receive a copy of any verification statement in respect of any financing statement or financing change statement relating to the security interest.

9.3 You agree that nothing in sections 114(1)(a), 120(1) or 122 of the PPSA will apply. You agree to waive your rights as a debtor under sections 116, 120(2) and 121 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.

10. CREDIT CHECK

10.1 You authorise us to collect, retain and use information about you for the purposes of carrying out credit checks, deciding whether to continue to make services available to you, debt collecting and marketing.

10.2 As part of this, you authorise us to obtain credit reports and other information about you from any third party (including third party credit agencies) notified by us to you for this purpose. You also authorise us to provide information about you (including information relating to any default in your payment obligations) to any third party for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law, those third parties may hold that information in their systems and use it now and in the future.

10.3 You may ask to see any personal information we hold about you and ask for any details that are wrong to be corrected.

11. GENERAL TERMS

11.1 **Disputes:** If a dispute arises out of or relates to these Terms or any Candidate, the parties will endeavor to resolve the dispute by good faith negotiations between the parties. If the parties are unable to resolve the dispute during negotiations, either party may refer the dispute to mediation by notice in writing by a mediator to be agreed between the parties within five working days of that notice or failing agreement by the president of the New Zealand Law Society or their nominee. The parties will share the costs of the mediator equally.

11.2 **Amendments:** Any amendments or modifications to these Terms must be agreed to by a director of TRN and must be in writing.

11.3 **Entire Agreement:** These Terms, together with any Order, constitute the entire agreement between the parties relating to their subject matter.

11.4 **Waiver:** A waiver of these Terms will only be effective if given by us in writing and only to the extent expressly stated to be given. Any waiver will not affect our rights under these Terms at any future time.

11.5 **Illegality:** If any part of these Terms is illegal, unenforceable or invalid, the remaining provisions, or the remainder of the provision concerned, shall continue in effect.

11.6 **Notices:** Notices and other communications are deemed to have been served to either party if they are hand delivered, transmitted by facsimile, posted or emailed. They are deemed to have been received unless the sender should have been reasonably aware that the delivery failed.

11.7 **Governing Law:** Our relationship with you is governed by New Zealand law and the courts of New Zealand have exclusive jurisdiction.