

TERMS OF BUSINESS – TEMPORARY

You (“the Client”)

Date of Terms: [Date as per the Letter of Acknowledgment]

IT IS AGREED BETWEEN THE PARTIES THAT

1. ABOUT THESE TERMS

- 1.1 These Terms apply to any request you make to us to supply you with Workers, unless otherwise agreed in writing between us.
- 1.2 By you requesting us to supply you with Workers, or you accepting Workers 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 supply you with Workers.
- 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.

2. SUPPLY OF WORKERS

- 2.1 You may notify us (verbally or in writing) of your requirements in relation to Workers (the “Order”). You must provide us with all information reasonably required by us to complete your Order, including the number of Workers and the hours each Worker is required for, details on the workplace and the nature and type of work and any qualifications or special skills to be held by the Workers.
- 2.2 Each Worker must be required for a minimum of four hours in any given shift.
- 2.3 We will use reasonable commercial endeavors to supply you with Workers pursuant to your Order under clause 2.1. We may supply any one of our Workers to you and/or substitute any one of our Workers for another at any time.

- 1) Rates charged are GST exclusive and covers ACC premiums, superannuation, leave provisions, recruitment, termination and administration costs. All Workers are employees of R.N. and are paid

directly by R.N. There are no charges for meal breaks, sick leave or time off. Where overtime provisions apply, an additional charge will be made. On public holidays the rates charged will be one and a half times the hourly rate. Christmas Day will be charged at double time. If ‘out of town’ travel is required a travel charge may apply.

- 2) R.N. will provide a timesheet, either paper or our digital portal for the purpose of recording the hours worked by the Worker on assignment. This timesheet is to be approved and returned by 3pm the following Monday. At such time, if the approved timesheet is not received from the client, R.N. will void the requirement of client approval and accept the submitted hours from our Worker.
- 3) A Worker introduced or referred by R.N. and subsequently:
 - a. employed by the client, or any associated organisations; or
 - b. engaged by the client through another agency,

whether on a paid or unpaid basis during an assignment or within a period of twelve months from the date of the last appointment, will be deemed a permanent placement and a placement fee will apply and become immediately payable to R.N. This placement fee will be calculated in accordance with the permanent placement fee schedule unless otherwise negotiated and will be quoted upon request.

The client is obliged to contact R.N. as soon as reasonably practicable after the WORKER has entered into an employment contract with the client. R.N. will issue an invoice to the client for the placement fee which will be payable within fourteen days of the date of invoice.

For the avoidance of doubt, R.N. makes no suitability guarantees in respect of those situations where the placement fee becomes payable pursuant to this clause 5.

- 4) R.N. is not liable for:-

- a. any loss, expense, damage or delay arising from any failure to provide staff for all, or part of the period of the booking or errors made by, or misconduct of staff provided.
 - b. in respect of any damage, loss or injury of whatsoever nature or kind, however caused, whether by our negligence or the negligence of one of our workers, the Workers, our servants or agents or others, in which might be suffered or incurred, whether directly or indirectly, in respect of the service provided under these conditions of assignment.
 - c. Any amount exceeding the fees paid for the Worker by the Client.
- 5) From the time that our employees or independent Workers report to the client for their duties, they are the care, control and supervision of the client for the duration of the assignment. The Worker shall be under the direction and control of the Client for the time of commencement of duties and for the duration of the arrangement.
- 6) The client is responsible for all the acts, errors or omissions whether willful or negligent or others of the Worker and shall ensure compliance with all statutory requirements relating to the Worker.
- 3. OUR GUARANTEE**
- 3.1 We guarantee that our Workers will be suitable to carry out the work for you, to the extent of the information disclosed by you to us under clause 2.1, in that our Workers will:
- a) carry out the work in a proper and workman like manner; and
 - b) exercise the degree of skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced Worker in the same or similar circumstances in accordance with good industry practices.
- 3.2 If any of our Workers prove unsuitable to carry out the work for you, we will use reasonable commercial endeavors to replace the unsuitable Worker as soon as practicable, and will not charge you for the time worked by the unsuitable Worker, provided that:
- a) where the Worker's shift is seven hours or more, you give notice to us within the first four hours of the Worker starting their shift; or
 - b) where the Worker's shift is less than seven hours, you give notice to us within the first two hours of the Worker starting their shift.
- 4. CHARGES AND PAYMENT**
- 4.1 The charges payable by you for each Worker will be:
- a) calculated on a time in attendance basis (including time for rest breaks, but excluding time for meal breaks), rounded to the nearest quarter hour; and
 - b) based on our standard hourly rates, unless any of the circumstances set out in clause 4.2 apply. As at the date of these Terms, our standard hourly rates are the rates set out in schedule 1 to these Terms.
- 4.2 If any of the following circumstances apply, the charges payable by you under clause 4.1 will be based on the following rates:
- a) if a Worker works on a public holiday other than Christmas Day, the rate will be 1.5 times our standard hourly rate; or
 - b) if a Worker works on Christmas Day, the rate will be 2 times the Standard Rates.
- 4.3 In addition to the charges under clause 4.1, we may also charge you for expenses incurred by us as a result of our Workers having to travel out of town to attend a shift.
- 4.4 All charges 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.
- 4.5 We will issue our invoices to you on a weekly basis. Subject to clause 4.7, you are required to make payment to us (not to the Workers) as set out in the invoice. Payment in full is due within seven days of the invoice date, without set-off, counterclaim or deduction of any kind. A surcharge may apply for payment made by credit card.
- 4.6 We may take a pre-authorized payment by direct debit if the invoice is not paid by the due date for payment.
- 4.7 We may require you to pay the charges in full or in part before we supply you with Workers pursuant to your Order.
- 4.8 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.
- 4.9 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.
- 4.10 We may increase the rates set out in schedule 1 from time to time to take into account an increase to the minimum wage and/or a change in any contributions, levies or taxes we are required to

make at law in respect of our Workers. We will give you notice in writing of any proposed changes to the rates and the new rates will take effect from the date specified in that notice.

- 4.11 If you cancel an Order for a Worker without giving us at least four hours' notice prior to that Worker's shift starting, we will charge you a cancellation fee. This cancellation fee will be the sum of the charges that you would have paid for that Worker for that cancelled shift or as otherwise agreed between the parties.

5. YOUR OBLIGATIONS

5.1 You must keep a written record of the time our Workers start and end their shift with you, and provide a copy of this timesheet to us signed (either electronically or manually) by no later than 9am on the Monday following the shift. If you fail to do so, we may:

- a) request this information from our Workers, and you will be deemed to have accepted their record of time, which will be used to calculate the charges payable by you under clause 4.1; and/or
- b) charge you for any additional cost to us as a result of your failure to provide this information to us.

5.2 From the time that our Workers report to you to the end of their shift, they are in your care, control and supervision. During this time, you must:

- a) provide an induction to our Workers reasonably required for them to carry out the work in a proper and safe manner, including provide them with any training and brief them on all relevant policies including workplace and occupational health and safety policies;
- b) provide our Workers with a uniform and such equipment and/or materials required for them to carry out the work in a proper and safe manner, unless we or our Workers have agreed to provide same;
- c) provide adequate supervision, instruction and direction to our Workers;
- d) not allocate tasks or responsibilities to our Workers, or allow our Workers to carry out or be involved in any work which you have not identified in the Order or which our Workers do not hold the necessary qualifications or have the necessary training in;
- e) promptly notify our Workers and us of any risk in the workplace which may cause danger to our Workers, and take steps to prevent, reduce or minimise such risk;
- f) comply with all obligations, duties, laws and regulations (whether statutory or

otherwise), including in respect of workplace and occupational health and safety, and discrimination and harassment; and

- g) comply with any of our reasonable requests in relation to our Workers.

5.3 In addition to those obligations under clause 5.2, you have an ongoing obligation to:

- a) promptly notify us of any performance issues in respect of our Workers;
- b) promptly notify us of any workplace incident that may give rise to a claim which in anyway involves our Workers;
- c) not on-hire or resupply our Workers to any other person or company; and
- d) hold and use all information we provide to you about our Workers, including the fact that they are looking for work, strictly in accordance 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 Workers 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 charges actually paid by you in relation to the Worker 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 Workers for all or part of an Order or shift, or any errors or mistakes made by our Workers, or misconduct of our Workers;
- 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. TRANSITION TO PERMANENT WORKER

8.1 If we supply, introduce or refer a Worker to you, and at any time during the twelve months thereafter you (or any related person or company) employ that Worker or engage that Worker through another

agency, you are deemed to have found the Worker through us and you will be required to pay a placement fee to us.

8.2 The fee payable by you for each Worker under clause 8.1 will be calculated based on the remuneration package of the Worker as set out in schedule 2 to these Terms.

8.3 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.

8.4 You must promptly notify us once the Worker under clause 8.1 has entered into an agreement with you, at which time we will promptly issue our invoice to you. You are required to make payment to us as set out in the invoice. Payment in full is due within fourteen days of the invoice date, without set-off, counterclaim or deduction of any kind. A surcharge may apply for payment made by credit card.

8.5 If payment is not received by the due date, we may require you to pay interest at a rate of 2.5% on all amounts remaining unpaid from the due date until the date of payment in full.

8.6 If the Customer fails to pay any overdue amounts as per the agreement, the Company reserves the right to suspend delivery of service without incurring any liability whatsoever. The Customer shall be liable for all expenses and costs (including legal) in relation to collection of outstanding amounts for services rendered as per the agreement.

8.7 For the avoidance of any doubt, our guarantee given in clause 3 does not apply to any Worker engaged 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 Force Majeure

a) Notwithstanding any other provision of these Terms, non-performance by either of the parties of any of its obligations (other than to pay money) under these Terms will be excused during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure (as defined in clause 9.1d)).

b) The party claiming the benefit of this clause will promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance. In the meantime, such party will take all reasonable steps to remedy or abate the Force Majeure.

c) Performance of any obligation affected by Force Majeure will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.

d) Force Majeure means any event or circumstance beyond the reasonable control of the party claiming the benefit of this clause, and includes, but is not limited to, any:

i. act of God, fire, earthquake, storm or flood;

ii. strike, lockout, work stoppage or other labour hindrance;

iii. explosion, electrical supply failure, nuclear accident or collision;

iv. sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not),

but does not include lack of funds for any reason.

not affect our rights under these Terms at any future time.

- 11.2 **Disputes:** If a dispute arises out of or relates to these Terms or our Workers, 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 of the parties 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 his or her nominee. The parties will share the costs of the mediator equally.
- 11.3 **Amendments:** Any amendments or modifications to these Terms must be agreed to by a director of TRN and must be in writing.
- 11.4 **Entire Agreement:** These Terms, together with any Order, constitute the entire agreement between the parties relating to their subject matter.
- 11.5 **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
- 11.6 **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.
- 11.7 **Confidentiality:** The parties will hold in confidence all information concerning each other or each other's affairs that is acquired while working together. The parties will only disclose confidential information if it is necessary or desirable to enable the party to carry out the other party's instructions or if it is required by law.
- 11.8 **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.
- 11.9 **Governing Law:** Our relationship with you is governed by New Zealand law and the courts of New Zealand have exclusive jurisdiction.