



## **AGREEMENT FOR PROVISION OF PERMANENT & FIXED TERM PLACEMENT SERVICES**

### **1. BACKGROUND**

- 1.1 Talentology is a provider of IT professional services to the Australian IT industry. From time to time, Talentology provides permanent employment placement services to Australian corporates (a Client) from his headquarters in Sydney, New South Wales.
- 1.2 This Agreement sets out the terms and conditions that will apply to all permanent employment placement services provided by Talentology to a Client. This Agreement must be read in conjunction with the terms and conditions of Schedule 1.

### **2. PROVISION OF SERVICES**

- 2.1 Talentology provides permanent and fixed-term employee placement services to Clients in a 'Fee for Service' format.

### **3. TERM OF AGREEMENT**

- 3.1 This Agreement applies to each individual permanent recruitment or fixed-term placement assignment between Talentology and the Client from the date of the initial discussion.
- 3.2 The parties agree to enter into an Agreement once a candidate resume has been sent by Talentology to the Client, and the Client has agreed to interview the candidate.
- 3.3 This Agreement shall continue until the Guarantee Period (Schedule 1 Clause 12) comes to an end or the Loss of Guarantee (Schedule 1 Clause 13) has been invoked.

### **4. BINDING EFFECT**

- 4.1 This Agreement becomes binding once a candidate resume has been sent by Talentology to the Client, and the Client has agreed to interview the candidate.

### **5. DEFINITIONS AND INTERPRETATION**

In this Agreement:

- 5.1 any term defined in a Schedule has the same meaning in this Agreement (and vice versa);
- 5.2 "client" refers to an Australian business or corporate organisation who has engaged Talentology
- 5.3 "person" or any word connoting a natural person includes a body corporate and vice versa;
- 5.4 "related body corporate" has the same meaning as in the Corporations Act 2001;
- 5.5 the words "including", "such as", "for example", "eg" and similar expressions do not imply any limitations.
- 5.6 "Services" means the services to be provided by Talentology as set out in:
  - (a) Schedule 1 – Permanent Placement Services

## **6. GENERAL**

- 6.1 This Agreement is the entire agreement between Talentology and Client regarding the Services, and supersedes all prior communications, representations, agreements or arrangements between the parties.
- 6.2 The laws of New South Wales shall govern this Agreement.
- 6.3 Any provision of this Agreement that is invalid in any jurisdiction must in relation to that jurisdiction be read down to the minimum extent necessary to achieve its validity (if applicable) or be severed from the Agreement in other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

## **7. CONFIDENTIALITY AND PRIVACY**

- 7.1 A party ("Receiver") may only use confidential information of the other party ("Discloser") received in connection with this Agreement ("Confidential Information") to the extent necessary to enable that party to exercise its rights or perform its obligations under this Agreement. (The contents of this Agreement constitute Confidential Information of each party.) Receiver may disclose Confidential Information to subcontractors and personnel having a need to know, and who are under non-disclosure obligations no less restrictive than in this Agreement. Receiver shall not disclose Confidential Information to any other third party without the prior written consent of the Discloser. Receiver shall protect the Confidential Information from unauthorised disclosure by using the same degree of care as Receiver uses to protect its own proprietary or confidential information of a like nature. The obligations under this clause 7 will not apply to any information which is (a) available to the public other than by breach of this Agreement by Receiver; (b) lawfully received by Receiver from a third party without proprietary or confidentiality limitations; (c) independently developed by Receiver; or (d) known to Receiver prior to first receipt of same from Discloser. This clause 7 will not apply to prevent Receiver from disclosing Confidential Information to the extent required by law or regulatory requirement, provided Receiver notifies Discloser promptly on receiving notice of such requirement, and asserts the confidentiality of the relevant Confidential Information to the body requiring disclosure.
- 7.2 If requested by Client, Talentology will procure that a candidate signs a written confidentiality undertaking to Client consistent with the obligations in clause 7.1.
- 7.3 For the purposes of clause 7.4, "Personal Information" means any information or opinion about a natural person (whether or not true), including 'Personal Information' as defined in the Privacy Act 1988 (Cth), which is collected or held by the Discloser and disclosed to the Recipient in connection with this Agreement.
- 7.4 Each party will: (a) to the extent reasonably requested by the other party, assist the other party to comply with its respective obligations under the Privacy Act 1988 (Cth); (b) obtain the other party's consent where it intends to use or disclose Personal Information for any purpose other than the purpose for which the information was provided (except if disclosure is required by law); (c) be responsible for the accuracy and completeness of any Personal Information that it discloses to the other party; (d) take reasonable steps to assist the other party to resolve a complaint or respond to a request in relation to Personal Information; and (e) take reasonable steps to ensure that Personal Information is protected from misuse and loss and from unauthorised access, modification or disclosure.

## **8. Payment Terms**

- 8.1 The Client agrees to pay all fees for Services and all agreed additional costs within 14 days of receipt of a Talentology invoice.

8.2 The Client acknowledges that if any invoice remains unpaid on the due date, Talentology may, in its discretion, charge interest at a rate equal to 1% of the amount outstanding per month until the invoice amount is paid in full.

8.3 If Talentology instructs solicitors to collect any overdue amount, all legal fees and collection charges and trading agents fees (on a full indemnity basis) will be payable by the Client and all payments made shall firstly be allocated towards such fees and charges, thereafter to interest and finally to principal.

## **9. GST**

### **9.1 Definitions**

In this clause 9:

(a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

(b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth).

(c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

9.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

9.3 If GST is payable in respect of any supply made by a supplier under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. The recipient will pay the amount referred to in this clause 9.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

9.4 Talentology must deliver a tax invoice or an adjustment note to the Client before Talentology is entitled to payment of an amount under clause 9.3. The Client may withhold payment of the amount until Talentology provides a tax invoice or an adjustment note, as appropriate.

9.5 If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under clause 9.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

9.6 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

(a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

(b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## **10. LIABILITY**

10.1 Talentology is not liable to Client for special, incidental, indirect, or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity or loss of data in connection with this Agreement irrespective of whether:

(a) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

(b) the Client or any other person was previously notified of the possibility of the loss or damage.

10.2 Without limiting clause 10.1, the maximum aggregate liability of Talentology for all proven losses or damages and claims arising out of any Services provided under this Agreement is limited to an amount

equal to the fees paid in respect of those Services in the period of 3 months prior to the date of the last event which Client alleges gave rise to liability on Talentology' part.

- 10.3 Any representation, warranty, condition, guarantee or undertaking that would be implied into this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law.
- 10.4 Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Client by the Australian Consumer Law in Schedule 2 of Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- 10.5 To the fullest extent permitted by law, the Liability of Talentology for a breach of a non-excludable consumer guarantee referred to in clause 10.4 is limited, at Talentology' option, to:
- (a) the supplying of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.

## **Schedule 1 – PERMANENT PLACEMENT SERVICES**

### **A. DEFINITIONS**

For the purposes of Schedule 1:

“Candidate” includes any person contained in a submission or short list made by Talentology to the Client, even though the person may be presented independently to the Client.

"Salary Package" means the total value of the agreed base salary plus superannuation.

### **B. CLIENT BRIEF**

Client warrants that the job brief information it provides to Talentology to recruit the role is accurate. The Client Brief may be provided as a document, email or verbal.

### **C. CANDIDATE SUITABILITY**

Talentology uses its best endeavours to ensure that the candidates that it presents are suitable for Client's position based on the information provided by both Client and candidates. However, Client is solely responsible ensuring that candidates are suitable for their positions. In line with Clause 10, Talentology cannot be held liable for candidate selection decisions made by Client.

### **D. ASSESSMENTS, REFERENCE CHECKS AND SUITABILITY**

Talentology will reference check Candidates where practicable to do so or as specifically agreed with the Client. However, may elect to perform its own reference checks and will advise Talentology if this is its requirement. Additional checks (i.e. credit and security checks) are available on request at Client's cost. Talentology will use its best endeavours to make known to the Client the Candidate's employment records, qualifications and salary requirements as accurately and objectively as possible. Talentology will not be liable for any untrue statements or misrepresentations made by the Candidate.

### **E. FEE FOR SERVICE**

A fee will be payable by the Client in accordance with these terms and conditions where a Candidate, referred by Talentology to the Client for any position, is engaged in any capacity directly with the Client, or any related business or entity of the Client, from the time of submission of the candidate for a period of 6 months.

### **F. PERMANENT PLACEMENT FEE**

The Permanent Recruitment Fee payable by the Client at the relevant percentages listed in Clause P will be invoiced on the date the Candidate commences employment /engagement with the Client.

### **G. RETAINED ASSIGNMENTS**

Where the Client engages Talentology to undertake an assignment on a retained basis, a proposal outlining the methodology to be used by Talentology, together with all fees, will be supplied to the Client for approval. The fees agreed in the proposal will apply to the relevant retained assignment.

Email approval will constitute agreement between Talentology and the Client. The agreed terms are to be read in conjunction with this Agreement.

For retained assignments, the Client will be invoiced at three points during the assignment:

- (i) a retainer fee at the point of agreement of the retained assignment proposal (33.33% of the agreed permanent recruitment fee based on the proposed salary package for the successful Candidate);
- (ii) a working fee at the point of submission of the shortlist of candidates (33.33% of the agreed permanent recruitment fee based on the proposed salary package for the successful Candidate); and
- (iii) a placement fee at the point when the successful Candidate commences employment with the Client. The placement fee shall reflect the balance of the agreed permanent recruitment fee payable, adjusted for any difference between the Salary Package agreed with the successful Candidate and the proposed salary as canvassed at the outset of the assignment.

Fees payable pursuant to clauses 5(i) and (ii) are non-refundable.

#### **H. EXECUTIVE SEARCH**

Talentology provides research and executive search services to clients separate from the recruitment process. Where executive search is the proposed solution by Talentology, a proposal outlining the methodology and associated fees will be supplied to the Client for approval. Email approval will constitute agreement between Talentology and the Client. The agreed terms are to be read in conjunction with this Agreement.

#### **I. PART-TIME ROLES**

Any recruitment undertaken for part-time roles will be charged at a pro rata percentage of the Permanent Recruitment Fee (calculated in accordance with Clause P, but using the full time equivalent Salary Package), but where the Candidate works less than half time, the minimum pro rata percentage to be applied in calculating the fee is 50%.

#### **J. FIXED TERM CONTRACT PLACEMENT**

A fixed term contract fee is payable where the Client places the Candidate for a fixed period of time ("Fixed Term Contract"). The fee for Fixed Term Contract placements:

- (a) for Fixed Term Contracts of 6 months or less is 60% of the Permanent Recruitment Fee calculated using the full-time equivalent Salary Package; or
- (b) for Fixed Term Contracts greater than 6 months is 100% of the Permanent Recruitment Fee calculated using the full-time equivalent Salary Package.

Where a contract is extended from an initial period of 6 months or less, an additional fee will be charged so that total fees payable by the Client is equal to 100% of the Permanent Recruitment Fee calculated using the full-time equivalent Salary Package.

#### **K. DISBURSEMENTS**

The Client must pay Talentology for agreed disbursement expenses incurred by Talentology, including but not limited to travel and accommodation, video conferencing, toll calls or couriers. These expenses

will be invoiced by Talentology and must be paid by the Client regardless of final outcome of the recruitment process.

**L. ADVERTISING**

Talentology may place internet advertisements at no cost to the Client ("Standard Internet Advertising"). The Client will be invoiced for any advertising over and above the Standard Internet Advertising; however this will be agreed prior to the placing of the advertisement.

**M. LIABILITY AND INDEMNITY**

Talentology makes all reasonable efforts to ensure the suitability of Candidates presented to the Client and endeavours to provide background on each Candidate's qualifications and experience.

However, the details are based on the information made available to Talentology by Candidates and referees, and accordingly, no responsibility can be accepted for errors, omissions or incorrect conclusions. Talentology recommends that the Client satisfy itself as to the Candidate's suitability for employment, as Talentology does not verify or guarantee references concerning a candidate's skills, qualifications or integrity.

Talentology will not be liable for any claim, loss, damage or expense suffered by the Client resulting from the acts or omissions of a Candidate or from any delay or failure by Talentology to refer a Candidate to the Client. The Client indemnifies Talentology against any claim, loss, damage or expense suffered by the Client arising out of or in connection with any act or omission of any Candidate placed with a client under this Agreement.

**N. GUARANTEE**

- (i) If a Candidate is placed with the Client pursuant to this Schedule 1 ("Appointee"), and the Appointee cease to be employed by the Client for any reason whatsoever other than redundancy or substantial job changes, within 3 months of the date of commencement with the Client then, subject to clause (iii), Talentology will endeavour to replace the appointee without any additional placement fee being charged.
- (ii) If within 2 months of the date of cessation of employment no substitute candidate is found, or if found, is not satisfactory to Client, then Talentology will credit Client's account for the relevant placement fee paid. This credit can be used against any future employee recruitment services that Client engages Talentology to provide.
- (iii) If the Client employs the substitute candidate on a package that differs from the original Appointee, the placement fee paid by Client will be adjusted accordingly.
- (iv) Should the Client use other means to fill the same position (including, but not limited to, engage an alternative recruitment company or recruit a replacement themselves), Talentology will not be liable for any fee credit. The 3-month guarantee is only applicable when Talentology replaces the appointee.

**O. LOSS OF GUARANTEE**

- (i) The guarantee under clause N will not apply if:
  - 1. Talentology accounts are not paid within 14 days of invoice date.
  - 2. During the Guarantee period Client does not notify Talentology in writing within 7 days of the cessation of the employment of the Appointee.

3. A substitute candidate has already been provided under the terms of this guarantee and accepted by Client.
4. The cessation of the Appointee's employment occurs as a result of a change in the job specification or role of the Appointee.
5. In line with 12.4, Client uses other means to fill the same position.

**P. PERMANENT RECRUITMENT FEES**

The permanent recruitment fee payable by the Client is calculated as follows:

Salary Package (Base Salary plus Superannuation)	Non-Exclusive	Exclusive to Talentology
\$0 - \$179,999	15.0%	12.5%
\$180,000 +	17.5%	15.0%

For more information and all enquiries, please contact:



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