

Definitions

- In this agreement unless the context otherwise requires:
 - "Additional Services"** means psychological profiling and advertising, and such other services outside the scope of the Assignment that Development Careers may agree to arrange and/or coordinate on behalf of the Client.
 - "Assignment"** means the work agreed to be performed by Development Careers for and on behalf of the Client as referred to in Clause 4 of this Agreement.
 - "Assignment Specification"** means a detailed overview of the requirements of the Client in respect of the person the Client seeks to employ or otherwise engage.
 - "Development Careers"** means The Development Careers Pty Limited ABN 79123402399
 - "Candidate"** means a person who is put forward to the Client by Development Careers in the performance of the Assignment as a potential person who may be engaged by the Client as an employee or consultant or in some other capacity.
 - "Client"** means the party named in the Consulting Agreement as the Client or any associated company or subsidiary.
 - "Commencement Date"** means the date the Successful Candidate commenced their employment or engagement with the Client
 - "Commencing Remuneration"** means the total first year remuneration package of the Successful Candidate, and without limiting the generality of the foregoing includes cash remuneration, superannuation, car allowance, bonuses and commissions and any non-cash benefits
 - "Fee"** means the fee payable by the Client to Development Careers for undertaking the Assignment.
 - "GST"** means Goods and Services Tax.
 - "Role"** means employment or some other form of engagement of a Candidate by the Client.
 - "Search"** means the undertaking of research to locate suitable potential candidates to be employed by the Client, but does not include advertising.
 - "Selection"** includes placement of advertising materials, vetting responses and preparing a Shortlist.
 - "Shortlist"** means a list of final Candidates submitted by Development Careers to the Client for the Client's consideration.
 - "Successful Candidate"** means the Candidate who is offered employment or some other form of engagement by the Client and for the purpose of Clauses 13 to 18 inclusive of this Agreement means the Candidate who accepted such an offer

Acceptance of this Agreement

- If the Consulting Agreement specifies this is a non-retained role, then this Agreement shall be deemed accepted by the Client if the Client accepts the resume of a Candidate.
- If the Consulting Agreement specifies this is a retained role, then this Agreement may be accepted by the Client by:
 - signing and returning the Consulting Agreement;
 - informing any recruitment officer of Development Careers (whether orally or in writing, including by email) of acceptance by the Client; or
 - instructing or continuing to instruct Development Careers to perform work in respect of the Assignment (in which case the Client will be deemed to have accepted all of the terms and conditions set out in this Agreement).

The Assignment

- Development Careers shall engage in Search or Selection or Search and Selection of a suitable Candidate to be employed or otherwise engaged by the Client, within the parameters set out (where applicable) the Assignment Specification.
- If the Assignment Specification indicates this is a retained role, then Development Careers shall complete and forward to the Client within seven days from the date of acceptance of this Agreement by the Client, and payment of the amount specified in Clause 9(a)(i) of this Agreement, the Assignment Specification. Development Careers shall only commence the Assignment when the Client confirms acceptance of the Assignment Specification. Obligation of Client in respect of Payment of Fees

Obligations of the Client in respect of Additional Services

- The Client shall pay the Fee to Development Careers in the amount calculated in accordance with Clause 7 at the time specified in Clause 9 of this Agreement.
- The Fee shall be:
 - if a percentage of Commencing Remuneration or a fixed fee is specified in the Assignment Specification, the amount calculated in accordance with that percentage or the fixed amount (as the case may be);
 - in any other case, a percentage of the Commencing Remuneration calculated in accordance with the following:
Commencing Remuneration Percentage
The Commencing Remuneration includes cash remuneration, superannuation, car allowance, bonuses and commissions and non-cash benefits that form an integral part of the remuneration package.
- In addition to the Fee (which is expressed exclusive of GST) the Client must also pay, or reimburse as the case may be, any GST that may be paid or payable in respect of the Fee, which as at the date of this Agreement is currently 10%. Development Careers will, at the appropriate time or times, supply the Client with a tax invoice setting out the Fee plus the GST component. GST must be paid at the same time as the Fee.
- The time when the Fee is payable is as follows:**
 - if the Consulting Agreement specifies that this is a retained role, then: On the issue of non-refundable tax invoices payable in 14 days from the invoice date:-
 - one-third of the Fee at the time of entry into this Agreement;
 - a further one-third of the Fee at the time Development Careers presents a Shortlist, or such other event as Development Careers may specify at the time of entry into this Agreement; and
 - the remaining one-third of the Fee within 14 days of the date when Development Careers issues a tax invoice for the remainder of the Fee.
 - if the Consulting Agreement specifies that this is a nonretained role, then within 14 days of the date when Development Careers issues a tax invoice for the Fee. For the purposes of Clause 9(a) (i) of this Agreement, if the Fee is specified as a percentage of Commencing Remuneration, and the Consulting Agreement specifies an approved salary range, one third of the Fee shall be calculated on an average Commencing Remuneration amount taking into account the lower and higher amount specified as the approved salary range in the Consulting Agreement. Development Careers shall issue tax invoices in respect of each payment required to be made by the Client, and for the purposes of Clause
- (a)(iii) and 9(b) of this Agreement Development Careers shall be entitled to issue a tax invoice immediately upon the Successful Candidate accepting (either orally or in writing to Development Careers or the Client) a Role.
- If the Fee (plus any GST) is not paid on or before the date it is due for payment, the Client shall be liable to pay, in addition to the Fee, an amount equal to 3% of the Fee (plus any GST upon that additional amount). This amount is a genuine pre-estimate of the cost and expense that will be incurred by Development Careers arising out of the late payment of the Fee.
- The Client shall be responsible to pay (or reimburse as the case may be) all reasonable costs (which have been pre-approved by the Client) incurred by:
 - a Candidate in attending an interview with the Client; and
 - a consultant or employee of Development Careers in the performance of the work required to complete the Assignment, Development Careers shall be entitled to recover these amounts and disburse them to Candidates/its consultants and employees in such manner as Development Careers thinks fit.

13. If the Consulting Agreement specifies that the Client requires Development Careers to arrange for Additional Services, then:
 - (a) the costs associated with the provision of the additional services are costs in addition to the Fee;
 - (b) the Client acknowledges that Development Careers is not a provider or supplier of the Additional Services;
 - (c) the Client authorises Development Careers to liaise with third parties for the purpose of securing their provision of the additional services for and on behalf of the Client;
 - (d) the costs of the additional services are to be invoiced directly to the Client by the third party supplier, and the Client will, upon request by Development Careers, enter into such arrangements with third party providers of the Additional Services as may be reasonably required in order to secure the provision of the relevant Additional Services;
 - (e) Development Careers shall not be obliged to incur any costs or liability to any party in respect of the provision of the Additional Services, and the Client indemnifies Development Careers in respect of any such liability;
 - (f) in relation to advertising arranged for/on behalf of the Client;
 - (i) Development Careers will endeavour to obtain the prior approval of the Client upon advertising rates and charges before any advertising is lodged for publication with the third party provider of advertising services;
 - (ii) the Client alone will be liable for any costs associated with cancellation of any scheduled advertising.
17. If the Consulting Agreement specifies this is a non-retained role and the Successful Candidate's employment or other engagement by the Client is terminated (whether by resignation or otherwise) within three months from the Commencement Date, Development Careers will endeavor to locate a Candidate to replace the Successful Candidate in the identical role and to perform the identical functions for which they were employed or engaged by the Client.
18. Any Fee required to be paid pursuant to Clause 15 of this Agreement shall be paid within 14 days of the date when Development Careers issues a tax invoice for the Fee and in this regard Development Careers shall be entitled to issue a tax invoice immediately upon the new Successful Candidate accepting (either orally or in writing to Development Careers of the Client) a Role.
19. The replacement guarantee provisions set out in Clauses 13 to 18 inclusive of this Agreement shall not extend to any Candidate appointed as a replacement for the Successful Candidate.

Warranties and representations

Replacement Guarantee

20. Whilst Development Careers shall use all reasonable endeavours to locate a suitable Candidate in accordance with the requirements of the Assignment and shall use all reasonable endeavours to review information provided by Candidates (subject to the Assignment Specification):
 - (a) the Client alone will be responsible for assessing the suitability of the successful Candidate and shall have and make the final decision as to the Successful Candidate;
 - (b) Development Careers makes no warranty (express or implied) as to the accuracy of any information or materials supplied by or on behalf of any Candidate;
 - (a) Development Careers is not liable for any loss, damage, inconvenience or other incidence which may arise as a result of:
 - (i) a Candidate (or a third party on behalf of a Candidate) having provided false, incorrect or misleading information; or
 - (ii) failure by the Successful Candidate to perform or comply with the terms and conditions of his or her employment or engagement arrangements with the Client.
14. Development Careers shall only be liable to honour the replacement guarantee provisions set out in Clauses 15 and 16 of this Agreement if:
 - (a) all Fees (including GST) and any other amounts payable to Development Careers pursuant to this Agreement have been paid, and payment was made strictly in accordance with the provisions of this Agreement;
 - (b) the termination of the Successful Candidate's employment or engagement with the Client was NOT the result of:
 - (i) organisational or structural changes within the business of the Client;
 - (ii) changes or anticipated changes in the job specification of the Candidate or location requirements of the Client;
 - (iii) the Client's failure to meet its actual or implied legal obligations to the Candidate (including, without limiting the generality of the foregoing, the obligation of fairness);
 - (c) the Successful Candidate is not subsequently engaged by a subsidiary or other related body corporate of the Client;
 - (d) the Client provides written notification of a claim made pursuant to the replacement guarantee provisions of this Agreement to the Development Careers within ten working days of the termination or resignation of the Successful Candidate. The replacement guarantee shall only extend to finding a replacement for the specific position and function for which the Successful Candidate was employed or otherwise engaged by the Client, and cannot be transferred so as to require Development Careers to undertake an assignment in respect of an alternate position or function within the organisation of the Client.
15. If the Consulting Agreement specifies this is a retained role and the Successful Candidate's employment or other engagement by the Client is terminated (whether by resignation or otherwise) within the relevant periods specified in Clause 16 of this Agreement, then Development Careers will:
 - (a) endeavour to locate a Candidate to replace the Successful Candidate in the identical position and to perform the identical functions for which they were employed or engaged by the Client. This warranty is limited to only one replacement.
 - (b) charge no further Fees in respect of the work to be performed as specified in Clause 14(a) of this Agreement; PROVIDED THAT the Client shall be liable to pay the costs associated with any Additional Services that may be required.
16. For the purpose of Clause 15 of this Agreement, the relevant periods are:
 - (a) for a Successful Candidate who was engaged on a Commencing Remuneration in excess of \$130,000.00, six months from the Commencement Date;
 - (b) for a Successful Candidate who was engaged on a Commencing Remuneration of \$130,000.00 or less, three months from the Commencement Date

Other Provisions

21. If, in addition to the Successful Candidate, another Candidate is selected by the Client from the Shortlist and is offered a Role by the Client that is subsequently accepted, the Client shall pay a Fee to Development Careers calculated in the same manner as the Fee payable in respect of the Successful Candidate and payable within the same time frame as is required in respect of the Successful Candidate.
22. The Development Careers will be entitled to a fee, payable by the Client, where a Candidate is placed directly with the Client or is introduced by the Client to a third party resulting in a temporary assignment or permanent placement. Where a Candidate has undertaken an assignment with the Client, this clause applies up to one year from completion of the assignment. Where the Candidate has not undertaken an assignment with the Client, this clause applies up to one year from the date of initial introduction.
23. This Agreement shall be governed by the law in force in the State of Queensland and the parties submit to the exclusive jurisdiction of the Courts of that State.
24. The invalidity or unenforceability of any provision of this Agreement shall not invalidate or render unenforceable the remaining provisions of this Agreement, but rather the void, illegal or invalid provision or provisions shall to the extent possible be severed from this Agreement and the remaining provisions shall continue in full force and effect, provided that the basic and underlying nature, purpose and intent of this Agreement is not materially altered.
25. The Client must pay each invoiced amount by providing the Development Careers with cleared funds without any set-off, abatement, counter-claim, deduction or withholding whatsoever. The client must not claim any right of set-off, abatement, counter claim or other similar right.