

PERMANENT RECRUITMENT TERMS AND CONDITIONS

1. DEFINITIONS

- (a) **Agreement** means the agreement between MTM and the Supplier for the provision of recruitment services comprising these Permanent Recruitment Terms and Conditions and the corresponding Purchase Order.
- (b) **Background IP** has the meaning given in clause 11(a).
- (c) **Data** has the meaning given in clause 10(a).
- (d) **Data Security Breach** has the meaning given in clause 10(a).
- (e) **Developed IP** has the meaning given in clause 11(b).
- (f) **Fee** means:
 - (i) if the Purchase Order specifies an Unbundled Services Fee, the Unbundled Services Fee; or
 - (ii) where paragraph (i) does not apply, the amount determined in accordance with clause 6(b).
- (g) **Guarantee Period** has the meaning given in clause 7.
- (h) **Introduction** means the provision of information to MTM which identifies a candidate (including a curriculum vitae) and **'Introduce'** and **'Introduced'** have corresponding meanings.
- (i) **MTM** means Metro Trains Melbourne Pty Ltd ACN 136 429 948.
- (j) **Purchase Order** means the purchase order issued by MTM to the Services Provider in respect of the Services.
- (k) **Services** means either Standard Recruitment Services or Unbundled Services, as specified in the Purchase Order.
- (l) **Standard Recruitment Services** includes shortlisting, reference checks, probity checks and offer negotiation and any other services described in the Purchase Order.
- (m) **Supplier** means the person or entity identified as such in the Purchase Order.
- (n) **TFR** means total fixed remuneration, comprising base annual salary plus superannuation as specified in the relevant MTM employment contract and excludes any bonuses, incentives and allowances.
- (o) **Unbundled Services** means the recruitment services described as such in the Purchase Order.
- (p) **Unbundled Services Fee** means the amount identified as such in the Purchase Order.

2. AGREEMENT

- (a) The Supplier acknowledges and agrees that this Agreement is binding on the parties on and from the date on which the Supplier accepts the Purchase Order.
- (b) This Agreement comprises the entire agreement between the parties and supersedes any written or oral prior agreements between the Supplier and MTM pertaining to its subject matter.
- (c) No amendments to this Agreement will be binding upon the parties unless agreed to in writing by both parties.
- (d) These Permanent Recruitment Terms and Conditions take precedence to the extent that there is any discrepancy or inconsistency between the Purchase Order and these Permanent Recruitment Terms and Conditions.

3. SERVICES

- (a) The Supplier agrees to provide the Services in respect of the position described in the Purchase Order:
 - (i) exercising due care, skill and judgment.
 - (ii) in an efficient and professional manner; and
 - (iii) in accordance with good industry practices and applicable laws, and otherwise in accordance with this Agreement.
- (b) The Supplier agrees to pursue qualified, professional candidates for the position described in the Purchase Order who meet the position requirements specified in the Purchase Order or as otherwise notified to the Supplier by MTM from time to time.
- (c) Without limiting clause 3(a), the Supplier must provide (and must ensure that any employees, officers, contractors, or agents of the Supplier provide) the Services to MTM in a manner which will not bring MTM's name into disrepute or otherwise damage MTM's reputation (or threaten to do either of these).

4. MTM OBLIGATIONS

- (a) MTM will notify the Supplier within 5 business days if a candidate Introduced by the Services Provider is already known to MTM.
- (b) Except where MTM has issued a notice under clause 4(a), MTM must notify the Supplier within 5 business days after a candidate Introduced by the Services Provider executes an employment agreement with MTM, which notice must specify the TFR of the successful candidate.
- (c) MTM will notify the Supplier within 10 business days if a candidate Introduced by the Services Provider ceases employment with MTM prior to the expiry of the Guarantee Period.

5. TERMINATION

- (a) MTM may terminate this Agreement, with or without cause, by notice in writing to the Supplier. Termination is effective immediately unless otherwise specified in the termination notice.
- (b) Termination will not relieve MTM of its obligation to pay any part of the Fee that becomes payable in accordance with this Agreement.

6. INVOICING AND PAYMENT

- (a) The Supplier may submit to MTM an invoice for the Fee if a candidate Introduced by the Services Provider executes an employment agreement with MTM on or prior to the date which is 6 months after the initial Introduction, except where MTM has issued a notice under clause 4(a).
- (b) Except where the Purchase Order specifies an Unbundled Services Fee, the Fee will be determined in accordance with the table below:

TFR	Fee (% of TFR)
\$0 - \$150,000	12%
\$150,001 - \$250,000	15%
\$250,001 and above	18%

- (c) Each invoice submitted to MTM must:
 - (i) include the Supplier's full trading name, address and ABN and otherwise meet the requirements of a valid tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) be clearly addressed to 'Metro Trains Melbourne Pty Ltd ABN 43 136 429 948'; and
 - (iii) be sent to MTM's address for invoices specified on the Purchase Order.
- (d) MTM must pay the Fee (including GST) within 30 days after the end of the month in which the Supplier issues to MTM a tax invoice which complies with clause 60.

7. GUARANTEE PERIOD

If any candidate Introduced by the Supplier ceases employment with MTM other than as a result of redundancy (in this clause 7, the 'first candidate') within 6 months of commencement of employment (the **Guarantee Period**):

- (a) the Supplier must endeavour to find and introduce a replacement candidate at no additional charge to MTM; and
- (b) the Supplier will credit MTM an amount equal to the Fee paid in respect of the first candidate, which will be available to MTM in respect of any services provided by the Services Provider to MTM (Pursuant to this Agreement or any other agreement) until the earlier of:
 - (i) the date on which a replacement candidate Introduced by the Supplier executes an employment contract with MTM; and
 - (ii) the date which is 12 months after the date that the first candidate ceased employment with MTM.

8. NON-SOLICITATION

The Supplier agrees not to induce, encourage or solicit any candidate placed by the Supplier following the commencement of employment and thereafter for a period of at least:

- (a) 2 years; or
- (b) if clause 8(a) is held void or unenforceable, 12 months; or
- (c) if clause 8(b) is held void or unenforceable, 6 months.

9. CONFIDENTIALITY AND PRIVACY

- (a) The Supplier agrees that it must treat as confidential and must not disclose to any person:
 - (i) the details of any search request it may receive from MTM, including but not limited to the title of the job available, the compensation and the skill set required (provided that such information may be disclosed as necessary for the recruitment of candidates);
 - (ii) the details of this Agreement; and
 - (iii) any other information that MTM requests the Supplier to treat as confidential.
- (b) The Supplier must handle all information provided by a candidate in accordance with the *Privacy Act 1988* (Cth) and the *Privacy and Data Protection Act 2014* (Vic).
- (c) The Supplier indemnifies MTM from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind that may be incurred or sustained by MTM in respect of or arising from any breach of this clause 9 or clause 10.

10. DATA SECURITY

- (a) The Supplier must take all reasonable steps to ensure that all information or materials generated, processed, obtained, received, collected, held, stored, managed, used, disclosed, transferred or transmitted by the Supplier in performing its obligations under this Agreement (**Data**) are secure, including (without limitation) doing all things that a reasonable and prudent entity would do to ensure all Data is protected at all times from unauthorised access or use by a third party or misuse by any person.
- (b) If the Supplier becomes aware of any actual, threatened or unauthorised access to, or use by a third party or misuse of, the Data (**Data Security Breach**) it must notify MTM in writing immediately and, in any event, within one hour of becoming aware of the Data Security Breach and must immediately comply with any reasonable directions issued by MTM in connection with the Data Security Breach.

11. INTELLECTUAL PROPERTY

- (a) Each party retains ownership or control (as applicable) of the intellectual property rights owned by or licensed to that party and which exist prior to the date of this Agreement (**Background IP**).
- (b) MTM owns the intellectual property rights coming into existence as a result of, for the purposes of the performance of the Services but not including the Supplier's Background IP (**Developed IP**).
- (c) The Supplier gives MTM a perpetual, irrevocable, non-exclusive, royalty free and transferable licence to reproduce, use, modify or adapt the Supplier's Background IP to enable MTM to use any Developed IP or other documents, information or things brought into existence by the performance of the Services.

12. GENERAL

- (a) This Agreement is governed by, and will be interpreted in accordance with, the laws of Victoria, Australia.
- (b) In respect of any dispute which may arise out of or in connection with this Agreement, the parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Victoria.
- (c) If a provision in this Agreement is wholly or partly void, illegal, or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.
- (d) The Supplier may not assign its rights under this Agreement or subcontract or delegate the performance of any of its obligations under this Agreement without MTM's prior written consent.