

## Individual Independent Contractor Agreement

**Between:**

Whizdom Recruitment (ABN 52 119 884 945) of Unit 7, 28-34 Thynne Street, Bruce ACT 2617  
("Firm")

**And**

Enter Contractor Full Name

Company: Enter Company Name (ABN Enter ABN) of Address ("Contractor")

(together, "Parties")

### Background

- A. The Firm is an Australian company in the business of providing on-hire contracting services and recruitment management services and holds a Labour Hire Licence in the ACT, QLD and VIC as required.
- B. The Firm has made or proposes to make an agreement with a Client for the supply of services and wishes to obtain the Contractor's services to fulfil the Client's scope of works.
- C. The Contractor is an individual who is able to supply the Services on the terms and conditions set out in this Agreement.
- D. This Agreement is made between the Parties on Date.

## 1 Definitions and Interpretation

See Schedule 1.

## 2 Term

- 2.1 This Agreement will be for a specified term beginning on the Commencement Date set out in Schedule 2 and continuing until the Expiry Date, unless otherwise varied or terminated earlier in accordance with this Agreement in which case the Agreement will end on the Termination Date ("**Service Period**").
- 2.2 Should the Contractor continue to supply Services after the Expiry Date, the terms of this Agreement will continue to apply (except for this clause 2.2), until otherwise varied or terminated in accordance with this Agreement.

## 3 Engagement and Warranty

- 3.1 During the Service Period, the Contractor will apply their skills and expertise to the supply of the Services in relation to the Client's business.
- 3.2 The Contractor undertakes that:
- (a) they are able to supply the Services and to perform and comply with the functions, obligations and responsibilities set out in this Agreement and, in doing so, the Contractor is not breaching any other agreement, contract or obligation owed to a third party; and
  - (b) all representations made by the Contractor, including as to the Contractor's qualifications and experience, are true and correct, and the Contractor has not failed to disclose any matter which may have influenced the Firm's decision as whether or not to engage, or continue to engage, the Contractor.
- 3.3 The Contractor warrants that there are no contracts, restrictions or other matters that the Contractor has not disclosed to the Firm, which would interfere with the:
- (a) Contractor's ability to discharge their obligations under this Agreement or an Engagement Offer; or
  - (b) the ability of the Firm to recover the payment of a fee payable by the Client in the event that the Contractor is subsequently engaged by the Client or a third party otherwise than through the Firm.

## 4 Independent Contractor Relationship

- 4.1 The Parties agree that the relationship between the Firm and the Contractor is and shall be for all purposes an independent contractor relationship. The Contractor is not and will not be in a partnership or joint venture with the Firm or an employee of the Firm.
- 4.2 Neither this Agreement, or an Engagement Offer, nor anything contained in them or otherwise implied, shall constitute any other relationship or any offer or contract of employment.
- 4.3 The Contractor will have no claim against the Firm in respect of any payments or benefits which the Contractor or the Contractor's contractors or employees receive or may be entitled to

receive, including (without limitation) fees, salary or wages, leave entitlements, workers' compensation coverage or superannuation.

- 4.4 The Contractor shall have no authority to bind the Firm in any manner including (but not limited to) contracting with third parties without the Firm's specific written consent.

## 5 Supply of Services to Others

### 5.1 General

- (a) Subject to clause 19 (Restraint), this Agreement does not prevent or restrict the Contractor supplying services to any other person, provided that the supply of such services does not adversely affect the Contractor's ability to diligently and professionally provide the Services under this Agreement or pursuant to an Engagement Offer.

### 5.2 Conflict of interest

- (a) The Contractor represents that:
- (i) there currently exists no conflict of interest, real or apparent, between the Services and any other work performed by the Contractor; and
  - (ii) complete and total disclosure of any conflict of interest, real or apparent, has been made to the Firm prior to the signing of this Agreement.
- (b) If the Contractor supplies services to a person other than the Firm, and a conflict, or potential conflict, of interest arises between the Contractor's interests and those of the Firm or the Client as a result of the supply of such services, then the Contractor must immediately disclose the conflict, or potential conflict, of interest to the Firm and must resolve the conflict of interest as required by the Firm.

### 5.3 Right to delegate

The Contractor may delegate to another person those aspects of the Services which do not require the Contractor's specialist skills and knowledge, subject to the prior written consent of the Firm, which may be given subject to such reasonable conditions as the Firm may require and which will not be unreasonably withheld.

## 6 Contractor's Obligations

### 6.1 The Contractor agrees:

- (a) to supply the Services set out in Schedule 2 and at any other reasonable location as may be instructed by the Firm or the Client from time to time;
- (b) to supply the Services set out in Schedule 2 and all other reasonable services instructed by the Firm (or requested by the Client) with due care, skill, timeliness and diligence;
- (c) to remedy or meet the costs of remedying any work or product that does not meet with the reasonable satisfaction of the Client by reason that the Services have not been supplied in accordance with sub clause 6.1(b) above;

- (d) to comply with all lawful and reasonable instructions issued by the Firm or which the Firm permits the Client to issue from time to time;
- (e) to comply with all policies and procedures (including any codes of conduct) as instructed by the Firm and/or the Client from time to time (provided that where there is any inconsistency between the policies and procedures of the Firm and those of the Client, the Firm's policies and procedures will apply to the extent of the inconsistency unless otherwise stated by the Firm. A link to relevant policies was provided in the offer email;
- (f) to advise the Firm immediately if the Contractor's Australian Business Number ("ABN") changes or is cancelled;
- (g) to advise the Firm as soon as possible if, for any reason whatsoever, the Contractor becomes unable to supply any or all of the Services;
- (h) without limiting clause 17.5, to duly account for all property of the Firm or the Client that is or was in the use, possession or control of the Contractor in connection with or resulting from providing the Services; and
- (i) to contact the Firm immediately if:
  - (i) the Client requests the Contractor to supply the Services or any other services at a place that is not set out in Schedule 2; or
  - (ii) the Contractor believes that their health or safety is at risk whilst engaged on an assignment.
- (j) The Contractor will provide such reports about the supply of the Services as the Firm may reasonably require to the Firm's representative named in Schedule 2 or to any other representative named by the Firm from time to time.
- (k) The Contractor will co-operate fully and in good faith with any contractor management firm or other third party (i.e., external payroll provider), which the Firm has appointed to perform any of the Firm's powers, tasks and responsibilities under this Agreement.

## 7 Indemnities

7.1 The Contractor is liable for and indemnifies the Firm for any loss, damage or costs (including reasonable legal costs on a solicitor and own client basis) suffered or liabilities incurred directly or indirectly by the Firm or the Contractor as a consequence of any act or omission by the Contractor in the course of supplying the Services, including but not limited to:

- (a) a breach by the Contractor of this Agreement; including but not limited to a breach of the Contractor's obligations under clause 18 of this Agreement;
- (b) any negligent, wilful or unlawful acts or omissions of the Contractor;
- (c) any personal injury, death or property damage caused by the acts or omissions of the Contractor;
- (d) the Services infringing on another person's IP Rights; or

(e) any breach of any obligation of confidence or privacy by the Contractor.

7.2 It is not necessary for the Firm to incur a cost or expense or make payment before enforcing a right of indemnity conferred by clause 7.1.

7.3 The liability of the Contractor for loss or damage to the Firm will be reduced proportionately to the extent of the Firm's negligent or wilful act or omission, or failure to comply with its obligations under this Agreement.

## 8 Payment for Services & Invoicing

8.1 The Contractor agrees that any payment made in accordance with this Agreement shall be based solely on the Services supplied, charged at an agreed rate, but excluding time engaged whilst remedying defective or unsatisfactory work for which the Contractor is responsible. The Contractor shall not be entitled to any other benefits, payments or entitlements other than those expressly contemplated by this Agreement.

8.2 Provided the Contractor complies with this Agreement, as consideration for properly supplying the Services, the rate payable by the Firm to the Contractor shall be the amount set out in Schedule 2 ("**Service Fees**").

8.3 Before the Firm will be required to pay to the Contractor any Fees or make any other payment to or on behalf of the Contractor under this Agreement, the Contractor must:

(a) provide the Firm with a tax invoice relating to the Services in accordance with the terms of this Agreement ("**Invoice**");

(i) where you have completed an RCTI agreement with the Firm, no tax invoice is required; and

(b) provide the Firm with a timesheet approved by the relevant Client; or

(c) ensure that the relevant Client has confirmed that the Services have been supplied by the Contractor to the Client's satisfaction.

8.4 The Invoice must contain complete, correct and clear explanations, details and descriptions of the Services supplied, the hours and time and expenses incurred and spent in properly supplying the Services, and other relevant and applicable information required by the Firm. Details pertaining to the times at/within which the Invoice shall be rendered and paid are as set out in Schedule 2.

8.5 Deductions and set-offs may be made by the Firm from the Service Fees for (without limitation):

(a) taxes;

(b) failure to return Firm property;

(c) over payment of the Service Fees; or

(d) for any other amounts owed to the Firm.

8.6 Save as may be agreed in writing between the Parties, the Contractor is responsible for all expenses which the Contractor incurs in supplying the Services.

8.7 Payment of any Invoice to the Contractor does not infer unconditional acceptance of the Services and does not waive the Firm's or Client's rights to seek redress or otherwise should the Contractor or the Services be found to have breached or not complied with this Agreement.

## 9 GST

### 9.1 Interpretation

In this clause 9, a word or expression defined in the GST Act which is not otherwise defined in this Agreement has the meaning given to it in that Act.

### 9.2 Consideration GST exclusive

The Parties agree that all consideration provided under this Agreement is exclusive of GST unless it is specifically expressed to be GST inclusive. If a party ("**Supplier**") makes a taxable supply to another party ("**Recipient**") under or in connection with this Agreement in respect of which GST is payable, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

- (a) the date when any consideration for the taxable supply is first paid or provided; and
- (b) the date when the Supplier issues a tax invoice to the Recipient.

### 9.3 Adjustment events

If an adjustment event varies the amount of GST payable by a Supplier under this Agreement, the Supplier must adjust the amount payable by the Recipient to take account of the adjustment event. Any resulting payment must be paid by the Supplier to the Recipient, or the Recipient to the Supplier (as appropriate) within 10 Business Days of the Supplier becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease of the additional amount payable under clause 9.2.

### 9.4 Reimbursements

Subject to an express provision in this Agreement to the contrary, any payment, reimbursement or indemnity required to be made to a party ("**Payee**") under this Agreement which is calculated by reference to an amount paid or payable by the Payee to a third party ("**Outgoing**") will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.

### 9.5 Payments calculated by reference to revenue

Subject to an express provision in this Agreement to the contrary, any payment, or amount required to be made under this Agreement which is calculated by reference to sales, revenue, income or other amounts received or receivable from a third party ("**Revenue**") will be calculated by reference to that Revenue exclusive of GST.

9.6 This clause 9 will survive the termination of this Agreement by any party.

## 10 Entitlements, Taxes and Other Charges

10.1 The Contractor must pay all taxes and levies and maintain all registrations, licences and insurances required by law in connection with this Agreement and supply of the Services.

10.2 The Contractor warrants that they have an Australian Business Number (“ABN”) under the GST Act and has provided the applicable ABN to the Firm and must:

- (a) continue to have an ABN during the term of this Agreement;
- (b) quote its ABN on each invoice they provide to the Firm;
- (c) advise the Firm in writing immediately if its ABN changes or its ABN is cancelled; and
- (d) indemnify the Firm for any loss or damage suffered or any tax, charge, fine, penalty or other impost which the Firm incurs or becomes liable to pay, as a result of its breach of any of the warranties contained in this clause.

## 11 Insurance

11.1 On the basis that the Firm is in the business of on-hire contracting services, the Firm will take out and maintain workers' compensation insurance as required by law in respect of the Services provided by the Contractor.

11.2 Upon written request, the Firm will provide to the Contractor evidence of the insurance cover obtained by the Firm in accordance with clause 11.1.

11.3 In respect of the Services provided under this Agreement, during the Service Period the Contractor should take out and maintain the following insurance policies with the minimum cover specified by the Client below:

- (a) public liability insurance for a minimum amount of \$20 million on a single occurrence basis ; and
- (b) professional indemnity insurance for a minimum amount of \$10 million on a single occurrence basis.

11.4 The insurances referred to in clause 11.3 above must:

- (a) insure against any Claim arising from the performance of the Contractor's obligations under this Agreement; and
- (b) cover each entity in the Group (if applicable) for their respective rights and interests.

11.5 The Contractor must provide the Firm certificates of currency and the terms of the insurance policies referred to in clause 11.3 above:

- (a) before starting to perform the Services; and
- (b) within 48 hours of a written request by the Firm.



- 11.6 If a Client requests the Contractor to use the Client's vehicle, travel nationally or internationally, handle cheques, cash, valuables, documentation or equipment, whether on or off the Client's premises, the Contractor will advise the Firm immediately in writing to allow the Firm to verify that appropriate insurance arrangements have been made by the Client. If the Contractor fails to advise the Firm, the Contractor acknowledges and agrees that the Contractor may be responsible for any damage or loss incurred or suffered.
- 11.7 The Contractor acknowledges that if requested by the Firm, the Contractor will be required to take out and maintain an insurance policy for domestic or international travel or for working in other locations. These arrangements vary between Clients and locations.
- 11.8 The Contractor will immediately notify the Firm of an event that may or is likely to give rise to a claim under an insurance policy or other similar arrangement of the Contractor in connection with the Services and will ensure that the Firm is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 11.9 If the Contractor fails to take out and maintain an insurance policy required under this clause, the Firm has the right to:
- (a) take out and maintain the insurance policy;
  - (b) set off against any sum payable by the Firm to the Contractor (including the Service Fees), all reasonable costs and expenses incurred by the Firm in taking out and maintaining that policy; and
  - (c) refuse any claim by the Firm for payment (including payment of the Service Fees), until the Contractor complies with the Contractor's obligations under clause 11.3.

## 12 Work Health & Safety

- 12.1 The Contractor must, to the extent that is reasonably practicable, comply with all of its work health and safety obligations at law by:
- (a) taking all practicable steps to ensure their own health and safety;
  - (b) taking reasonable care that their acts or omissions do not adversely affect the health and safety of other persons;
  - (c) complying with all lawful and reasonable instructions of the Firm and the Client in regard to health and safety, including complying with the Client's work health and safety policies; and
  - (d) fully co-operating with the Firm and the Client in any action to maintain a working environment which is safe and without risk to health.

### 12.2 Anti-discrimination

The Contractor must comply with all relevant anti-discrimination laws to provide an environment free of discrimination, sexual harassment and/or other forms of harassment at any premises or at any location at which the Contractor provides the Services.



## 13 Confidential Information

13.1 The Contractor acknowledges that:

- (a) Confidential Information is confidential to the Firm, Group and/or Client (as the case may be); and
- (b) through its engagement with the Firm and the supply of the Services, they may obtain or become aware of Confidential Information.

13.2 The Contractor will both during the Service Period and after the Termination Date:

- (a) not disclose, use or attempt to use any Confidential Information obtained or received for any purpose other than is necessary for the proper performance of the Contractor's obligations pursuant to this Agreement;
- (b) as requested, return all Confidential Information to the Firm or Client (as the case may be) together with any other property in its possession or control as a consequence of the Services; and
- (c) not keep copies in any form of any of the Firm's, Groups or Client's Confidential Information or records including, without limitation, computer programs, data and manuals.

13.3 Despite clause 13.2, the Contractor may disclose Confidential Information required by law to be disclosed or with the written consent of the Firm, Group, or the Client as the case may be.

13.4 The Contractor will take all reasonable measures to protect Confidential Information obtained by the Contractor in the course of, or in connection with, the supply of the Services from use or disclosure otherwise than in accordance with the consent of the person from whom it was obtained.

13.5 The Contractor shall indemnify and keep indemnified the Firm in respect of any loss, damage, injury, claim, demand or allegation relating to, or arising out of any breach by the Contractor of any obligation under clauses 13 and 12.2.

13.6 This clause 13 will survive the termination of this Agreement by any party.

## 14 Privacy

14.1 The Contractor consents to:

- (a) the Firm and any Group Member (if applicable) holding and processing personal information relating to them for legal, personnel, administrative and management purposes and in particular the processing of any "sensitive information" as defined in the Privacy Act in relation to him/her; and
- (b) the Firm transferring their personal information to shareholders, any Group Member (if applicable) or any third-party administrative provider (under an outsourcing arrangement) without breaching their rights under the Privacy Act.

- 14.2 The Contractor agrees to comply with all applicable policies and privacy laws including (but not limited to) the Privacy Act in respect of any personal or sensitive information which is disclosed to, or is collected or accessed by him/her in the course of supplying the Services.
- 14.3 The Contractor agrees that, if called upon to do so in accordance with this Agreement (whether during or after the supply of Services), the Contractor will (at its cost) execute all instruments and do all things necessary in order to secure and to assure to the Firm and the Client the confidentiality and privacy of information obtained by the Contractor in the course of, or in connection with, the supply of services pursuant to this Agreement.
- 14.4 This clause 14 will survive the termination of this Agreement for any reason.

## 15 Copyright and Intellectual Property

### 15.1 Ownership

- (a) All Firm IP remains the sole property of the Firm. The Contractor acknowledges that they acquire no right, title or interest in or to the Firm IP by virtue of this Agreement or the disclosure or use of the Firm IP in the course of the performance of the Services, other than as expressly set out in this agreement.
- (b) All Contractor IP remains the sole property of the Contractor. The Firm acknowledges that it acquires no right, title or interest in or to the Contractor IP by virtue of this Agreement or the disclosure or use of the Contractor IP in the course of the performance of the Services, other than as expressly set out in this Agreement.

### 15.2 Assignment of Services IP

- (a) The Parties agree that all Services IP vests in the Client immediately when created and the Contractor hereby assigns all IP Rights they have or may have in the Services IP to the Client and the Contractor must do all things and execute such documents as required to assign such IP Rights to the Client as directed by the Client in its sole discretion.
- (b) The Contractor must promptly and fully disclose all Services IP to the Client.
- (c) The Contractor warrants that the Client will not require any licence of any IP Rights owned by a third party in order to use the Services IP. This applies unless the Client has consented in advance in writing to the relevant third-party IP Rights being incorporated into or otherwise used for the creation of the Services IP on terms acceptable to the Client. If this occurs, the Contractor is responsible for obtaining all necessary rights for the use of the third-party IP Rights.

### 15.3 Moral rights

- (a) The Contractor consents to the doing of any acts or making of any omissions by the Client, its employees, servants, agents, licensees and assigns that infringe the Contractor's Moral Rights in any Works made by them in the course of assisting the Contractor to provide the Services, including:
- (i) not naming the Contractor as the author of a Work;
- (ii) naming another person as the author of a Work;

- (iii) amending or modifying (whether by changing, adding to or deleting/removing) any part of a Work,
  - (iv) whether those acts or omissions occur before, on or after the date of this deed poll.
- (b) The Contractor acknowledges that this consent is genuinely given without duress of any kind and that the Contractor has been given the opportunity to seek legal advice on the effect of giving this consent.

#### 15.4 Restricted conduct

The Contractor agrees that they must not:

- (a) except as expressly authorised by the terms of this agreement disclose any part of the Firm IP or Services IP to:
  - (i) any other person (whether governmental, corporate or individual) except in accordance with the terms of this Agreement; or
  - (ii) any person, related body corporate or body corporate with whom they have an understanding or affiliation;
- (b) create or attempt to create a product, technology or arrangement that is the same as or similar to the Firm IP and/or the Services IP disclosed to them;
- (c) do any act or thing:
  - (i) that is inconsistent with the proprietary interest of the Firm in the Firm IP;
  - (ii) that is inconsistent with the proprietary interest of the Client in the Services IP; or
  - (iii) which leads, or may lead, to a reduction in the value of the Firm IP and/or the Services IP or causes or may cause the Firm IP and/or the Services IP to otherwise be adversely affected; or
- (d) hold themselves out as being entitled to any proprietary interest in the Firm IP or the Services IP

#### 15.5 Disclosure

- (a) The Contractor is absolutely liable to the Firm for any Claims arising from disclosure of the Firm IP where such disclosure:
  - (i) was made by the Contractor or persons who obtained knowledge of the Firm IP through the Contractor; and
  - (ii) was not made in accordance with the terms of this Agreement.
- (b) The Contractor is absolutely liable to the Client for any Claims arising from disclosure of the Services IP where such disclosure:

- (i) was made by the Contractor or persons who obtained knowledge of the Services IP through the Contractor; and
- (ii) was not made in accordance with the terms of this Agreement.

#### 15.6 Assistance to the Firm in the event of infringement of rights

- (a) If the Contractor becomes aware of a person using the Firm IP without the apparent approval of the Firm, then they must immediately notify the Firm.
- (b) The Contractor must, if requested by the Firm and at the Firm's expense, do all such acts necessary to assist the Firm to protect its interest in the Firm IP.

#### 15.7 Assistance to the Client in the event of infringement of rights

- (a) If the Contractor becomes aware of a person using the Services IP without the approval of the Client, then they must immediately notify the Client.
- (b) The Contractor must, if requested by the Client and at the Client's expense, do all such acts necessary to assist the Client to protect its interest in the Services IP.

### 16 Technology and Equipment

- 16.1 If the Firm or the Client provides the Contractor with any technology, equipment, plant or other resources ("**Equipment**") during the Service Period, the Contractor acknowledges that such Equipment remains the property of the Firm or the Client (as the case may be), however, the Contractor is responsible for the care of the Equipment while it is in the Contractor's possession.
- 16.2 The Contractor will ensure that they have in place suitable and adequate backup and disaster recovery systems in place to protect any Equipment.
- 16.3 The Contractor will only use the Equipment for the purpose of supplying the Services in accordance with Schedule 2 and not for any other purpose.
- 16.4 The Contractor warrants that any technology, equipment, plant or other resources owned or introduced by the Contractor, for use in the supply of the Services are, at the time of such use:
  - (a) free from any defect in title, ownership, licence, or usage that would prevent or inhibit them from being so used; and
  - (b) free from any defect, (including malware or computer contaminant) which may cause damage (including damage to reputation, data, or privacy) to the Firm, the Client or to any other person.

### 17 Termination

#### 17.1 Termination on Notice

- (a) The Firm or the Contractor may at any time and for any reason terminate this Agreement, by providing written notice of the period referred to in Schedule 2 ("**Termination Notice**").

- (b) The Firm may (at its discretion) require the Contractor to provide the Services for all or part of the Termination Notice, or it may provide the Contractor with payment in lieu of all or part of the Termination Notice.

## 17.2 Termination for Cause

- (a) The Firm may terminate this Agreement immediately for cause (without any obligation to provide notice of termination or pay the Contractor compensation) if the Contractor:
  - (i) commits an act of Serious Misconduct;
  - (ii) commits a material or persistent breach of this Agreement including without limitation clause 5.2 (Conflict of interest), clause 13 (Confidential Information) and clause 15 (Copyright and Intellectual Property);
  - (iii) commits a breach of this Agreement that cannot be remedied or that remains unremedied for a period of 7 days after receipt of written notice from the Firm;
  - (iv) wilfully disregards any lawful or reasonable instruction from the Firm or the Client;
  - (v) is grossly, seriously or persistently incompetent or unprofessional in the supply of the Services;
  - (vi) is unable or unwilling to supply the Services;
  - (vii) is involved in anything which, in the Firm's reasonable opinion, affects the Contractor's suitability for engagement with the Firm or which brings the Firm into disrepute or injures its reputation, interests, business or good name;
  - (viii) is found to be, in the Client's reasonable opinion, negligent, inefficient or technically unsuitable in supplying the Services;
  - (ix) is declared bankrupt or is otherwise precluded or disqualified from managing a corporation under Part 2D of the *Corporations Act 2001* (Cth) as in force and varied from time to time; or
  - (x) if a Client rejects the further supply of the Contractor's services.
- (b) Nothing in this Agreement restricts the Firm's right to terminate the engagement summarily at common law.

## 17.3 Payment on Termination

Without limitation, if the Agreement is terminated for cause, the Firm will not be obliged to pay the Contractor any moneys other than any accrued unpaid Service Fees to which the Contractor is entitled as at the Termination Date. Following payment of any Service Fees properly due to the Contractor, the Contractor releases the Firm and Group (in full and final settlement) from any claim regarding the engagement and its cessation.

#### 17.4 Firm's Premises and Suspension

At any time during the Service Period (including the Termination Notice), the Firm may prevent the Contractor from coming onto the premises of the Firm or the Client (as the case may be). The Firm may also suspend the Contractor's engagement, without payment of any Service Fees, where the Firm considers it necessary to adequately investigate allegations of misconduct or impropriety against the Contractor. Such an act or suspension will not amount to a termination of the Agreement.

#### 17.5 Return of Firm Property

On the cessation of the Agreement, or otherwise at any other time during the Service Period as requested by the Firm, the Contractor will immediately return to or deal with as directed by the Firm any Equipment and other Firm, Group or Client property. The Contractor acknowledges that they have no claim over or entitlement to Equipment and other Firm, Group or Client property.

#### 17.6 Representation, Use of Names, Survival of Provisions

The Contractor agrees and acknowledges that, following the cessation of the Agreement, the Contractor will not represent themselves as being connected with the Firm or Group in any way, or use or register any name identical to or likely to be confused with a name (including a trade or Firm name) used by the Firm.

### 18 Compliance

#### 18.1 The Contractor must:

- (a) during the Service Period, comply, and take all reasonable steps to ensure that any of its subcontractors comply, with all applicable obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009*;
- (b) during the Service Period and for a period of 6 years after the Termination Date, provide the Firm with any information and documentation that the Firm reasonably requires to confirm that the Contractor has complied with all applicable obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009*;
- (c) undertake annual audits to determine that the correct wages, loadings, allowances and penalties have been paid to its employees, and the Contractor will rectify any underpayments within a reasonable time period of identifying the underpayment;
- (d) immediately inform the Firm of any:
  - (i) compliance action taken by the Fair Work Ombudsman in any way related to the provision of the Services, including but not limited to penalty infringement notices, compliance notices, enforceable undertakings, proactive compliance deeds or court orders; or
  - (ii) other court orders arising from non-compliance with the *Fair Work Act 2009* or *Fair Work Regulations 2009* by the Contractor in any way related to the provision of the Services, and any remedial action that the Contractor is

required to take, has taken or proposes to take as a result of the compliance action or court order; and

- (e) commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the requirements of this clause 18.

18.2 The Contractor warrants that it complies, and will continue to comply, with any applicable labour hire licensing legislation that may apply to the Contractor from time to time including any obligations to hold and maintain any licence required to provide labour hire services.

18.3 The obligations of the Contractor in this clause 18 will survive the termination of this Agreement for any reason.

## 19 Restraint

19.1 Except with the Firm's prior written approval, the Contractor must not during the Service Period:

- (a) directly or indirectly approach, solicit, endeavour to entice away, contract with or employ, any employee or contractor of the Firm or of a Client who is engaged or employed by the Firm or the Client;
- (b) directly or indirectly approach, solicit, canvass or try to entice away any Client from the Firm;
- (c) counsel, procure or otherwise assist any person, firm or corporation to do any of the acts referred to in 19.1(a) and 19.1(b) above; or

19.2 The Contractor and the Firm agree that the provisions of this clause 19 are reasonable and the Parties intend the provisions to operate to the maximum extent.

## 20 Dispute Resolution

20.1 *Dispute:* A Party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute which arises out of or in connection with this Agreement ("**Dispute**") unless it has made a genuine effort to resolve the Dispute and complied with this clause 20.

20.2 *Notification:* A Party claiming that a Dispute has arisen must notify the other Party to the Dispute by giving details of the Dispute ("**Notification**"). On receipt of Notification each Party must refer the Dispute to their nominated representative for resolution.

20.3 *Referral to Mediation:* If the Parties are unable to resolve the Dispute by discussion and negotiation within 14 days of receipt of the Notification, then the Parties must immediately refer the Dispute to mediation.

20.4 *Conduct of Mediation:* The mediation must be conducted by a mediator and at a fee agreed by the Parties. Failing agreement between the parties, the mediator will be selected, and his/her



fee determined by the President for the time being of APSCo Australia and the mediator's fee will be borne equally between the Parties.

20.5 *Failure to comply:* If a Party to a Dispute does not comply with any provision of this clause 20, the other Party to the Dispute will not be bound by this clause.

20.6 *Information:* Any information disclosed under this clause:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

20.7 *Costs:* Each Party must bear its own costs of complying with this clause.

## 21 Consent to Screening

21.1 The Contractor consents for the purpose of enabling the Firm to undertake reasonable suitability checks including, without limitation, security clearance, criminal history checking, reference, qualification and transcript checking, professional registration status checking, and lawful entitlement to work checking.

## 22 Variation of Agreement

22.1 The Parties may vary this Agreement (including its schedules), provided that no variation will be effective or binding on either Party unless it is in writing and signed by both Parties.

## 23 Waiver

23.1 The failure of the Firm at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

## 24 Severability

24.1 If any provision of this Agreement is viewed as contrary to law or unenforceable by any Court or tribunal with jurisdiction to consider such matters, the provision will apply as modified by the Court or tribunal, or in the event it is not modified by the Court or tribunal, it will be severed from this Agreement and the remainder of the Agreement will continue to be enforceable by the Parties.

## 25 Applicable Law

25.1 This Agreement will be governed by and construed in accordance with the laws in force in the State of Australian Capital Territory and the Commonwealth of Australia and the Contractor and

the Firm submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

## **26 Compliance with laws**

- 26.1 The exercise of or compliance with any discretion, right or obligation under this Agreement is subject to compliance with all applicable laws, including the *Corporations Act 2001* (Cth).

## **27 Notices**

- 27.1 Any notice required to be given by a Party under this Agreement must be in writing. A notice given in accordance with this clause is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 Business Days after the date of posting; and
- (c) if sent by email, when the senders email delivery system confirms a successful transmission of the message or the time a delivery receipt is generated.

## **28 Entire Agreement**

- 28.1 This Agreement, together with its Schedules, contains the whole and entire agreement between the Parties and supersedes all prior understandings or agreements between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party in connection with that subject matter.

Draft

## SIGNED AS AN AGREEMENT

**Signed** for and on behalf of **Whizdom Pty Ltd (Whizdom Recruitment)** (ABN 52 119 884 945)

Signature of Whizdom Representative



Name of Whizdom Representative (print)

Choose an item.

Date

**Signed by** Enter Contractor Full Name **of** Enter Company Name **(ABN** Enter ABN)

Signature of Contractor



Date

Draft

## SCHEDULE 1 Definitions and Interpretation

### 1. Definitions

The following definitions apply unless the context requires otherwise.

**“Agreement”** means this Independent Contractor Agreement including all Schedules.

**“APSCo Australia”** means the Association of Professional Staffing Companies in Australia.

**“Engagement Offer”** means Schedule 2 agreed to between the Parties in accordance with this Agreement.

**“Business Days”** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the State work is performed as outlined in Schedule 2.

**“Claim”** includes a claim, complaint notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party of a Party to this Agreement.

**“Client”** means the client identified in Schedule 2 and any other client or potential client of the Firm or any Group Member to whom the Contractor may provide Services to from time to time.

**“Confidential Information”** means any information of or relating to the Firm, the Group or a Client including:

- a) all information concerning their business, methods of operating and methods and proposals for marketing, promotion, and other activities;
- b) information concerning Clients, customers, suppliers or competitors;
- c) confidential and financial information;
- d) trade secrets or know-how;
- e) the Works and Intellectual Property;
- f) Intellectual Property rights in the Works and Intellectual Property rights arising out of or in relation to the provision of the Services;
- g) the terms of this Agreement;
- h) specifications, drawings, diagrams or any other information relating to equipment or machinery which are now, or which are proposed to be designed, manufactured, leased, owned or operated by or for the Firm or the Group; and
- i) information of or relating to any third party which the Firm or the Group has an obligation not to disclose or use,

that the Contractor becomes aware of or generates in the course of, or in connection with, the provision of the Services under this Agreement (but does not include information that is or becomes publicly available for reasons other than unauthorised disclosure by the Contractor or any person to whom they have disclosed such information).

**"Contractor IP"** means IP Rights owned by or licensed to the Contractor as at the Commencement Date or acquired or developed by the Contractor during the Service Period independently of the activities carried out under this Agreement, which the Contractor has the right to license to third parties and which are necessary or desirable for use in connection with the Services.

**"Engagement Offer"** means Schedule 2 agreed to between the Parties in accordance with this Agreement.

**"Expiry Date"** means the date specified in Schedule 2

**"Firm IP"** means IP Rights owned by or licensed to the Firm prior to the Commencement Date or acquired or developed by the Firm independently of the provision of the Services, which the Firm has the right to license to third parties and which are necessary or desirable for use in connection with the Services.

**"Group"** means, both jointly and severally, the Firm and any body corporate which is an Associated Entity within the meaning of the *Corporations Act 2001* (Cth), and any other associated company nominated by the Firm.

**"Group Member"** means any member of the Group, including the Firm.

**"GST"** any tax, levy, charge or impost generally imposed pursuant to the GST Act or any other Act of Parliament of the Commonwealth of Australia which the Parties are obliged to pay in respect of the supply of any services under this agreement.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"IP Rights"** includes all present and future rights in or to any copyright, database, patent, design, trademark (including any rights in get up or trade dress), brand name, domain name, business name, know-how, trade secret, confidential information and any other rights of a similar nature whether registrable, registered or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

**"Moral Rights"** means any moral rights or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any law of the Commonwealth of Australia), that exist or may come to exist anywhere in the world.

**"Privacy Act"** means the Privacy Act 1988 (Cth) as amended or replaced from time to time.

**"Serious Misconduct"** means:

- a) wilful or deliberate behaviour by the Contractor that is inconsistent with the continuation of the engagement under this Agreement;

- b) conduct by the Contractor that causes serious and imminent risk to the health and safety of a person or the reputation, viability or profitability of the Firm's or Client's business;
- c) theft, fraud or assault engaged in by the Contractor in the course of the engagement;
- d) the Contractor being intoxicated in the course of providing the Services; or
- e) a refusal by the Contractor to carry out a lawful and reasonable instruction which is consistent with this Agreement.

**"Services"** means the services described in Schedule 2 which may be varied by the Firm in response to the Client's requirements following agreement with the Contractor.

**"Services Fee"** means the fee payable by the Firm to the Contractor under this Agreement, as described in Schedule 2.

**"Services IP"** means all IP Rights created, conceived, developed or reduced to practice in the course of the:

- a) performance of this Agreement; and/or
- b) the provision of the Services.

**"Termination Date"** means the date upon which the Contractor's engagement with the Firm ceases for any reason.

**"Works"** means all programs, programming, literary, dramatic, musical and artistic work within the meaning of the *Copyright Act 1968* (Cth).

## 2. Interpretation

In this agreement, unless the contrary intention appears:

- a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- b) a reference to includes or including must be construed without limitation;
- c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- d) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- e) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- f) a reference to any thing is a reference to the whole or any part of that thing;
- g) the singular includes the plural and vice versa;

- h) a reference to a clause or schedule is a reference to a clause or schedule to this agreement and a reference to this agreement includes any schedules;
- i) a reference to an instrument, a document or agreement, including this agreement, includes a reference to that instrument, document or agreement as novated, altered or replaced from time to time;
- j) a reference to \$ is a reference to Australian currency;
- k) a reference to writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form;
- l) no provision of this agreement will be construed adversely against a party because that party was responsible for drafting the provision; and
- m) headings are for ease of reference only and do not affect the meaning of this Agreement.

Draft



**SCHEDULE 2**  
**Engagement Offer**

1. **Independent Contractor:** **Name:** Contractor Full Name
- Company:** Enter Company Name
- ABN:** ABN
- Address:** Address
2. **Firm representative:** **Name:** Choose an item.
- Phone:** 1300 944 936
- Email:** admin@whizdom.com.au
3. **Client:** [insert]
4. **Location:** [insert client address or site-specific address per work order]
5. **Services:** **Description:** [insert general description of Contractor's services from the work order]
- Security Requirements:** [insert any security levels or police checks needed for the contract]
- Specific Client Requirements:** [insert any other requirements specific to the client from the work order, e.g., drug test, confidentiality agreements, etc.]
6. **Commencement Date:**
7. **Expiry Date:**
8. **Extension options:** Choose an item.  
[insert info for other – or delete line if not applicable]
9. **Reduced activity period:** as per department guidelines – usually public holidays and Christmas/New year stand down.
10. **Termination Notice period:** [insert info from panel deed or work order]  
[If nothing is outlined then use the following: 2 weeks]
11. **Hours:** As offered by the Client and accepted by the Contractor from time to time. Where a Client's work order specifies total contract or core hours, those will be set out below.
- Total Contract hours:** [insert from work order]
- Core Hours:** [insert from work order, example: not to exceed 8 hours per day between 7am and 7pm]

**12. Service Fee:****All Inclusive Rate:** \$xxx.xx per hour ex GST**13. On-Call Provisions**

[outline any on-call provisions per the work order, if none, then please insert Not Applicable]

**14. Travel and Expenses:**

If an Invoice includes items related to travel or expenses, the Contractor will only be entitled to receive payment from the Firm for those travel or expense items after they have been authorised by a Client in writing.

**Client Specific Information:**

[insert info from panel deed or work order]

**15. Pay Cycle:**

Choose an item.

**16. Timesheets**

Client approved timesheets must be submitted to the Firm within 3 business days at the completion of the nominated pay cycle.

**Your 1<sup>st</sup> pay cycle dates are:**

Please quote your Choose an item. listed below on all timesheets

**Number:** [insert contract or PO number]

**17. Payment Terms:**

Subject to item above (Timesheets), payments will be made within 5 business days on receipt of the Client approved timesheets/expenses and correctly rendered Invoice at the completion of each pay period.

If an RCTI Agreement is on file, payments will be made within 5 business days on receipt of the Client approved timesheets/expenses at the completion of each pay period.