Terms and conditions - permanent recruitment services

1. Scope of this Agreement

1.1 This Agreement details the terms and conditions upon which Robert Walters will supply Services to Client in respect of Candidates sourced and Introduced by Robert Walters for Permanent and Fixed Term Placements.
1.2 This Agreement commences on the date Robert Walters starts supplying Services to Client and continues until terminated or varied in accordance with this Agreement.
1.3 The use by Client of any Candidate details provided by Robert Walters (whichever is the earlier) will constitute Client's acceptance of the terms of this Agreement.

2. Services

2.1 Robert Walters will perform the Services using reasonable skill and care.
2.2 Client shall provide all information reasonably necessary to enable Robert Walters perform the Services.
2.3 Robert Walters will conduct background checks on Candidates as requested by Client. Charges for third party checks will be passed on to Client at cost. Robert Walters makes no warranty and shall not be liable for any loss or expense incurred or suffered by Client (including direct loss, indirect or consequential loss, loss of profit, loss of anticipated revenue, loss of reputation or regulatory fines) caused by any errors in background checks arising directly or indirectly from incorrect, misleading or misrepresented information provided by a Candidate or any third parties, including but not limited to, those who verify any element of the background checks (for example, a referee, a former employer or government agency). Client is responsible for undertaking its own investigations to verify Candidate information is correct.
2.4 Where Client has instructed Robert Walters to headhunt a particular Candidate on Client's behalf, Client shall indemnify and keep Robert Walters indemnified against all loss, or expense incurred by Robert Walters as a result of claims made in connection with such instruction.
2.5 Robert Walters makes no representation that any Candidate is or will be willing and/or available to accept a Placement with Client.
2.6 Robert Walters excludes liability for any loss, liabilities, costs or expenses incurred by Client arising from a Candidate's acts or omissions, including in the performance of a Placement with Client.
2.7 Robert Walters shall make every reasonable effort to ensure that Candidates suit Client's notified requirements. Client acknowledges and agrees that the final decision to employ any particular Candidate in a Placement rests with Client.
2.8 Client must promptly notify Robert Walters if a Candidate accepts a Placement with Client or a third party to whom Client has referred the Candidate, including the start date of the Placement and details of the Candidate's Salary Package.

3. Fees

3.1 In consideration of Robert Walters' provision of the Services, Client must pay Robert Walters the Fees.
3.2 The Fee payable by Client for a Placement is calculated as a percentage of the Candidate's annual full time equivalent Salary Package, in accordance with the table below:

SALARY PACKAGE	% MARGIN
$0 – $64,999	**19%**
$65,000 – $99,999	**21%**
$100,000 - $139,999	**23%**
$140,000 +	**25%**

3.3 Client must notify Robert Walters and pay the Fee that would have been due to Robert Walters for a Placement where:
  a) although no Placement occurs initially, a Candidate is employed or engaged by Client in any capacity within 12 calendar months from the date of Introduction;
  b) an offer of employment is made by Client and accepted by a Candidate but (through no fault of the Candidate) no employment or engagement results; or
  c) irrespective of whether or not a Placement results from the Introduction of a Candidate by Robert Walters to Client, the Candidate is Introduced by Client to a third party within 12 calendar months of the date of Introduction.
3.4 Robert Walters will invoice Client for the Fee upon the later of:
  a) an offer of employment being accepted by the Candidate; or
  b) commencement of the Candidate in the Placement.
3.5 Robert Walters reserves the right to review the Fee annually to accommodate increases to operating costs. Such increase will not exceed CPI.

4. Retained Searches

4.1 This clause only applies if Client requests Robert Walters in writing to provide Services in respect of a Retained Search.
4.2 For a Retained Search, the Fee (calculated in accordance with clause 3.2) will be invoiced in three stages:
  a) 1/3 of the Fee upon Robert Walters' agreement to undertake the Services;
  b) 1/3 of the Fee upon the earlier of:
    i) Robert Walters' delivery of a short-list of Candidates to Client; or
    ii) 30 days after Robert Walters' agreement to undertake the Services; and
  c) the balance of the Fee (if applicable, adjusted for any changes to the Salary Package) on the commencement of the Candidate's Placement with Client.
4.3 If Client withdraws the Placement before the Candidate commences, all three stages of the Fee specified in clause 4.2 will be payable immediately. If within three (3) calendar months of such withdrawal Client instructs Robert Walters to provide Services for an identical position, a credit will be given against such Fee.

5. Payment Terms

5.1 Invoices are payable within 14 days of the date of invoice.
5.2 All amounts payable to Robert Walters under this Agreement are in NZD and exclusive of GST, which shall be charged at the prevailing rate and as required by law.
5.3 Client is deemed to have accepted the invoice if no dispute is raised within 14 days of the date of invoice.
5.4 If Client requires a purchase order, or its equivalent, to effect the payment of an invoice, Client must raise a purchase order prior to Candidate's commencement of a Placement with Client. For the avoidance of doubt, acceptance of a purchase order by Robert Walters will not result in acceptance of any terms and conditions attached to such purchase order.
5.5 Overdue payments are subject to interest on the amount unpaid from the due date to the date of payment at a daily rate 4.0% per annum above the base rate of the ASB Bank.

5.6 A dispute will not affect payment of any non-disputed Fee on the same invoice or the payment of any other invoices due by Client and Client shall have no right of set off.
5.7 Any costs incurred by Robert Walters in recovering amounts overdue shall be payable by Client.
5.8 Payments must be made: (i) free of any restriction or condition; (ii) without any deduction or withholding for or on account of any tax (except to the extent required by law); and (iii) without deduction or withholding on account of any other amount, whether by way of set-off or otherwise. Client is responsible for any bank charges, local taxes or costs incurred in relation to payments.
5.9 For foreign Clients with no registered entity in New Zealand, Robert Walters reserves the right to request payment of a bond (as security of payment of Fees). The bond shall be refunded to the Client's nominated bank account following termination of this Agreement less any outstanding Fees. Client indemnifies Robert Walters from and against any loss, damage or liability arising from third party claims in connection with Client's non-compliance with Workplace Laws in relation to a Placement.

6. Replacement Guarantee

6.1 If a Placement is terminated by Client or Candidate (for reasons other than redundancy, change of management, change of job description or working conditions, pregnancy or unexpected illness) within eight (8) weeks of its commencement date (including the Candidate's period of contractual notice), Robert Walters will seek a replacement Candidate, on the condition that:
   a) Client has paid Robert Walters' invoice in respect of the initial Placement in accordance Clause 5;
   b) the request is given exclusively to Robert Walters to replace the Candidate;
   c) the nature of the replacement position is the same as the initial Placement;
   d) Client notifies Robert Walters within 7 days of the date of termination of the Placement; and
   e) If required, Client has issued a purchase order prior to commencement of Candidate in the Placement.
6.2 No rebate or refund of Fees will be payable.
6.3 Robert Walters offers this replacement guarantee on the initial Placement only.
6.4 The replacement guarantee does not apply to the conversion of a Fixed Term Placement to a Permanent Placement.
6.5 If the Salary Package of the replacement Candidate increases from the original Placement, the Fee will be adjusted accordingly.
6.6 The replacement guarantee will be valid for a period of three (3) months from the date of termination of the initial Placement, after which Robert Walters is not obliged to offer such replacement guarantee.

7. Privacy and Confidentiality

7.1 Each Party must comply with the data protection obligations in the Privacy Law in their collection, use, storage and disclosure of Personal Information in the performance of this Agreement.
7.2 Client shall indemnify Robert Walters against all liabilities, costs, expenses, damages and direct losses and all interest, penalties and reasonable legal and professional costs and expenses suffered or incurred by Robert Walters arising out of or in connection with any third party claims (including those of Candidates) caused by the misuse of a Candidate Personal Information by Client, its related entities, any company within its group of companies or the employees, directors, agents or contractors of each.
7.3 Each Party will hold information of the other that can be reasonably regarded as being confidential or is notified as being so by the disclosing party, (including this Agreement), in confidence and will not disclose such information without the consent of the other party unless required by law or a court of competent jurisdiction, or it has already been made available to the public other than through a breach of this clause. Any CVs or details of a Candidate provided to Client by Robert Walters shall remain the confidential information of Robert Walters.

8. Liability

8.1 Neither Party shall be liable to the other under or in connection with this Agreement for any indirect or consequential loss, loss of profits, loss of business, loss of revenue loss of anticipated savings, loss of reputation or regulatory fines. Nothing in this Agreement limits any warranty, exclusion or limitation of liability or right imposed by statute or regulation to the extent that it cannot lawfully be excluded or limited.

9. Termination

9.1 Either party may terminate this Agreement:
   a) for any reason on not less than thirty (30) days' prior written notice to the other Party; or
   b) on written notice to the other Party with immediate effect if:
      i) the other Party commits a material breach of these Terms and Conditions; or
      ii) the other Party becomes insolvent, is adjudicated bankrupt, has a receiver appointed, or has a resolution passed or order made for its liquidation.
9.2 Those clauses which, by their nature, are intended to continue to have effect following termination or expiry of this Agreement shall survive and continue to bind the Parties.
9.3 Termination of this Agreement will not prejudice any rights or remedies already accrued to a party under the Agreement prior to termination.

10. Law and Jurisdiction

10.1 This Agreement shall be governed by and construed in accordance with the laws of New Zealand.
10.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of New Zealand.

11. General

11.1 Client will not during the course of this Agreement and for a period of 12 calendar months thereafter (either on its own account or for any other individual or organisation), directly or indirectly induce, entice or solicit away or try to induce, entice or solicit away from Robert Walters any individual who is an employee, director or consultant of Robert Walters.
11.2 If Client employs or engages any person in breach of clause 11.1, Client shall pay to Robert Walters on demand the sum equivalent to 35% of the Salary Package of such person. The parties agree that this is a genuine pre-estimate of loss.
11.3 If a clause is held by a Court to be illegal or unenforceable, that part will be severed from all other terms without affecting the validity or enforceability of all other terms of this Agreement.
11.4 Neither party is responsible for any failure to perform its obligations under this Agreement if it is prevented from, or delayed in, performing those obligations by an event of force majeure. A party affected by a force majeure event must notify the other party as soon as possible that such event has arisen or is likely to arise. Force majeure event includes pandemics, epidemics, quarantine, biological contamination or entry and exit restrictions resulting in shortage of labour or materials as a result of such an event which is beyond the reasonable control of a party.
11.5 No failure or delay by either party in exercising any right or remedy available to it will constitute a waiver of that or any other right or remedy. No waiver or amendment of

any clause will be effective unless confirmed in writing to the other party and in the case of Robert Walters, by an authorised representative of Robert Walters.

12. Definitions

12.1 The following words are defined as follows:

a) **Candidate** means an individual Introduced by Robert Walters to Client for a Placement.
b) **Client** means the legal entity acquiring Services under this Agreement and any of its Related Companies as defined in the Companies Act 1993.
c) **CPI** means Consumer Price Index, published by Statistics New Zealand (SNZ), or any replacement category published by the SNZ from time to time.
d) **Fee** means the fee for Services calculated in accordance with clause 3.
e) **Fixed Term** means the employment of a Candidate by Client where the Candidate's employment will end on a specified date or when a particular event occurs.
f) **GST** means GST within the meaning of the Goods and Services Tax Act 1985.
i) **Introduced** means: (i) the sending of a Candidate's CV or other information which expressly or impliedly identifies the Candidate; (ii) the arrangement of an interview with a Candidate, whether at a face to face meeting, by telephone or by video conference; or (iii) the introduction of a Candidate by any means to Client or by Client to a third party that enables the Candidate to be identified, and "**Introduction**" and "**Introduce**" shall be construed accordingly.
g) **Permanent** means the employment of a Candidate by Client, where the Candidate has the full set of employment rights and responsibilities under Workplace Laws and employment continues until Client or Candidate ends the employment relationship.
h) **Placement** means a position in respect of which a Candidate is employed by Client on a Permanent or Fixed Term basis.
i) **Personal Information** means information about an identifiable individual.
j) **Privacy Laws** means the Privacy Act 2020, as amended from time to time.
k) **Retained Search** means Services provided on an exclusive basis in respect of a Placement for which Robert Walters will charge a Fee in accordance with clause 4.2.
l) **Robert Walters** means Robert Walters New Zealand Limited (NZBN 9429036154180).
m) **Salary Package** means the annual anticipated gross remuneration package for a Placement, which includes gross annual salary, applicable benefits (including KiwiSaver), commission, bonuses, allowances and joining inducements. The provision of a car is valued at $25,000 per annum.
n) **Services** means work performed by Robert Walters in relation to the sourcing and Introduction of Candidates for Placements, including but not limited to, Robert Walters receiving instructions from Client for Placements, long/short listing of Candidates, Introducing Candidates, arrangement and/or conducting interviews with Candidates and any other act in the sourcing and Introduction of Candidates for Placements, or related services described in clause 2.
o) **Workplace Laws** means the laws of New Zealand that govern workplaces or regulate or relate in any way the relationships between employers and employees or principals and contractors, including the Employment Relations Act 2000, Holidays Act 2003, Health and Safety at Work Act 2015 and anti-discrimination legislation, as amended from time to time, and any subordinate legislation.

12.2 References to the "Parties" mean Robert Walters and the Client and their respective successors and permitted assignees. "Party" shall be construed accordingly.

Acceptance:

By signing below Client accepts and agrees to the terms and conditions of this Agreement.

Signed on behalf of Client by its authorised representative

Name:

Title:

Client:

NZBN:

Date: