

Terms and Conditions of Business

1. Definitions

In these Terms of Business the following definitions apply:

“abrs” means Australian Barnardos Recruitment Services, ABN 18 068 557 906 (a social business venture of Barnardos Australia, a company limited by guarantee – Registered Charity No. CFN 13840).

“Client” means the person; firm or corporate body together with any related body corporate as defined by the Corporations Act 2001 to which the candidate is introduced and/or placed in a temporary on-hire assignment with named in the attached Schedule A

“Candidate”, “Temporary Employee” or “Independent Contractor” means the person introduced by abrs to the Client for Engagement as a permanent employee, fixed term employee, on-hire Temporary Assignments or named in Schedule A.

“Current Hourly Rate” means the hourly charge out rate detailed in Schedule A. Payable in accordance with Clause 13

“Engagement” means the engagement, employment or use of the Candidate by the Client or any third party on a permanent, fixed term or temporary basis, whether under a contract of service or for services; under an agency, license, and franchise or partnership agreement; or any other engagement; directly or through a company or other legal entity of which the Candidate is an officer or employee.

“Fee” means the monies payable to abrs in accordance with clauses 3 and 4 of these Terms of Business

“Introduction” means:

- The Client’s interview of a Candidate in person or by video/telephone, following the Client’s instruction to abrs to search for a candidate
- Presenting to the Client a résumé or information which identifies the Candidate, and which leads to an Engagement of that Candidate; or
- The presentation of Candidate to the Client by abrs, whether or not the Client knew the candidate previously.

“Position” means any position within the client organisation offered to an abrs Candidate, Temporary Employee or Independent Contractor within a 12 month period from the date of these Terms of Business.

“Remuneration” means the Candidate’s base salary and any other benefits or allowances which represent remuneration in other forms which include, but are not limited to, superannuation, motor vehicle, FBT and all other monies or benefits provided to the Candidate by the Client or a third party.

“Temporary Assignment” means the Temporary Assignment of an abrs Temporary Employee or Independent Contractor with the Client for the Temporary Assignment Period pursuant to this agreement as detailed in Schedule A.

“Temporary Assignment Period” means the proposed duration of the temporary assignment as detailed in Schedule A

2. Agreement to place Permanent or Temporary staff

2.1 By accepting the introduction of a candidate from abrs, or by requesting abrs to undertake the recruitment of employees or temporary staff on behalf of the Client, the Client agrees to be bound by the terms and conditions, agreement for the engagement of permanent employees, direct hires, on-hire Temporary Employees or Independent Contractors on a temporary assignment, and to make payments, as provided in this agreement.

2.2 The Client acknowledges that abrs has no obligation to accept any particular assignment or to continue to accept assignments from the Client indefinitely.

2.3 The Client acknowledges that abrs is not the legal representative, agent, joint ventures or partner of the Client for any purpose.

2.4 Acceptance may be expressed, implied or by conduct and, without limiting the variety of circumstances that might constitute acceptance, occurs if you:

- (i) tell us you have accepted them; or
- (ii) ask us for help to fill a position after you have received a copy of them; or
- (iii) use or disclose, without our consent and in connection with an offer of work that is or may be made by you or any other person to our candidate, any personal information about our candidate that we have provided to you (including the name or contact details of our candidate).

2.5 The Client agrees to notify us of:

- (i) The Client must advise abrs immediately if an engagement is accepted by a candidate who abrs has introduced to the Client. Once the Client agrees to engage a candidate provided by abrs for any position within the Client’s organisation, even if the introduction is made indirectly, within twelve months (12) of receipt of a candidate’s CV, the Client agrees to pay abrs the amount calculated in accordance with the fee detailed in clauses 3 and 4.
- (ii) the outcome of any interview between you and our candidate;
- (iii) any offer (or acceptance of any offer) in relation to the placement of our candidate with you, or a person on whose behalf or for whose benefit you may be acting, or to whom you have communicated any personal information about our candidate. Your notification must include details of the remuneration or benefits offered;
- (iv) your employment or engagement of our candidate;
- (v) to provide us with a copy of the contract or an accurate summary of its contents within seven days of its being agreed by both you and the candidate;

3. Fees Permanent or Fixed Term Employee Introduction

3.1 The fee shall be payable by the Client to abrs where the Candidate is employed or engaged in any capacity whatsoever by the Client, or a third party to whom the Client has Introduced the Candidate, within twelve (12) months of the date of the Introduction. This includes, but is not limited to, circumstances where the Candidate is employed or engaged in any manner whatsoever by the Client indirectly by virtue of a third party arrangement between the third party and the Candidate. The fee shall be payable by the client to abrs regardless of the duration of employment of the Candidate, whether or not the Client is satisfied with the services of the Candidate, and whether or not the Candidate’s employment is said to be on a “probationary” or “trial” basis or similar.

3.2 Upon employment of a Candidate, the Client agrees that it will pay the Standard Introduction Placement fee to abrs.

Standard Introduction Fee percentage applied as follows;

19% for salary package of \$150,001 and above
17% for salary package of \$100,001 to \$150,000
15% for salary package of up to \$100,000

The total introduction placement fee is calculated on the total remuneration package of the candidate including superannuation and packaging plus GST. Where a part-time position is offered the fee will be calculated at the total full-time equivalent remuneration package plus GST.

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4. Fees On-Hire Temporary Employee Introduction

- 4.1** Schedule A constitutes part of this agreement
- 4.2** The Client will pay to abrs by payment to Barnardos Australia, the Hourly Rate as specified in Schedule A
- 4.3** The fee will be negotiated prior to commencement of each Contract Assignment or specific project. The fee is based on the standard rate that would be paid to the Temporary Employee or Independent Contractor, or their nominated representative, based on standard working hours only.
- 4.4** All payments to Temporary Employees or Independent Contractors will be subject to PAYG withholding unless otherwise agreed in advance in accordance with abrs policies and ATO guidelines.
- 4.5** abrs may vary the fee at any time (including retrospectively) without notice in light of the following:
- changes to CPI or market rates;
 - overtime rates, shift penalties, allowances or other rates payable pursuant to any award or agreement or rate of pay set by Fair Work Australia (or other relevant body) applicable to the Temporary Employee or Independent Contractor;
 - insurances, insurance premiums, or any statutory charges, levies, taxes or other payments abrs is lawfully required to make or for which abrs may become liable in respect of providing a Temporary Employee or Independent Contractor under these Terms of Business.
- 4.6** The Client must pay the fee to abrs according to the number of hours worked by a Temporary Employee or Independent Contractor for the Client. Invoices are produced weekly based on the actual hours worked by the Temporary Employee or Independent Contractor as evidenced by an authorized timesheet. These hours exclude unpaid meal breaks. The Temporary Employee or Independent Contractor will be paid on terms to be negotiated prior to the commencement of an assignment.
- 4.7** The Client is responsible for paying abrs a fee equal to the reasonable business expenses incurred by a Temporary Employee in performing an assignment, and by Independent Contractors unless specifically agreed otherwise in writing.
- 4.8** If you make an offer of permanent employment or an offer transfer to your payroll as a direct temporary hire to a candidate who was presented to you, or Temporary Employee or Independent Contractor who is performing an assignment for you (or who has performed an assignment for you during the previous twelve (12) months), and the offer is accepted, you must pay to abrs the permanent placement fee in accordance with abrs permanent recruitment fees.

5. Guarantee Provision Permanent Staff

- 5.1** Where a Candidate employed by the Client on a permanent basis leaves the Client's employment for any reason, other than as set out in Clause 5.2, within three (3) months of commencing such employment, abrs will use its reasonable efforts to locate and provide a replacement Candidate for the vacated position at no additional fee. Nothing in this clause obliges abrs to refund the Fee if a suitable replacement Candidate cannot be found.

The Guarantee Provision referred to in Clause 5.1 is only valid and applicable in circumstances where the client:

- pays the Fee in full within thirty (30) days of abrs sending an invoice to the Client;
 - informs abrs in writing within seven (7) days of the Candidate leaving the employment that it requires abrs to endeavor to find a replacement Candidate;
- 5.2** Clause 5.1 above shall not apply if the Candidate's employment is terminated by the Client owing to work shortage, redundancy, or employer relocation.
- 5.3** The Replacement Guarantee only relates to the specific vacated position which abrs originally recruited for. Where the Client of its own efforts or volition, either directly or indirectly sources a replacement Candidate for the vacated position, abrs is not obliged whatsoever to make any efforts of its own to find a replacement Candidate nor to repay any fees paid by the Client to abrs.
- 5.4** abrs is not obliged to provide a replacement candidate where there is a change in the position originally recruited for, although it may do so at its absolute discretion. In these circumstances, the Client acknowledges that:
- Where the replacement candidate's Remuneration Package is less than that of the position originally recruited for, the Client remains liable to pay the Fee payable for the original position; and
 - Where the replacement candidate's Remuneration Package is more than that of the position originally recruited for, the Client will be liable to pay the difference between the Fee payable for the replacement candidate and the Fee previously paid for the position originally recruited for.
- 5.5** The Guarantee Provision specified in Clause 5.1 shall not apply to a replacement Candidate. If the replacement Candidate is terminated, abrs has no obligation whatsoever to make further efforts to find a replacement Candidate for the role, nor to repay any fees paid by the Client to abrs.
- 5.6** The Replacement Guarantee is applicable to permanent placements only. There is no guarantee applicable for temporary, contract or temporary to permanent placements.

6. Responsibilities On-Hire Temporary Staff

- 6.1** abrs will be responsible for all administration in relation to any Temporary Employee or Independent Contractor, including making payments, workers' compensation insurance payments, superannuation, and the deduction of income tax, any other taxes, as applicable, and other statutory charges.
- 6.2** abrs will make every effort to select an abrs Temporary Employee or Independent Contractor with the qualities and experience required for the Client's needs. If the Client Organisation is in any way concerned with the performance or conduct of the Temporary Employee or Independent Contractor during the Temporary Assignment, the Client will consult immediately with abrs account manager and provide abrs with a reasonable opportunity to address those concerns by appropriate means including, but not limited to, discussions with the Temporary Employee or Independent Contractor (which may involve the Client). If, after appropriate discussions, direction by the Client and consultation with abrs, the performance or conduct remains unsatisfactory, abrs will, if requested, endeavor to find a replacement for the temporary Assignment.
- 6.3** abrs will not be liable for any loss, expense, damage or delay suffered by the Client arising from or in connection with a failure by abrs to provide the Client with a Temporary Employee or Independent Contractor, whether as a result of any action pursuant to clause 6.2 or otherwise.

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- 6.4** The Client acknowledges that it has no ability to take steps to terminate the employment of the Temporary Employee or Independent Contractor. abrs will give 48 hours' notice to the Client and Candidate before terminating a Temporary Assignment if the termination of the Temporary Assignment is earlier than the date for expiry of the Temporary Assignment Period.
- 6.5** In order to fulfill its obligations as an employer, abrs will investigate any accident, critical incident or allegation against any Temporary Employee or Independent Contractor.
- 6.6** Given that Temporary Employee or Independent Contractor will be working under the day to day direction and control of the Client Organisation and, during the Temporary Assignment will not be acting as an agent of abrs, the Client Organisation agrees that abrs will not be liable for any loss, costs, expense, injury, damage or delay suffered by the Client Organisation or any third party arising out of or in connection with:
- any advice, acts or omissions of a Temporary Employee or Independent Contractor; or
 - the negligence, dishonesty, misconduct, lack of skill or medical condition of a Temporary Employee or Independent Contractor
- 6.7** The Client agrees to indemnify abrs, its Related Body Corporates (as that term is defined in the Corporations Act 2001 (Cth)), their officers and employees (including the relevant Temporary Employee or Independent Contractor) in respect of any action or claim made against them, directly or indirectly, in relation to any advice, acts or omissions by the Temporary Employee or Independent Contractor arising out of or in connection with the performance of their duties during the Temporary Assignment. This will be reduced proportionately to the extent any negligent act or omission by the Client contributed to the relevant loss, cost, expense, injury, damage or delay. The Client's liability to indemnify abrs will be limited to the value of the contract.
- 6.8** The Client agrees to ensure that abrs are provided with a full description of the duties and responsibilities the Temporary Employee or Independent Contractor will perform in relation to any Temporary Assignment and the Client agrees that any substantive changes to those duties and responsibilities will be negotiated with abrs.

7. Work Health and Safety, Anti-Discrimination and Anti-Bullying

- 7.1** The Client warrants that it has policies and procedures in place to ensure compliance by it and its officers and employees with obligations under any applicable licensing and accreditation legislation and under equal opportunity legislation (including provisions in respect of sexual harassment and bullying) and that it will comply with those policies and procedures and with its legal obligations in respect of the Temporary Employee or Independent Contractor as though they were an employee of the Client.
- 7.2** The Client has direct supervision and management of the Temporary Employee or Independent Contractor in the performance of each temporary Assignment for the Client. The Client directly controls the conditions under which the assignment is performed, and the outcome of the Temporary Employee or Independent Contractor.
- 7.3** The Client is responsible for ensuring the health and safety of the Temporary Employee or Independent Contractor while the Temporary Employee or the Independent Contractor providing services to the Client at the Client's premises, and must satisfy all its obligations in relation to the Temporary Employee or Independent Contractor under applicable occupational health and

safety and discrimination legislation. This includes, but is not limited to, the following:

- providing all necessary induction and other training and issuing all necessary policies, procedures and directions (including, without limitation, those relating to equal employment opportunity, anti-bullying, and workplace health and safety) ;
 - immediately notifying abrs of any occupational health and safety risks or discrimination or harassment issues in connection with the provision of services by the Temporary Employee or nominated representative of the Independent Contractor;
 - requiring the Temporary Employee or nominated representative of the Independent Contractor to perform only those tasks that that person is skilled and trained to perform;
- 7.4** The Client agrees that it will inform abrs immediately regarding any accidents, critical incidents or complaints involving any Temporary Employee or Independent Contractor. The Client agrees to give a representative of abrs access to the workplace and to relevant documentation and people so that it can comply with any relevant State Laws and its own occupational health and safety obligations, and any other relevant legislation, and/or should an investigation into such an accident, critical incident or complaint become necessary.
- 7.5** The responsibility for protecting the Client's confidential information and intellectual property lies solely with the Client. abrs is not liable for any claim arising from the Client's Confidential Information and Intellectual Property;
- 7.6** The Client is responsible for ensuring that the Temporary Employee or Independent Contractor is adequately covered by any insurance policy held by the Client in respect of the Client's business. For example, if the Temporary Employee or Independent Contractor is required by the Client to handle valuables such as cash, operate machinery or equipment, drive vehicles or handle documentation.

8. Privacy Policy

- 8.1** abrs will keep all information with regard to the Client private and confidential in accordance with any applicable privacy laws. abrs agrees to protect the Client's privacy and to comply with the national privacy principles under the current Australian privacy laws. abrs will only collect information relevant to its purposes and confirms that it does not trade, rent or sell your information to other parties.
- 8.2** The Client agrees to comply with the terms of the Privacy Laws regarding Personal information and not to use Personal Information except for the purpose of engaging or considering a Candidate, Temporary Employee or Independent Contractor to provide services to the Client. The Client must ensure that before disclosing any Personal Information to abrs the Client is entitled to disclose that information and without taking any further steps as required by the Privacy Laws abrs may use and disclose such information for the purpose of providing recruitment services under these Terms of Business. If the Client becomes aware of any breach or alleged breach of the Privacy Laws concerning information disclosed by abrs to the Client or by the Client to abrs, then the Client must notify abrs immediately and comply with any reasonable directions of abrs with respect to such breach.

9. Collection, Use and Storage of Information

- 9.1** The Client Organisation's information, whether supplied electronically or by any other means to abrs, will be treated confidentially by abrs

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9.2 The Client Organisation's information will be used for the purpose of recruiting and placing candidates. abrs agrees to use information to assess job needs, eligibility to apply for a visa, skills and experience. Non identifying information may be used for research or analysis purpose.

9.3 The Client Organisation's information will be held in a secure database, which is available to abrs staff only. Where external computer assistance has been sought, abrs agrees to ensure that contractors providing such assistance will be required to agree to appropriate privacy restrictions.

10. Disclosure

10.1 abrs agrees that all information sent to abrs by the Client Organisation will be treated as confidential with access on a need to know basis by abrs staff only. Non-identifying information will be shared with other relevant client organisations and applicants, until such time as a placement is being finalised or with the prior agreement of the Client Organisation.

10.2 The Client agrees that abrs may disclose its information without the Client's consent where:

- It is for a reasonably expected purpose related to the purposes for collecting the information in accordance with this agreement and its privacy policy.
- abrs reasonably believe it is necessary to assist an enforcement body to perform its functions.
- abrs suspect that an unlawful activity has been, is being, or may be, engaged in and the personal information is a necessary part of our investigation or reporting of the matter.
- abrs reasonably believe it is necessary to prevent a threat to life, health or safety or abrs are authorised or required by law to do so.

10.3 The Client agrees that information relevant to the Client will be kept permanently to fulfill abrs obligations to protect clients and particularly children and young people. abrs agrees that information will not be released unless abrs are legally obliged to do so.

11. Liability

The Client Organisation accepts and acknowledges that, whilst abrs makes every reasonable effort to ensure the suitability of Candidates, the final recruitment decision lies with the Client Organisation. abrs and its Related Body Corporates (as that term is defined in the Corporations Act 2001 (Cwlth)) shall not be responsible to the Client Organisation, and the Client Organisation agrees to indemnify abrs, its Related Body Corporates, their officers and employees, for any losses, costs, expenses or damages, however occasioned (direct, indirect or consequential), arising out of or in connection with the employment of a Candidate by the Client Organisation or from any delay or failure to refer a candidate to the Client Organisation.

12. Confidentiality

12.1 abrs considers that, as the Temporary Employee or Independent Contractor clearly understands the confidentiality issues which might arise during the course of, and subsequent to, the Temporary Assignment, abrs can have no responsibility if the Temporary Employee or Independent Contractor breaches any obligation that they have to the Client Organisation in relation to confidentiality. The Client Organisation must ensure that the Temporary Employee or Independent Contractor is prepared to undertake to abide by any reasonable restrictions the Client

Organisation might place on them in relation to confidentiality except in circumstances identified in other State Legislation.

13. Payment Terms

13.1 Our trading terms are strictly thirty (30) days from date of invoice issue.

13.2 The Client will pay all fees and charges in accordance with the terms of payment shown on the abrs invoice. Where fees are paid outside the abrs terms, the Client will forfeit any claim under Clause 5 of these Terms and Conditions.

13.3 In the event of non-payment, abrs reserves the right to charge interest at a flat rate of 2.5% per month on unpaid invoices from the due date to the receipt date.

13.4 Any legal matter arising out of non-payment of any invoice will be dealt with in accordance with NSW State Law. Should abrs be forced to take legal action to recover the outstanding debt, it will be entitled to claim court costs and any other associated legal fees and charges on a full indemnity basis.

13.5 Any fees or charges payable under these terms and conditions will be exclusive of Goods and Tax as defined in A New Tax System (Goods and Services Tax) Act 1999.

Payment Terms On-Hire Temporary Staff

13.6 A Tax Invoice will be issued by abrs every week. The Tax Invoice will be payable within thirty (30) days of issue.

13.7 abrs reserves the right to invoice the Client for any overtime, shift, penalty or public holiday payments that arise under any relevant industrial award or certified agreement and to which a Temporary Employee or Independent Contractor is entitled, that are not already included in a Tax Invoice under this agreement.

13.8 abrs reserves the right to invoice the Client for any agreed reimbursements including, but not limited to, kilometer reimbursements including a 20% abrs administration fee.

13.9 abrs reserves the right to pass on any increase in the daily/hourly rate following any change in the relevant industrial award, certified agreement or compulsory payments relevant to the Temporary Employee or Independent Contractor.