

Terms of Service

1. DEFINITIONS

- a. **'TOS'** means this Terms of Service, any Schedules, Annexures and amendments to the TOS.
- b. **'Alternate Candidate'** means a Candidate that is providing or will potentially provide Services to the Client while the Candidate is on Candidate Leave or unable to provide the Services;
- c. **'Address for Notices'** means:
 - i. For the Company: the Company's address
 - ii. For the Client: the Client's address.
- d. **'Bond'** means an amount equal to six (6) weeks of the total Services selected under the Schedule.
- e. **'Business Day'** means a day other than:
 - i. a Saturday or Sunday;
 - ii. a public holiday on client's location or
 - iii. a day in the period of 24 Dec to 4 Jan (inclusive).
- f. **'Client'** means the party identified under the heading in the Coweso digital registration/online application.
- g. **'Commencement Date'** means the date stated on the Schedule.
- h. **'Company'** means Coweso, IT and Outsourcing Services Provider.
- i. **'Candidate'** means the staff member that the Company will supply to the Client;
- j. **'Candidate Leave'** means:
 - i. 8 annual leave in a twelve (12) month period;
and
 - ii. 5 days annual sick leave in a twelve (12) month period.
- k. **'Force Majeure'** means:
 - i. War, riot or civil commotion;
 - ii. Strike action or embargo;
 - iii. Storm, tempest, pandemic or act of God;
 - iv. Such other circumstances beyond the reasonable control or direction of the relevant Party.
- l. **'GST'** means the Goods and Services Tax under the GST Act;
- m. **'GST Act'** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- n. **'Party'** means a Party to this TOS;
- o. **'Recruitment of Candidate Fee'** means the amount in Item 1 of the Schedule;
- p. **'Services'** means any of the services selected by the Client under Item 2 of Schedule;
- q. **'Supply Rate'** means the rate set out in the table under Item 2 of Schedule; and
- r. **'Schedule'** means the Schedule separately provided to the Client by the Company with regard to the provision of the Services.

2. INTERPRETATION

- a. A reference to persons includes corporations.
- b. Words including the singular number include the plural number and vice versa.
- c. Words referring to a gender include the other gender.

- d. A reference in this TOS to a statute or a section of a statute includes all amendments to that statute or section passed in substitution for the statute or section referred to or incorporating any of its provisions.
- e. A reference to dollars or \$ in this TOS means the currency of Australia.
- f. A reference to a clause, clauses, Schedule or Annexure is a reference to a clause or clauses, Schedule or Annexure to this TOS and a reference to this TOS includes any Schedules and Annexures whether provided prior to or contemporaneously with this TOS.
- g. A reference to a Party includes its respective Candidates, servants, successors and assigns.
- h. No waiver by a Party of any of the provisions of this TOS is binding on that Party unless it is made in writing.
- i. If part of this TOS is illegal or unenforceable that part may be severed and the remaining parts of this TOS will continue in force.
- j. Headings may be used to assist in the interpretation of this TOS.

3. PURPOSE OF TOS & ACKNOWLEDGEMENT

- a. The overarching purpose of this TOS is for the Company to source and provide an Candidate to the Client pursuant to the terms and conditions of this TOS and the Schedule.
- b. The Candidate will undertake and provide the Services to the Client in exchange for the Client paying all fees to the Company as invoiced from fortnight to fortnight.
- c. The Client acknowledges that the Company will source an Candidate who is employed through directly on global level or the selected regions from the client.
- d. The Client consents to all information provided to the Company being shared only with the Company. The Client consents to the Company collecting their personal information insofar as required to perform the services in accordance with the terms of this agreement and for the Company to receive fortnightly payments by direct debit where applicable.
- e. The Client acknowledges that this TOS is solely between it and the Company. The Client has no TOS with the Third Party or the Candidate directly.

4. PERIOD OF TOS

This TOS will begin on the Commencement Date and will continue to operate throughout the duration of the provision of Services by the Company to the Client until such time as the TOS is terminated in accordance with the termination protocol contained in Clause 10 in this TOS.

5 CANDIDATE ENGAGEMENT

- a. Recruitment of Candidate
 - i. Upon entering into this TOS, the Company is responsible for and will take all steps necessary to source, recruit and engage an Candidate to provide the Services to the Client.
 - ii. As part of the recruitment process, the Company will put forward a panel of prospective Candidates to the Client which it will have interviewed and vetted.
 - iii. The Client, in consultation with the Company, will need to nominate the Candidate the Client wishes to have engaged on its behalf to provide the Services.
- b. Provision of Candidate
 - i. The Company will provide the Candidate on a monthly basis to the Client and the Candidate will undertake and provide the Services to the Client
 - ii. The provision of Services by the Candidate will be invoiced in accordance with the Supply Rate and/or Package Selected, as contained in Item 2 of the Schedule, and will depend upon the Services that have been selected and requested by the Client.
 - iii. The Client will not directly employ or pay any amount of money or any type of sponsorship to the Candidate, however, it is encouraged by the Company that the Client think of the Candidate as a member of their team and treat them as though they would any other of their Candidates, for example, including the Candidate in team meetings and considering the Candidate's Candidate Leave requests when undertaking annual planning.
 - iv. As part of their entitlements, the Client acknowledges and understands that the Candidate will be entitled to Candidate Leave, which shall be approved and not unreasonably withheld by the Client.
 - v. In the event that the Candidate takes Candidate Leave in excess to that which they may be entitled during a twelve (12) month period, the Company may supply, at no extra cost to the Client, an Alternate Candidate, to undertake and provide the Services to the Client for that time if requested.

- vi. The Client understands the Candidate will be available to provide the Services from 9:00am AEST to 5:00pm AEST, and is entitled to a 30 minute lunch break.
 - vii. In the event the Client requires the Candidate to provide the Services outside of the hours set under clause 5.b.vi., this may be arranged by TOS between the Client, Company and Candidate, provided, however, the hours per week do not exceed those provided for under the Services, if hours exceeded, then the extra rate is applicable.
- c. Training of Candidate
- i. The Client will, in consultation with the Company, identify the Services required, by reference to Item 3 and Item 4 of the Schedule.
 - ii. The Client acknowledges and understands that whilst an Candidate will have a base level of skill and knowledge to undertake the relevant Job Description, the training of the Candidate, to familiarize them with the Client's own industry-specific software and office or business practices and procedures, will be the Client's responsibility.
 - iii. The Client agrees to provide training and guidance to the Candidate to ensure that the Candidate is able to perform the tasks required to fulfil the Job Description.
 - iv. As part of any training, the Client understands that it will be required to provide any log-in codes and passwords for any software, social media, web pages or other accounts which are required to be accessed by the Candidate as part of their Services.
- d. Alternate Candidate
- i. The Company may assist with and encourages the training of an Alternate Candidate by the Client, at no additional cost to the Client.
 - ii. The purpose of the Alternate Candidate is to ensure somebody available to fulfil the Services in the unlikely event that the Candidate takes Candidate Leave in excess to that which they would be entitled in a twelve (12) month period.
 - iii. The Company will identify an Alternate Candidate it considers appropriate to provide the Services to the Client and will introduce that person to the Client and the Candidate.
 - iv. The Alternate Candidate will primarily be trained by the Candidate, however, the Client should be actively involved and assist with the training of the Alternate Candidate to ensure the Alternate Candidate is able to take over and perform the Services if ever required.
 - v. The Company also encourages the Client to get to know the Alternate Candidate, so they are familiar with each other and so the Alternate Candidate is aware of the Client's business processes and procedures.
- e. Quality Assurance and Vetting
- i. To ensure and maintain quality assurance, the Company will, at all times during the day, actively monitor the productivity and attendance of the Candidate, and can represent last 3 months record if requested.
 - ii. On a monthly basis, the Company will undertake internal reviews of the Candidate.
 - iii. Before any Candidate is engaged or presented as a possible candidate to the Client in accordance with clause 5.a., the Company ensures that the Candidate has been the subject of a background check.
 - iv. In the event the Client is not satisfied with the performance or quality of Services of the Candidate, the Client must advise the Company immediately in writing, providing a detailed outline of all issues encountered by the Client.

6. SUPPLY OF EQUIPMENT

- a. In the event the Client requires the Candidate to make and receive telephone calls on its behalf as part of the Services, the Client understands it is responsible for the cost of supplying a telephone line to the Candidate as per Item 5 in the Schedule. The telephone line will be established by the Company.
- b. Upon the basis the Client requires a telephone line to be provided to the Candidate, the Company will supply the telephone equipment or softphone software (as may be required, applicable or appropriate) in accordance with Item 6 of the Schedule.
- c. The cost of the telephone line will also include the Company integrating the Candidate's telephone equipment into the Client's telephone system. The Client understands that the integration of equipment will be undertaken to the best abilities of the Company, however, some functionality may be limited, depending upon the Client's telecommunication system.
- d. If the Client requires the Candidate to have any other specific equipment to fulfil the Services, such additional equipment must be outlined in Item 7 of the Schedule.

- e. The Company will source the additional equipment and issue an invoice to the Client for that additional equipment. Upon payment of that invoice, the Company will ensure the additional equipment is delivered to the Candidate.

7. FEES AND PAYMENTS

- a. Upon commencement of the TOS the Client will pay to the Company:
 - i. one month of Services in advance;
 - ii. any costs associated with the supply of equipment; and
 - iii. the Recruitment of Candidate Fee.
- b. The Company and Client agree that the Company will be paid for the duration of this TOS in accordance with:
 - i. the Supply Rate or Package Selected for the Services provided under the Schedule; and
 - ii. any equipment costs under the Schedule.
- c. The Client will pay the Recruitment of Candidate Fee when an Candidate has been chosen by the Client for the provision of Services (including additional Services commencing after the Commencement Date of this TOS).
- d. The Recruitment of Candidate Fee will not apply if the purpose of the recruitment is to replace an Candidate who has ceased their role with the Client within three (3) months of their commencement of providing Services with the Client. That is, if the Candidate ceases to provide Services to the Client, for any reason, within their first three (3) months, they will be replaced by the Company without charge.
- e. The Company will provide to the Client a fortnightly tax invoice for all Services provided under this TOS, one fortnight in advance. Or The company will charge direct debit on Client's account/credit card based on raised invoice after a fortnight.
- f. The Client will pay all tax invoices within seven (7) days of the date of the invoice.
- g. Where the Client objects to any aspect of a tax invoice issued by the Company, the Client must issue to the Company a notice detailing in full the basis for the objection and the proposed resolution of same.
- h. The Company and Client agree and understand that should the Candidate's wages or entitlements rise over time, then the Company and Client will negotiate an amended rate for the Services, to be evidenced in writing between them.
- i. The Client acknowledges and agrees that before engaging the Company, the Client has thoroughly searched its network and database.
- j. Where the Company passes on the details of a candidate already known to the Client, the Client must notify the Company immediately in writing and, in any event, up to 24 hours after the information was passed on to the Client. Please do so to avoid the Candidate being deemed to have been introduced by the Company to the Client.
- k. If the Client notifies the Company that the Candidate is already known to the Client, the Client must also demonstrate that the Client is actively considering the Candidate for the engagement. Otherwise, the Candidate will be deemed to have been introduced by the Company, in which case the usual fees under this agreement become payable.
- l. The client is deemed to have been actively considering a Candidate for engagement if the Client has had regular contact or communication with the Candidate in the three (3) month period immediately before the Company provides the Candidate's details to the Client.
- m. The Company has right to increase the cost of service from \$70-\$100 weekly rates or 6-10% extra on top of the agreed rate of the supplied candidate/s or according to inflation rate from 1st Jan of each calendar year.

8. RELATIONSHIP OF THE PARTIES

- a. The parties acknowledge that this TOS is intended as an TOS for the provision of services and not any other relationship. In particular, this is not the relationship of employer and Candidate, principal and agent or partnership.
- b. This TOS does not create a relationship of employment, agency or partnership between the Client and the Company, Third Party or Candidate.
- c. The Client warrants that it will not attempt to induce the Candidate to provide Services directly for them or provide any services other than those forming part of this TOS either during the operation of this TOS or at any time within 12 months after the Termination of this TOS.

9. NO LIABILITY

Notwithstanding any other provisions, the Company shall not be liable for any loss, expense, damage, delay or indirect loss (including loss of profits or other consequential loss) however caused arising from any failure to provide Candidate (s) or employees or the non-attendance of Candidate (s) or employees at any time or the negligence, misconduct or lack of skill of any Candidate introduced by the Company to the Client.

Candidate references are sought strictly at the Client's request. Criminal checks of Candidates are performed strictly at the Client's request, and the Client shall pay an additional fee if the Company is requested to perform a criminal check.

The Client accepts that the final recruitment decision rests with the Client, and it is the Client's sole responsibility to satisfy itself regarding the Candidate's suitability for a particular position or employment.

The Client accepts that a Candidate may provide untruthful information concerning him or herself, and there is no warranty by the Company as to the truth of any information supplied to the Client concerning the Candidate by the Candidate or by the Company. The Client shall be responsible for obtaining any work or any other necessary permits and ensuring that the Candidate can satisfy any medical requirements or holds the necessary other qualifications for the position.

10. TERMINATION AND VARIATION

a. This TOS can be terminated by either party for any reason whatsoever by way of thirty (30) days' notice in writing from one to the other. The parties acknowledge that this is an essential term if the Candidate has worked on the Client's assignment for more than three (3) months; if the client fails to give sufficient notice, the fees under this agreement will remain payable until the one (1) month notice period has lapsed.

b. If the Client ever falls one (1) month in arrears for the payment of Services, the Company may do any of the following:

i. Cease contact between the Candidate and the Client (including disabling any equipment including the telephone line);

ii. Terminate this TOS with immediate effect; or

iii. Charge interest on the arrears at a rate of 15% per annum until the full amount outstanding is repaid.

c. The Services to be provided under this TOS can be varied by the Client by way of thirty (30) days' notice in writing from it to the Company.

d. For clarity, this means that the Client may choose to reduce their Services under this TOS, and need not terminate the entire TOS in doing so.

e. The Company may unilaterally vary, change or amend any term of this TOS without notice or TOS of the Client.

f. The Schedule may only be changed, amended or varied by way of written TOS between both Parties.

g. The client may only vary, change or amend the terms of this TOS by way of written TOS between both Parties.

11. ASSIGNMENT

Neither Party to this TOS can assign, transfer or dispose of this TOS or their rights under this TOS without first obtaining the written consent of the other Party to this TOS.

12. CONFIDENTIALITY

a. The Parties shall during the currency of this TOS and thereafter, strictly maintain the confidentiality of any financial or other information in connection with the Parties and shall not disclose any such information to any third party save and except for as permitted under this TOS or in obtaining legal or financial advice from a Legal Practitioner or Accountant.

b. Nothing in this TOS shall prevent disclosure as required by law.

- c. Where necessary, the Company will implement Chinese Wall policies and procedures to restrict the flow of information. For clarity, this means the Client's confidential information will be strictly limited to the division/section/team assigned to the particular task and will not be shared with the Company as a whole.

13. STATUTORY OBLIGATIONS

- a. The Company undertakes and guarantees that it will comply with its statutory obligations in respect of the employment of the Candidate, including but not limited to compliance with:
 - i. Any applicable industrial awards and TOSs;
 - ii. Minimum terms and conditions of employment including those in respect of long service leave, annual leave, parental leave and sick leave;
 - iii. Applicable industrial relations and anti-discrimination legislation; and
 - iv. Occupational health and safety and workers compensation legislation.
- b. The Company will ensure to deliver the on-time salary, annual bonuses, paid sick and annual leaves to the Candidates.

14. Costs

Each Party shall bear their own legal and other costs, charges and expenses incurred in relation to the negotiation, preparation or execution of any additional documents to depute the Candidate to work with a client.

15. NOTICES

- a. Any Party wishing to give notice to another Party for any purpose under this TOS must do so in writing by:
 - i. Hand delivering or posting to the other Party's Address for Notices; or
 - ii. Sending to the facsimile number or email address of the other Party.
- b. A notice given in accordance with this TOS is taken to be received:
 - i. If hand delivered – on delivery;
 - ii. If sent by post – three (3) business days after the date of posting;
 - iii. If sent by facsimile – when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and
 - iv. If sent by email - immediately upon sending unless the sender receives a response generated by the recipient's mail system indicating the transmission was not successful.
- c. Notices given after 5:00pm will be treated as given on the next Business Day.

16. GOVERNING LAW

This TOS is governed by the law in force in Australia, NSW and the parties irrevocably consent and unconditionally submit to the non-exclusive jurisdiction of the courts of that state.

17. FORCE MAJEURE

The failure or delay in the performance of any obligation under this TOS by either Party will not be deemed to be a breach of this TOS if that failure or delay is due to Force Majeure.

18. EXECUTION BY ELECTRONIC EXECUTION

- a. The parties hereby agree and consent to the giving, sending and receiving of documents and information including, but not limited to, this TOS by electronic transmission pursuant to Section 11 and Section 12.

- b. The Parties hereby further agree that this TOS will be binding on the Client by it selecting the checkbox on the Coweso client registration form and submitting to the Company.

19. NON-SOLICITATION

If the Client, its related entity, or a third party to whom the Client or the related entity has introduced a Candidate seeks to employ, offer work or services, or sponsor the Candidate without the prior approval of the Company:

- a. The Client is taken to have been in material breach of this agreement, and the Company is entitled to terminate this agreement immediately; and
- b. If the Company elects not to terminate this agreement, then a placement fee (as the parties may agree separately or in advance) becomes immediately payable to the Company.

If the Client wishes to obtain the services of a Candidate within 12 months after the cessation of their work on the Client's assignment under these terms, the Client agrees to obtain the services of the Candidate only through the Company.