

BLAKE DAWSON WALDRON

L A W Y E R S

Subcontractor Agreement

Job Futures Ltd
ABN 13 080 037 538

trading as

Version 1.0
June 2006

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DATE

PARTIES

Job Futures Ltd ABN 13 080 037 538 ("**Job Futures**")

Outer East Employment Service (the "**Subcontractor**")

RECITALS

- A. Job Futures was established to provide a vehicle to support members in the winning of business through tenders, the provision of services and to build member capacity.
- B. Job Futures has entered into an agreement ("**the Principal Agreement**") with the Customer for the provision of employment related services.
- C. Job Futures is willing to engage the Subcontractor, subject to the terms and conditions set out below, as a subcontractor to perform services in connection with the Principal Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

- 1.1 In this Agreement, unless the contrary intention appears, any capitalised terms will have the meaning prescribed to them in the Principal Agreement, save for the following:

"**Agreement**" means this agreement for the provision of back-to-back services on a subcontractor basis.

"**Board**" means the board of directors of Job Futures.

"**Board Performance Management and Intervention Policy**" means the Job Futures' policy of that name provided to the Subcontractor in writing as amended from time to time.

"**Business Day**" means:

- (a) for determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day that is not a Saturday, Sunday or public holiday in Sydney.

"**Commencement Date**" means the date specified in item 3 of Schedules 1 to 8.

"**Confidential Information**" means information in any form or media, given by, or acquired from, a Party, directly or indirectly before or after the date of this Agreement, but excludes the Excluded Information. Confidential information includes information concerning:

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- (a) the past, present or future structure, business activities, strategies, plans, assets, financial affairs of a Party or its related bodies corporate;
 - (b) subcontractors and their financial affairs;
 - (c) the Customer, the Material and the Services; and
 - (d) the terms of this Agreement and any information relating to those terms.
 - (e) and also includes:
 - (f) any other information of a Party or a related body corporate that:
 - (i) is, by its nature, confidential; or
 - (ii) is marked or designated or confirmed by the Party as confidential or proprietary at the time of its disclosure.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Customer" means the party to the Principal Agreement specified in item 7 of Schedules 1 to 8.

"Dual Branding Policy" means the Job Futures Dual Branding Policy as determined by Job Futures from time to time.

"Excluded Information" means information that:

- (a) is in or enters the public domain other than through a breach of any obligation of confidence;
- (b) is or was lawfully received by a Party from another person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality; or
- (c) is or was developed by a Party without the Party relying on, referring to, or incorporating any of the other Party's Confidential Information.

"Fees" means the fees payable by Job Futures to the Subcontractor as specified in item 5 of Schedules 1 to 8 to this Agreement, inclusive of GST.

"Force Majeure Event" means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that Party, including forces of nature, industrial action and action or inaction by a government agency.

"Government Agency" means:

- (a) a government or government department or other body;

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- (b) a governmental, semi-governmental or judicial person; or
 - (c) a person (whether autonomous or not) who is charged with the administration of a law.

"GST" means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

"GST Law" means the same as "GST law" in *A New Tax System (Goods and Services Tax) Act 1999 Cth*.

"Incorporated Principal Agreement" means the Principal Agreement identified in the relevant Schedule as incorporated into this Agreement by clause 4.

"Infringement Claim" has the meaning set out in clause 15.5(a).

"Insolvency Event" means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

"Intellectual Property" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

"Job Futures Materials" means all materials provided by Job Futures to the Subcontractor from time to time associated with the Services which are to be performed by the Subcontractor pursuant to this Agreement including all documents, pamphlets, guidelines, Codes of Conduct, reporting and monitoring systems, media releases, newsletters and signage.

"Key Personnel" means the Subcontractor personnel possessing specific and relevant skills who are nominated by either party as personnel required to undertake work in relation to the performance of the Services.

"Loss" means any damage, loss, liability, cost, charge, expense, outgoing or payment (whether direct, indirect, consequential or incidental).

"Member" means an entity which is accepted for membership status by Job Futures and agrees to comply with all relevant membership obligations.

"Membership Policy" means the membership policy of the Board that is available on request from Job Futures as amended from time to time.

"Moral Rights" means the rights conferred by Part IX of the *Copyright Act 1968* (Cth).

"National Training Program" means a national training program provided by Job Futures to a Subcontractor, the costs of which are to be paid by the Subcontractor or as otherwise agreed between the Parties.

"New Materials" means all materials created by, or on behalf of, the Subcontractor for the purpose of the Subcontractor performing the Services.

"Party" means either Job Futures or the Subcontractor as the context dictates.

"Payment Terms" means the payment terms set out in Item 14 of Schedules 1 to 8.

"Performance Improvement, Quality Assurance and Evaluation Activities" means performance improvement, quality assurance and evaluation activities, including but not limited to:

- (a) the provision of client information to Job Futures so that Job Futures can directly survey or interview clients;
- (b) site visits by Job Futures or any of its representatives;
- (c) site audits by Job Futures or any of its representatives;
- (d) the creation and implementation of performance improvement strategies; and
- (e) training and development activities.

"Principal Agreement" means the agreement between Job Futures and the Customer, further particulars of which are set out in item 6 of Schedules 1 to 8 to this Agreement and includes the annexures, any specific conditions to the Principal Agreement, any schedules to any specific conditions and any documents incorporated into any of these documents.

"Region" means the region specified in item 2 of Schedules 1 to 8 to the Agreements.

"Schedule" means a schedule to this Agreement.

"Services" means the services or activities to be provided by the Subcontractor to Job Futures as specified in item 1 of Schedules 1 to 8 to this Agreement.

"Service Plan" means the Job Futures Service Delivery Plan revised and implemented as deemed necessary by Job Futures.

"Site" means a site at which the Subcontractor will perform any of the Services as specified in item 2 of Schedules 1 to 8 to this Agreement.

"Site Audit Policy" means the Job Futures Site Audit Policy as determined by Job Futures from time to time.

"Subcontractor" means the Subcontractor to Job Futures and includes its officers, employees, agents and subcontractors.

"Term" means the period specified in item 4 of Schedules 1 to 8 of this Agreement.

"Trade Marks" means the Job Futures trade marks specified in Schedule 9 to this Agreement.

1.2 The following rules apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word is defined, another part of speech has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.

(g) The words **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.

(h) The recitals to this Agreement do not form part of the Agreement.

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- (i) Headings are for convenience only, and do not affect interpretation.
- 1.3 If the day on or by which a person must do something under this document is not a Business Day:
- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
 - (b) in any other case, the person must do it on or by the previous Business Day.

2. **TERM**

- (a) This Agreement commences in respect of each Schedule on the Commencement Date and continues only for the Term in respect of that Schedule unless terminated in accordance with clause 7.
- (b) To avoid doubt the parties intend that this Agreement can have a different Term in respect of each Schedule.

3. **SERVICES**

- 3.1 The Subcontractor agrees to provide the Services within the Region from the Sites on the terms of this Agreement.

4. **BACK-TO-BACK PROVISIONS**

- 4.1 All the provisions of a Principal Agreement will have back-to-back application to this Agreement in relation to the Services to which that Principal Agreement applies.
- 4.2 For the purposes of clause 4.1, "back-to-back application" means that:
- (a) the obligations of Job Futures and the rights and remedies of the Customer under the Principal Agreement, including any amendments or variations to them as notified to the Subcontractor from time to time, will be deemed incorporated into this Agreement as if:
 - (i) the obligations of Job Futures under the Principal Agreement were obligations of the Subcontractor under this Agreement; and
 - (ii) the rights and remedies of the Customer under the Principal Agreement were rights and remedies of Job Futures under this Agreement;
 - (b) the provisions of the Principal Agreement, as incorporated into this Agreement:
 - (i) are in addition to the provisions set out in this Agreement; and
 - (ii) will be interpreted in the context in which they are used in the Principal Agreement;
 - (c) to the extent that interpretation of the provisions of the Principal Agreement necessitates in turn a reference to the definitions or interpretative provisions of the

Principal Agreement, the provisions of the Principal Agreement will be interpreted accordingly;

- (d) to the extent of any inconsistency between the provisions of the Principal Agreement and any other clause of this Agreement, the provisions of the Principal Agreement will prevail but wherever possible, the provisions of the Incorporated Principal Agreement and the clauses of this Agreement will have cumulative effect and will be so interpreted;
- (e) to avoid doubt:
 - (i) where Job Futures must meet any relevant date or deadline under the Principal Agreement, Job Futures agrees to use its best endeavours to provide reasonable notice to the Subcontractor but the Subcontractor must meet that deadline or date, whether or not the Subcontractor received any relevant period of notice specified under the Principal Agreement;
 - (ii) if any right of suspension or termination is exercised by the Customer against Job Futures under the Principal Agreement with effect from a particular date, Job Futures may exercise that right against the Subcontractor with effect from that date;
 - (iii) if any payment or refund must be made by Job Futures to the Customer under the Principal Agreement, the Subcontractor must make that payment or refund to Job Futures not less than 2 Business Days before the due date under the Principal Agreement, together with any interest or other amount payable;
 - (iv) the parties acknowledge and agree that the effect of subparagraphs (i) to (iii) is that the Subcontractor may receive a lesser period of notice than is specified under the Principal Agreement. Job Futures agrees to use all reasonable endeavours to provide the Subcontractor with any relevant notice as soon as possible after receiving such notice under the Principal Agreement;
 - (v) the non-exercise of any right by the Customer under the Principal Agreement does not limit Job Futures' rights under this Agreement; and
 - (vi) the same or a similar provision in both the Incorporated Principal Agreement and this Agreement does not limit Job Futures' right to rely on or exercise any right under either provision at Job Futures' option.

5. SUBCONTRACTOR'S SKILLS AND PERFORMANCE OF THE SERVICES

5.1 The Subcontractor must:

- (a) engage and employ sufficient resources with relevant skills and experience for the duration of this Agreement to ensure that the Services are conducted in accordance with the terms of this Agreement;

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- (b) for the purposes of performing the Services, recruit and train employees (and any other persons carrying out the Services) and allocate resources, in accordance with Job Futures' policies, including any reasonable written directions of Job Futures as specified by Job Futures from time to time;
 - (c) ensure that all employees and other persons carrying out the Services:
 - (i) perform the Services in accordance with any Job Futures' policies, service guides, manuals, service delivery models and other data, documentation or material provided by Job Futures, including any reasonable written directions of Job Futures and relevant government or Job Futures' codes of conduct;
 - (ii) participate in any training or development programs specified by Job Futures from time to time;
 - (iii) regularly participate in meetings, forums or conferences relevant to the Services which are arranged by Job Futures and reasonably notified to the Subcontractor, unless otherwise agreed by Job Futures; and
 - (iv) support and participate in the Performance Improvement, Quality Assurance and Evaluation Activities;
 - (d) provide Job Futures with information regarding the skills and experience of employees and other persons providing the Services on request;
 - (e) advise Job Futures of any changes to Key Personnel within 10 days of any such changes; and
 - (f) maintain all necessary clearances and permits for all employees or contractors (if any) carrying out the performance of the Services.

6. PERFORMANCE AND COMPLIANCE

- 6.1 The Subcontractor must meet or exceed all performance standards, benchmarks, targets and related obligations set out in the Incorporated Principal Agreement or as determined and advised by the Job Futures Board from time to time.
- 6.2 The Subcontractor must meet or exceed all compliance standards, benchmarks, targets and related obligations set out in the Incorporated Principal Agreement or as reasonably determined and advised by the Job Futures Board from time to time.
- 6.3 Without prejudice to any other rights which Job Futures may have under this Agreement or at law, Job Futures may do anything contemplated in clause 7 if:
 - (a) the Subcontractor breaches clause 6.1 or 6.2; or
 - (b) fails to maintain all required insurances; or
 - (c) the Subcontractor is subject to an Insolvency Event or in Job Futures reasonable opinion is likely to be subject to an Insolvency Event; or

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- (d) in Job Futures' reasonable opinion, the Subcontractor undergoes a material change in objectives and in particular if a member ceases to be a not-for-profit organisation; or
 - (e) the Subcontractor relocates Sites without the prior approval of Job Futures; or
 - (f) the Subcontractor substantially breaches any relevant Customer code of conduct causing the reputation of Job Futures to be placed at risk with the Customer; or
 - (g) the Subcontractor fails to:
 - (i) provide to Job Futures audited annual financial statements within five months of the end of the financial year of the organisation concerned, or such other period as Job Futures agrees; or
 - (ii) respond, to the satisfaction of Job Futures, to performance management and intervention actions taken by Job Futures in accordance with Job Futures' Board policy; or
 - (iii) provide an adequate performance improvement plan to the reasonable satisfaction of Job Futures as and when required by the Job Futures Board; or
 - (iv) ensure that all staff participating or involved in the provision of the Services participate in any National Training Programs as and when required by Job Futures; or
 - (v) establish a new Site (where required to do so under this Agreement) within one month from the Commencement Date or such other time as Job Futures agrees; or
 - (vi) provide full and open access to Job Futures authorised personnel to all Sites, employees and to documents of any kind associated with the delivery of this Agreement; or
 - (vii) comply with service guides, manuals, service delivery models and other data, documentation or material provided by Job Futures which is associated with the delivery of the Services; or
 - (viii) implement Job Futures' Dual Branding Policy; or
 - (ix) provide Job Futures information in the form specified about the skills of staff involved in delivering the Services or notify Job Futures of any changes to Key Personnel; or
 - (x) support and participate in Job Futures Performance Improvement, Quality Assurance and Evaluation Activities; or
 - (xi) regularly participate in meetings, forums or conferences relevant to the Services which are arranged by Job Futures and reasonably notified to the

Subcontractor, where the Subcontractor has not reasonable excuse for not attending or being represented; or

- (h) the Subcontractor is in breach of any other term of this Agreement (including any term of the Incorporated Principal Agreement),

within 10 Business Days of written notice by Job Futures to do so (with the exception of clause 6.3(c) which does not require prior notice).

7. REMEDIAL ACTION AND TERMINATION

- 7.1 If an event in clause 6.3 occurs, Job Futures may in its absolute discretion (but in accordance with the Board Performance Management and Intervention Policy):

- (a) withhold, until the event is rectified to the satisfaction of Job Futures, the payment to the Subcontractor of up to 5% of any Fees for Services due to the Subcontractor;
- (b) recover from the Subcontractor all costs associated with ascertaining the rectification of any matter referred to in clause 6.3;
- (c) reallocate some or all of the Services to another Subcontractor or to itself; or
- (d) subject always to the resolution of the Job Futures Board, immediately upon notice in writing to the Subcontractor, terminate this Agreement in whole or in respect of one or more Schedules.

Nothing in this clause 7 limits Job Futures' right to seek damages or other remedies for breach of this Agreement.

- 7.2 If notice is given to the Subcontractor to terminate this Agreement pursuant to clause 7.1(d), Job Futures may, in addition to terminating the Agreement either in whole or in respect of one or more Schedules:

- (a) recover any sums paid to the Subcontractor on any account or for Services which have not been fulfilled or performed together with interest on such sums calculated from the date those sums were paid until the date of refund;
- (b) recover from the Subcontractor the amount of any loss or damage sustained as a result of the termination;
- (c) be regarded as discharged from any further obligations under this Agreement; and
- (d) pursue any additional or alternative remedies provided by law.

- 7.3 This Agreement will terminate in respect of the relevant Schedule in the event of termination for any reason of the Principal Agreement on the same day as termination of the Principal Agreement and if the termination of the Principal Agreement is due to:

- (a) an act or omission of the Subcontractor, the provisions of clause 7.2 will apply; and

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- (b) any other cause, this Agreement will terminate in respect of the relevant Schedule without further liability on the part of either Party and, without limiting the foregoing, the obligations of Job Futures to the Subcontractor will be limited to the payment of any amount due for work performed to the date of termination.

7.4 Upon termination of this Agreement or a Schedule for any reason then in respect of the terminated Services:

- (a) the Subcontractor must return within 7 days all Job Futures' property, including all data, documentation, Job Futures Material, Intellectual Property, Confidential Information belonging to Job Futures and all records retained by the Subcontractor pursuant to this Agreement (together "**Job Futures Property**");
- (b) the Subcontractor will provide all reasonable assistance which Job Futures considers necessary to enable the transfer of Job Futures' Property to Job Futures or to a third party nominated by Job Futures, at no additional charge to Job Futures or the third party;
- (c) the Subcontractor must immediately cease using any of the Job Futures Property; and
- (d) the Subcontractor will provide all assistance to Job Futures which Job Futures considers necessary to ensure the orderly transfer of the Services provided pursuant to this Agreement to another subcontractor or Job Futures, at no additional charge to Job Futures.

7.5 To avoid doubt, Job Futures may in its discretion take any of the actions specified in clause 7.1 or otherwise exercise any right of termination in respect of:

- (a) one or more Schedules of this Agreement only; or
- (b) this Agreement in its entirety, whether or not the matter or right of termination arose in respect of one or more Services.

8. **SITE**

8.1 If the Subcontractor is establishing a new Site for the delivery of Services under this Agreement, it must establish the Site within one month from the Commencement Date or such other time as agreed by Job Futures.

8.2 The Subcontractor must not relocate the Site without first obtaining Job Futures' prior written consent, which will not be unreasonably withheld subject to the approval of the Customer.

9. **LAWFUL DIRECTIONS**

In the discharge of its duties, the Subcontractor will:

- (a) comply with all resolutions, regulations and directions of Job Futures as may be given from time to time as to the nature and scope of the Services to be provided, including any reasonable direction relating to the allocation of the Subcontractor's

employees and other resources, or the level of competency of the Subcontractor's employees, relevant to its performance of the Services;

- (b) subject to paragraph (a) and subject also to any other obligations arising out of this Agreement, comply with all reasonable and lawful directions of the Customer in matters relating to personal conduct, security and use of the Customer's facilities.

10. MEMBERSHIP

10.1 Subject to clause 10.4, the Subcontractor must comply with the Membership Policy, including without limitation, the requirement that all organisations delivering business through Job Futures must be, and remain for the Term, a full member of Job Futures.

10.2 Subject to clause 10.4, if the Subcontractor is not a full member of Job Futures at the Commencement Date:

- (a) the Subcontractor must submit an application for full membership within 14 days of the Commencement Date; and
- (b) if approved by the Board, the Subcontractor must pay any applicable membership fee by the date specified by the Board.

10.3 Subject to clause 10.4, if the Subcontractor:

- (a) is not a full member of Job Futures at the Commencement Date and:
 - (i) does not comply with the requirements of clause 10.2; or
 - (ii) the Board does not otherwise approve its application for full membership;
or
- (b) is a full member at any time and ceases to be a full member of Job Futures,

Job Futures may immediately terminate this Agreement.

10.4 The Board may resolve that certain non-members may provide Services on any conditions the Board decides.

11. SUBCONTRACTOR'S STATUS

11.1 The Subcontractor acknowledges and agrees that it is an independent contractor without authority to bind Job Futures by contract or otherwise and neither the Subcontractor nor the Subcontractor's personnel are agents or employees of Job Futures by virtue of this Agreement.

11.2 The Subcontractor acknowledges that it has sole responsibility in relation to payment, if any, of superannuation, workers' compensation and taxes incidental to employment in respect of its own personnel. The Subcontractor further acknowledges that neither it nor its personnel have, pursuant to this Agreement, any entitlement from Job Futures in relation to any form of employment or related benefit.

12. FEES

- 12.1 Subject to the Subcontractors compliance with its obligations under this Agreement, Job Futures will pay the Subcontractor the Fees in accordance with the Payment Terms.
- 12.2 Except to the extent otherwise provided in this Agreement, the Fees will be the total fees payable by Job Futures. Without limiting the foregoing, no additional fees will be made on account of new or existing or increased government levies, charges or fees applicable to this Agreement.
- 12.3 Where Fees paid to the Subcontractor are later recovered by the Customer, 100% of the recovered Fee will be payable by the Subcontractor to Job Futures two Business Days before the date that those Fees become payable to the Customer.

13. PAYMENT

- 13.1 Payment of any Fees will not be due until:
- (a) the Customer has paid the fees under the relevant Principal Agreement to Job Futures; and
 - (b) either:
 - (i) Job Futures issues a copy of a payment advice note in the form of a correctly rendered Recipient Created Tax Invoice ("RCTI") to the Subcontractor in accordance with clause 14.5; or
 - (ii) Job Futures receives a copy of a correctly rendered tax invoice in accordance with clause 14.3.
- 13.2 To avoid doubt, Job Futures may issue an RCTI under clause 13.1(a) and make the relevant payment simultaneously.

14. GST

- 14.1 Unless the context requires otherwise and except for "GST", words defined in the GST Law have the same meaning in this clause.
- 14.2 The Fees or other consideration for any supply by the Subcontractor to Job Futures under or in connection with this Agreement includes any GST payable on that supply, and the Subcontractor (and not Job Futures) is responsible for payment of that GST.
- 14.3 Subject to subclause 9.5, the Subcontractor must, within twenty-eight (28) days of request from Job Futures, issue a tax invoice (or an adjustment note) to Job Futures for any supply by the Subcontractor for which GST is payable under or in connection with this Agreement.
- 14.4 Subject to subclause 9.5, the Subcontractor will promptly create an adjustment note for (and apply to the Commissioner of Taxation for) a refund, and refund to Job Futures, any over payment by Job Futures for GST.

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- 14.5 Job Futures may issue a RCTI for any supply by the Subcontractor for which GST is payable under or in connection with this Agreement. Job Futures will issue the RCTI within 28 days of determining the value of the supply to which the RCTI relates. Job Futures must issue any adjustment notes relating to any supply to which the RCTI relates within 28 days of the date of adjustment. Where Job Futures issues an RCTI, the Subcontractor must not issue a tax invoice (or an adjustment note) for the supply to which the RCTI relates.
- 14.6 Each Party acknowledges that it is registered for GST purposes at the date of this Agreement. If a Party ceases to be registered or ceases to satisfy the requirements for the issue of RCTIs, it will notify the other Party within 14 days of it ceasing to be registered, or ceasing to satisfy the requirements for the issue of RCTIs, as applicable.
- 14.7 A Party's obligation to reimburse another Party for an amount paid or payable to a third party (eg. a Party's obligation to pay another Party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the Party being reimbursed is entitled to claim an input tax credit for that GST.

15. INTELLECTUAL PROPERTY

15.1 Job Futures Material

The Subcontractor acknowledges and agrees that as between it and Job Futures, Job Futures owns all right, title and interest, including all Intellectual Property rights in Job Futures Material.

15.2 New Material

- (a) Where required by the Principal Agreement, all right, title and interest, including all Intellectual Property rights throughout the world, in all New Material immediately vests in the Customer on its creation.
- (b) The Subcontractor agrees to provide copies of New Material to Job Futures as and when requested by Job Futures.

15.3 Licence

- (a) Subject to this clause 15.3, Job Futures grants to the Subcontractor a non-exclusive, non-transferable, revocable, royalty-free licence to use, reproduce, adapt and communicate to the public the Intellectual Property in the Job Futures Material and the New Material for the Term for the sole purpose of providing the Services and on the terms of this Agreement.
- (b) The Subcontractor must comply with any instruction or guidelines provided to the Subcontractor by Job Futures from time to time in relation to the use of the Job Futures Material.
- (c) The licence granted to the Subcontractor in clause 15.3(a) is revocable on Job Futures providing notice on the terms set out in Schedules 1 to 8 and expires on the expiry or termination of this Agreement.

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- (d) The Subcontractor must not sub-license any right or interest granted to it under clause 15.3(a), without the prior written consent of Job Futures which may be withheld at its absolute discretion.

15.4 **Branding**

The Subcontractor must implement and comply with the Dual Branding Policy for the duration of the Term.

15.5 **Intellectual Property Indemnity**

- (a) The Subcontractor will fully indemnify Job Futures against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against Job Futures alleging that the New Materials infringe the Intellectual Property of a third party (**Infringement Claim**).
- (b) The indemnity referred to in clause 15.5(a) will be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- (c) Job Futures agrees to notify the Subcontractor as soon as practicable of any suspected or alleged Infringement Claim.
- (d) Without prejudice to Job Futures' right to defend an Infringement Claim, the Subcontractor will, if requested by Job Futures but at the Subcontractor's expense, conduct the defence of the Infringement Claim. The Subcontractor will observe Job Futures' directions relating in any way to that defence or to negotiations for settlement of the claim.
- (e) Job Futures will, if requested by the Subcontractor but at the Subcontractor's expense, provide the Subcontractor with reasonable assistance in conducting the defence of an Infringement Claim. The Subcontractor will reimburse Job Futures for all verified expenses incurred pursuant to this clause within ten (10) Business Days of receipt of Job Futures' written demand.

16. **SITE AUDIT**

- 16.1 The Subcontractor, in accordance with Job Futures' Site Audit Policy, will permit Job Futures' authorised personnel access to the Site, the Subcontractor's personnel and records including books, documents, equipment and other property relevant to the performance of the Services. Such access is for the sole purpose of enabling Job Futures to verify that the Subcontractor is complying with its obligations under this Agreement.
- 16.2 The Subcontractor agrees to provide reasonable assistance to the Job Futures' authorised personnel to ensure that the audit is conducted in a professional, timely and efficient manner.
- 16.3 Job Futures agrees to ensure that the authorised personnel agree to be bound by confidentiality obligations no less onerous than those set out in this Agreement.

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- 16.4 Job Futures will arrange its relevant authorised personnel to provide a copy of the audit report, along with any recommendations, as soon as reasonably practicable after the completion of the audit. Job Futures agrees to provide a copy of the report to the Subcontractor. Without limiting any right or remedy of Job Futures under this Agreement, the Subcontractor will undertake, at its cost, all necessary acts to ensure the recommendations set out in the report are promptly implemented.
- 16.5 The costs of conducting the audit will be met by Job Futures unless in Job Futures' reasonable opinion the Subcontractor has failed to implement previous audit recommendations or otherwise comply with any of its obligations relating to Performance Improvement, Quality Assurance and Evaluation Activities, in which case the Subcontractor must pay the costs of the audit as advised by Job Futures.

17. CONFIDENTIALITY

- 17.1 A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 17.2 A Party will not be in breach of subclause 1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 17.3 Each Party will take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.
- 17.4 The Subcontractor may at any time require Job Futures to arrange for its employees, agents or subcontractors engaged in the performance of this Agreement to execute a suitable confidentiality deed. Job Futures will arrange for all such deeds to be executed within the timeframe reasonably proposed by the Subcontractor.
- 17.5 Job Futures will on demand return to the Subcontractor any documents supplied by the Subcontractor to the Principal in connection with this Agreement.
- 17.6 Notwithstanding any other provision of this clause, the Subcontractor may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants.
- 17.7 In addition to any other obligation arising under this clause, the Parties agree to comply with the special confidentiality provisions (if any) set out in Schedules 1 to 8.
- 17.8 Job Futures may disclose the Subcontractor's Confidential Information to the Customer in accordance with the Principal Agreement.
- 17.9 This clause will survive the termination of this Agreement.

18. REPRESENTATIONS AND WARRANTIES

18.1 Mutual representations and warranties

- (a) Each Party represents and warrants that:
 - (i) it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
 - (ii) its entry into this agreement does not breach any existing agreement or arrangement between it and any other person or infringe the rights of a third party.

18.2 Subcontractor's representations and warranties

- (a) The Subcontractor represents and warrants on each day of any Term that:
 - (i) it will provide the Services with the high level of care, skill, knowledge, experience and ability which should be expected of an organisation providing services of the type of the Services;
 - (ii) it will provide all Services in accordance with:
 - (A) the terms of this Agreement, including without limitation, any provisions all the Principal Agreement that are incorporated into this Agreement; and
 - (B) all relevant laws, regulations, standards and codes of conduct;
 - (iii) in relation to any New Material produced under this Agreement:
 - (A) the New Material complies with all relevant laws, regulations, standards and codes of conduct; and
 - (B) the New Material will not infringe the rights (including, without limitation, the Intellectual Property rights) of any person and the Subcontractor has obtained valid written consents from all authors (including any approved subcontractors) involved in creating the New Material so that any use by Job Futures of the New Material as contemplated by this Agreement will not infringe any author's Moral Rights;
 - (iv) neither it nor any of its employees, agents, contractors or related bodies corporate, will engage in any conduct or activity that:
 - (A) in Job Futures' reasonable opinion may harm, or may be likely to harm, the name, reputation or goodwill of Job Futures or the Customer; or
 - (B) is otherwise offensive, illegal, corrupt or disreputable; and

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- (v) it is not and is not likely to be subject to an Insolvency Event.

19. **INSURANCE**

- 19.1 The Subcontractor must, to the extent specified in Schedules 1 to 8, be insured in respect of potential liability, loss or damage arising at common law or under any statute in respect of claims for property damage, personal injury, public liability and professional indemnity relevant to the performance of its obligations under to this Agreement.
- 19.2 The Subcontractor must provide to Job Futures on demand certificates of currency, and any other evidence demanded, for the insurance effected and maintained in accordance with this clause.

20. **LIABILITY AND INDEMNITY**

- 20.1 Subject to subclause 2, the Subcontractor will release and indemnify Job Futures, its employees, servants and agents (**Indemnified Persons**) against all Losses which may be suffered or incurred by the Indemnified Persons arising out of or referable to:
- (a) any breach of this Agreement by the Subcontractor;
 - (b) any negligent act or omission of the Subcontractor, its agents, employees or subcontractors or of any other person for whose acts or omissions the Subcontractor is vicariously liable (**Subcontractor Representatives**);
 - (c) any workers' compensation claim made against an Indemnified Person in relation to any personnel employed or contracted by the Subcontractor to perform work in relation to this Agreement; or
 - (d) any injury to, or death of, a natural person and any loss of, or damage to, real or personal property of an Indemnified Person or a third party, caused or contributed to by the Subcontractor or the Supplier's Representatives,
- except to the extent that the Loss is directly attributable to the negligence or wrongful act or omission of the Indemnified Person.

- 20.2 The liability of the Subcontractor (including liability under an indemnity) in respect of an act or omission by the Subcontractor in the course of performing its obligations under this Agreement will be subject to the limitation on liability (if any) specified in Schedules 1 to 8.

21. **SUB-CONTRACTS**

- 21.1 The Subcontractor must not sub-contract or otherwise arrange for another person to perform any of its obligations under this Agreement without the prior written consent of Job Futures which may be withheld at its absolute discretion.

21.2 If Job Futures consents to the Subcontractor subcontracting any part of its obligations under this Agreement, the Subcontractor:

- (a) remains fully responsible for the performance of all work in accordance with this Agreement as if
 - (iii) all acts of, including all work by, its subcontractors; and
 - (iv) all omissions including any failure to perform work, of its subcontractors, were acts and omissions of the Subcontractor itself;
- (c) must ensure that the terms of any sub-licence granted:
 - (i) are consistent with the terms of this Agreement and contain obligations on the subcontractor as least as onerous as those imposed on the Subcontractor under this Agreement; and
 - (ii) terminates immediately upon termination of this Agreement; and
- (d) provide to Job Futures a complete copy of any executed sub-licence agreement within 21 days of its execution.

21.3 On request by Job Futures, the Subcontractor must enforce the terms of any sub-licence.

22. CONFLICT OF INTEREST

22.1 The Subcontractor warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

22.2 The Subcontractor will not, during the course of this Agreement, engage in any activity likely to compromise the ability of the Subcontractor to perform its obligations under this Agreement fairly and independently. The Subcontractor will immediately disclose to Job Futures any activity which constitutes or may constitute a conflict of interest.

22.3 Job Futures acquires the Services from the Subcontractor on condition that the Subcontractor does not, during the term of the Agreement, supply, offer to supply or tender to supply Services of a type being supplied by the Subcontractor to Job Futures pursuant to this Agreement as set out in Schedules 1 to 8 on its own individual account or through a related body corporate to:

- (a) the Customer; or
- (b) another supplier of such services to the Customer.

23. ENTIRE AGREEMENT

This document contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

24. SPECIAL CONDITIONS

Each party must comply with any Special Conditions imposed on it as set out in Schedules 1 to 8.

25. PRECEDENCE

25.1 The documents comprising this Agreement will be read in the following order of precedence:

- (a) the provisions of the Principal Agreement which have been incorporated into this Agreement;
- (b) the remaining clauses of this Agreement; and
- (c) the Schedules.

25.2 Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence will where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

26. ASSIGNMENT AND NOVATION

26.1 The benefit of this Agreement will not be assigned by the Subcontractor without the written consent of Job Futures.

26.2 Job Futures may consent to the assignment or novation of this Agreement subject to such conditions as it chooses to impose.

27. WAIVER

A right may only be waived in writing, signed by the Party giving the waiver, and:

- (a) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

28. VARIATION

The Subcontractor acknowledges and agrees that Job Futures may vary the Services and other relevant terms of this Agreement by written notice to the Subcontractor, to the extent that the Customer varies, amends, adds to or modifies the Principal Agreement.

29. DISPUTE RESOLUTION

29.1 Without limiting Job Futures' rights and remedies under this Agreement, if a dispute arises out of or relates to this Agreement or its subject matter, the Parties shall settle the dispute in accordance with this clause. To avoid doubt, this clause:

- (a) does not entitle either party to any order or direction requiring the other party to exercise or not exercise a right under this Agreement or to take or not take any action in relation to that right; and
- (b) does not limit or affect the exercise of any right under clause 7.

29.2 Where a dispute arises under the Principal Agreement, the parties agree to be bound by the dispute resolution provisions of the Principal Agreement.

29.3 In any other case, and subject to clause 29.4 the dispute resolution procedure is as follows:

- (a) a party claiming that a dispute has arisen must give written notice to the other party identifying the dispute;
- (b) within seven days of delivery of the notice the Parties must attempt in good faith to settle the dispute;
- (c) if the dispute is not resolved within the seven days or such further period as the Parties agree then the dispute may be referred by either Party for mediation to the Australian Commercial Disputes Centre (ACDC) or such other person as the Parties may agree;
- (d) the mediation shall be conducted in accordance with the relevant guidelines of the person to whom the dispute is referred;
- (e) if the dispute has not been settled within twenty-eight (28) days after referral for mediation, either Party may by notice of referral require that the dispute be resolved by arbitration;
- (f) any referral of a dispute to arbitration shall be by notice from one Party to the other and the following provisions shall apply to the arbitration:
 - (i) subject to this sub-clause the arbitration shall be governed by the Commercial Arbitration Act, 1984;
 - (ii) the date of referral shall be the date on which the notice of referral is received by the respondent party;
 - (iii) the notice of referral shall set out sufficient information to enable the respondent to identify the issues in dispute;
 - (iv) if the parties cannot agree on the choice of an arbitrator within three business days after the date of referral then the referring Party shall if the dispute is substantially in relation to accounts or financial matters, require the then President of the New South Wales Branch of the Institute of

Chartered Accountants in Australia, and otherwise requires the then President of the Law Society of New South Wales, to appoint an arbitrator and the person so appointed shall be the arbitrator;

- (v) any question that arises for determination in the course of the arbitration shall be determined according to law, however the arbitrator may at his/her discretion determine any such question as a conciliator or on the basis of equity and good conscience;
 - (vi) the arbitrator shall give written reasons for the award which he/she makes and for any interim or other findings which he/she hands down;
 - (g) the arbitrator shall not be the same person as the mediator unless both Parties agree in writing within two business days after the date of referral to arbitration.
- 29.4 If the dispute procedure in clause 29.3 is triggered, and a dispute about the same subject matter is subsequently notified under the Principal Agreement, the parties agree to follow the dispute resolution procedures of the Principal Agreement from the date of that notification.
- 29.5 Nothing in this clause prevents either Party from seeking urgent interlocutory relief.

30. CO-OPERATION WITH JOB FUTURES

- 30.1 The Subcontractor will sign all documents and do all things necessary or desirable to give effect to this Agreement and will procure its officers, employees and agents to declare, make or sign all documents and do all things necessary or desirable to give full effect to this Agreement.
- 30.2 In addition to and notwithstanding any other obligation under this Agreement, the Subcontractor will:
- (a) to the extent practical, co-operate with Job Futures in the pursuit of Job Futures' business objectives, and the observance of Job Futures' ethics, as stated in Job Futures' code of conduct and strategic plans, as specified from time to time;
 - (b) pursue best practice in the delivery of Services pursuant to this Agreement;
 - (c) adhere to the Job Futures Code of Conduct; and
 - (d) as soon as practicable, consult with Job Futures on any matter arising which may materially affect the performance by the Subcontractor of its obligations under this Agreement.
- 30.3 Except to the extent stated to the contrary in this Agreement, any consent, approval, condition or thing required to be done pursuant to this Agreement ("**Consent**") will not be capriciously or unreasonably reached, withheld, given or carried out by either Party.
- 30.4 The Subcontractor acknowledges and agrees that to the extent that any Consent of Job Futures is exercised or withheld as a result of the Customer exercising or withholding its

Consent, Job Future will not be considered for the purposes of this Agreement to have reached or withheld the Consent capriciously or unreasonably.

31. JOB FUTURES' RIGHTS

Any express statement of a right of Job Futures under this Agreement is without prejudice to any other right of Job Futures expressly stated in this Agreement or arising at law.

32. SURVIVAL OF AGREEMENT

32.1 Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.

32.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement will remain in full force and effect following the expiration of the Agreement.

33. SEVERABILITY AND OPERATION

This Agreement and each of its provisions operates only to the extent permitted by law. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, whether generally or in its operation in particular circumstances, this Agreement will remain otherwise in full force apart from such provision which will be deemed deleted.

34. OPERATION OF INDEMNITIES

34.1 Each indemnity in this Agreement survives the expiry or termination of this Agreement.

34.2 A Party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

35. GOVERNING LAW

35.1 This document is governed by the law in force in New South Wales.

35.2 Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

36. SET-OFF

Job Futures may set-off against and deduct from any payment due by Job Futures to the Subcontractor any amount owing by the Subcontractor to Job Futures under this Agreement.

37. NOTICES

37.1 A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent in electronic form (such as email).

37.2 A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail:
 - (i) within Australia – three (3) Business Days after posting; or
 - (ii) to or from a place outside Australia – five (5) Business Days after posting; and
- (c) if it is sent by email:
 - (i) upon completion of transmission; and
 - (ii) receipt of confirmation of delivery to the recipient.

37.3 A person's postal and email address and fax number are those set out in Schedules 1 to 8 or as the person notifies the sender.

38. GENERAL

38.1 In providing the Services the Subcontractor must comply with the provision of any legislative and other requirements of the Customer, and the relevant State or Territory or local government applicable to any place at which the Services are provided.

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- 38.2 This Agreement may be executed in counterparts by the respective Parties, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement, provided that this Agreement will be of no force and effect until the counterparts are exchanged.
- 38.3 Each Party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.
- 38.4 Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Agreement.

EXECUTED as an agreement.

EXECUTED by **JOB FUTURES LTD:**

Signature of Chief Executive Officer

Signature of witness

Name

Name

EXECUTED for and on behalf of **Member** by its duly authorised representative:

Signature of Authorised Representative

Signature of witness

Name

Name