

# Exclusive Recruitment Services Agreement



THE UNIVERSITY OF  
MELBOURNE

**Date**

**Parties**

**The University of Melbourne** ABN 84 002 705 224 of Parkville, Victoria 3010, a body politic and corporate pursuant to the provisions of the *University of Melbourne Act 2009 (Vic)* (**University**)

and

The **Agency** is the organisation specified in item 1 of Schedule 1.

**Background**

The University wishes to appoint the Agency to supply the Recruitment Services and the Agency agrees to accept its appointment, on the terms set out in this Agreement.

**Operative terms**

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears from the context:

**Agreement** means this document, together with the Schedule and any annexures, along with any amendments made in accordance with this Agreement.

**Background Intellectual Property** means Intellectual Property owned or controlled by a Party, including Intellectual Property developed prior to or independently of this Agreement, which the Party determines, in its sole discretion, to make available for the carrying out of the Services.

**Business Day** means a day that is not a Saturday, Sunday or a University holiday as indicated on the University calendar (as amended from time to time).

**Business Hours** means from 9.00am to 5.00pm on a Business Day.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is designated by the University as confidential; or
- (c) the Agency knows or ought to know is confidential;

and includes without limitation the terms of this Agreement and all information about the University, its employees, students, agents, research, property, policies and operations which is made available or which becomes known during the term of this Agreement or as a result of executing this Agreement but does not include information which:

- (d) was in public domain at the time of its provision by the University;
- (e) became part of the public domain after its provision by the University or its creation by the University or the Agency under this Agreement, otherwise than through a disclosure by the Agency or any person to whom it has disclosed Confidential Information; or
- (f) is required to be disclosed by law.

**Contract Materials** means any data, information or materials, including all Intellectual Property in that data, information or materials created, developed or produced in connection with provision of the Services by the Agency to the University under this Agreement.

**Fee** means the amount in Australian currency specified in section 2 of Item 2 of Schedule 1.

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

**Intellectual Property** means all rights resulting from intellectual activity whether capable of protection by state, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests including Contract Materials.

**Parties** means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them.

**Position** means the position set out in paragraph 1.1 of Item 2 of Schedule 1.

**Privacy Laws** means:

- (a) *Privacy and Data Protection Act 2014 (Vic)* and the Information Privacy Principles contained in that Act;
- (b) the *Health Records Act 2001 (Vic)* and the Health Privacy Principles contained in that Act; and
- (c) any approved privacy code that applies to either of the Parties.

**Services** means the services to be performed by the Agency under this Agreement and which include all activities set out in Item 2 of Schedule 1.

**Term** has the meaning given to it in clause 2.1.

1.2 In this Agreement, the following rules apply except where the context requires otherwise:

- (a) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (b) a reference to the Agency includes, where the context so admits, its employees, agents and authorised subcontractors;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (f) where a term in the Schedule conflicts with a term of the Agreement the term of the Agreement will prevail.

## 2. TERM

- 2.1 This Agreement commences on the date the Agreement is signed by the last Party and continues until the Position has been filled or the University notifies the Agency that the University will not be proceeding with the filling of the Position, subject to earlier termination by either party in accordance with this Agreement.

## 3. ACQUISITION OF THE SERVICES

- 3.1 The Agency must:
- (a) supply the Services in accordance with this Agreement;
  - (b) provide the Services with all due care and skill to the best of its knowledge and expertise;
  - (c) ensure that all employees, agents and authorised subcontractors employed or engaged to carry out the Agency's obligations under this Agreement are of the highest standard sufficient to enable the Agency to satisfy its obligations under this Agreement;
  - (d) follow all reasonable instructions and directions given by the University from time to time;
  - (e) not cause undue interruption to the work of the University's staff, students or invitees;
  - (f) comply with any legal, regulatory or other licence obligations;
  - (g) comply with all occupational health and safety requirements of the University and all equal opportunity and other workplace policies of the University while on University premises or while using University equipment. The University's health and safety policy and procedures can be located at <https://policy.unimelb.edu.au/MPF1205> or can be otherwise provided by the University on request by the Agency; and
  - (h) keep the University regularly informed of all matters relevant to the provision of the Services.
- 3.2 The Agency acknowledges it has been provided with all relevant information requested and available so it can provide the Services in accordance with the terms of this Agreement.
- 3.3 The Agency must provide the University with all relevant information to enable the University to assess the Agency's compliance with its obligations under this Agreement.
- 3.4 If the University has granted the Agency access to University premises or the University's equipment the Agency:
- (a) may only access or use the premises or equipment for the purposes of providing the Services in accordance with this Agreement and for the purposes of complying with any reasonable and lawful instructions of relevant University officers; and
  - (b) must observe the University's security requirements including for example, by ensuring that only authorised personnel enter University premises, by securing locked areas after access and by carrying appropriate identification which must be produced upon request by the University.
- 3.5 The Agency must not sub-contract the performance of all or any part of the Services without the prior written consent of the University acting in its absolute discretion. The Agency remains fully responsible for the performance of all work provided under this Agreement and for all costs incurred with respect to its authorised subcontractor.

- 3.6 Without limiting any of the University's rights under this Agreement, if the University acting in its absolute discretion considers that a particular person employed, engaged or subcontracted by the Agency does not have sufficient expertise or skills, including interpersonal skills to provide the Services to the standard required under this Agreement, the University may notify the Agency and request that the person be replaced. The Agency will immediately replace the person with another person with appropriate skills and expertise.
- 3.7 The Agency's relationship with the University is exclusive in respect of the engagement of third-party suppliers of recruitment services for the purposes of filling the Position during the Term of this Agreement. This Agreement does not prevent or restrict the University from advertising and filling the Position through its own recruitment methods and systems.

#### **4. FEES PAYABLE FOR THE SERVICES**

- 4.1 The University will (except to the extent that the invoice is in dispute), pay to the Agency the fees on the terms set out in this Agreement within 30 days of the end of the month in which the Agency submits the invoice.
- 4.2 The Agency will issue an itemised tax invoice that clearly identifies the Services or part thereof which are the subject of the invoice.
- 4.3 A Party need not pay any amount made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.
- 4.4 Despite anything set out elsewhere in this Agreement or any other arrangement, the University will not be obliged to pay any Fees or disbursement/expenses to the Agency unless and until it is satisfied, acting reasonably, that the Agency has successfully provided the Services in accordance with the terms of this Agreement. If the University wishes to dispute an invoice (or part thereof) it will advise the Agency in writing as soon as it becomes aware of the issue and set out its reason for disputing the invoice.
- 4.5 In this clause 4, a word or expression defined in the GST Act has the meaning given to it in that Act. The Parties agree and acknowledge that any amount payable under or in connection with this Agreement, including the Fees, shall include an amount on account of the GST (if any) payable by the supplying Party in respect of that supply.

#### **5. CONFIDENTIALITY AND PRIVACY**

- 5.1 The Agency agrees to keep confidential and to ensure its employees, agents and subcontractor keep confidential, all Confidential Information:
- (a) provided by the University to the Agency in connection with this Agreement; or
  - (b) created by the University or the Agency in the provision of the Services or otherwise under this Agreement.
- 5.2 The Agency agrees not to disclose such Confidential Information without the prior written consent of the University acting in its absolute discretion.
- 5.3 The Agency must comply with:
- (a) all Privacy Laws; and
  - (b) the University's Privacy Policy and Guidelines as amended from time to time in respect of any personal or health information held by the University which the Agency becomes aware of or has access to in connection with this Agreement and any personal or health information collected, held, managed, used, disclosed or transferred by the Agency in

connection with this Agreement. The University's Privacy Policy can be located at <http://www.unimelb.edu.au/unisec/privacy> or can be otherwise provided by the University on request by the Agency.

- 5.4 The expression 'personal or health information' used in this clause 5 means personal information as defined in the *Privacy and Data Protection Act 2014 (Vic)* or 'health information' as defined in the *Health Records Act 2001 (Vic)*.

## **6. INTELLECTUAL PROPERTY**

- 6.1 The University will own all Contract Material created by the Agency in performing the Services with effect from the date of its creation.
- 6.2 Further to clause 6.1, the Agency will ensure that any of the Agency's employees, agents or authorised subcontractors that own intellectual property in such Contract Material will assign to the University all intellectual property rights referred to in clause 6.1.
- 6.3 The Agency and the University shall each retain ownership of all Background Intellectual Property developed or created by either of them prior to the Start Date or independently of the Services.
- 6.4 The Agency grants the University an irrevocable non-exclusive royalty free licence to use the Background Intellectual Property referred to in clause 6.3 to the extent required for the University to gain the full benefit of the Services.
- 6.5 The Agency undertakes to execute all documentation and do all things necessary to assign to the University the Agency's interest in Contract Materials and to give effect to this clause.

## **7. WARRANTIES**

- 7.1 Each Party warrants to the other that it has the power to enter into this Agreement and to perform its duties and obligations under this Agreement.
- 7.2 The Agency warrants that:
- (a) all Services will be supplied, without limitation, in accordance with this Agreement, including the Schedules;
  - (b) the use by the University of any products or materials provided in connection with the Services will not breach third party intellectual property rights; and that
  - (c) in providing the Services, it will not be in breach of any obligation owed to any person and that it holds all licences and approvals necessary for or incidental to providing the Services.

## **8. INDEMNITY AND INSURANCE**

- 8.1 The Agency indemnifies the University against all reasonable claims, demands, charges or expenses (including reasonable legal costs) made against or incurred by the University as a result of any breach of this Agreement by the Agency, its employees, agents or authorised subcontractor, or any negligent or fraudulent act or omission by the Agency, its employees, agents or authorised subcontractor except to the extent to which such claims, demands, charges or expenses is caused by or contributed to by the University.
- 8.2 The Agency agrees to take out and maintain public liability insurance to the amount of twenty million dollars (\$20,000,000) to cover the performance of its obligations under this Agreement and must provide written proof of maintenance of such insurance to the University on request.

- 8.3 The Agency agrees to take out and maintain professional indemnity insurance to the amount of five million dollars (\$5,000,000) to cover the performance of its obligations under this Agreement and must provide written proof of maintenance of such insurance to the University on request.

## **9. TERMINATION**

- 9.1 The University may terminate this Agreement with immediate effect by giving written notice to the Agency if the Agency:
- (a) breaches any provision of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so; or
  - (b) enters into liquidation or any form of insolvency administration.
- 9.2 The University may also terminate this Agreement in whole or in part at any time without cause by giving the Agency 30 days' written notice.
- 9.3 If the University exercises a right to terminate a part of this Agreement:
- (a) the University has the sole discretion as to which part or parts of the Agreement are to be terminated; and
  - (b) the parties will agree, or failing agreement within a reasonable time, the University will reasonably specify any appropriate variations to the Agreement including to the Fees.
- 9.4 If at any time the University considers that any aspect of the partial termination is not proceeding to its satisfaction, the University may by notice convert the partial termination into a full termination of the Agreement.
- 9.5 Termination or expiry of this Agreement for any reason does not affect the accrued rights or remedies of either party.
- 9.6 Clauses 5, 6, 7, 8.1, 12 and this clause 9.6 survive the expiration or termination of this Agreement (for whatever cause).

## **10. RECORD KEEPING**

- 10.1 The Agency will retain copies of all materials associated with the provision of the Services.
- 10.2 The University is permitted to conduct a review of all materials held by the Agency associated with the provision of Services in order to assess the Agency's compliance with this Agreement. The Agency must provide all necessary assistance to facilitate the University's review of the materials.

## **11. RELATIONSHIP**

- 11.1 This Agreement constitutes a relationship of principal (on the part of the University) and independent Agency (on the part of the Agency) and no employment, partnership or joint venture relationship is created or exists between the Parties.
- 11.2 The Agency will not assume or create, or attempt to create, directly or indirectly, any obligation on behalf of or in the name of the University.
- 11.3 The Agency is responsible for its own employees, agents and authorised subcontractor and carries out the Services at its own risk.

## 12. DISPUTE RESOLUTION

- 12.1 Subject to clause 12.6, if any dispute, controversy or claim arises under this Agreement ("**Dispute**"), and a Party wishes to initiate a resolution of the Dispute under this Agreement, that Party must notify the other Party by giving written details of the Dispute ("**Notice**"). The Parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each Party who are authorised to hear the Dispute before commencing any legal proceedings in relation to the Dispute.
- 12.2 Any Dispute which cannot be settled under clause 12.1 within 20 Business Days from receipt of Notice must be referred for mediation by an independent person appointed for that purpose by the Parties and failing Agreement between the Parties within 10 Business Days, appointed by the Chair of the Resolution Institute or the Chair's designated representative ("**Independent Expert**").
- 12.3 Any mediation conducted under the above clause 12.2 will be submitted to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules unless expressly agreed otherwise in writing.
- 12.4 The Independent Expert must act as an expert not as an arbitrator and his or her decision will be final and binding on the Parties.
- 12.5 The cost of the Independent Expert's determination must be borne equally by the Parties.
- 12.6 The fact that the Parties are engaged in the dispute resolution process set out in this clause 12 does not affect the obligations of either Party under this Agreement.
- 12.7 Nothing in this clause 12 prejudices the right of a Party to seek urgent injunctive or declaratory relief in relation to any Dispute.

## 13. NOTICES

- 13.1 A notice, demand, consent, approval or communication under this Agreement must be:
- (a) in writing, in English and signed by a person authorised by the sender; and
  - (b) hand delivered or sent by prepaid express post or email to the recipient's address specified in the details as set out item 1 of Schedule 1 and marked to the attention of the contact person specified in the details, as varied by any notice given by the recipient to the sender.
- 13.2 A notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid express post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
  - (c) if sent by email, 3 hours after the time sent (as recorded on the device which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

## 14. GENERAL

- 14.1 **Governing law and jurisdiction.** The laws that are applicable in Victoria, Australia govern this Agreement and each Party submits to the jurisdiction of the courts of that state and any courts which may hear appeals from those courts.
- 14.2 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- 14.3 **Amendment.** This Agreement may only be amended in writing signed by the Parties.
- 14.4 **Assignment.** The Agency must not assign this Agreement or a right under this Agreement unless it has the prior written consent of the University acting in its absolute discretion.
- 14.5 **Waiver.** A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.
- 14.6 **Severance.** A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.
- 14.7 **Execution.** This Agreement may be executed in counterparts, including facsimile counterpart. All executed counterparts constitute one document.
- 14.8 **Force Majeure.** Neither party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond the first party's reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike and riots and either party may terminate the Agreement if such an event occurs and continues for a period of 30 days or more.



**Signing page**

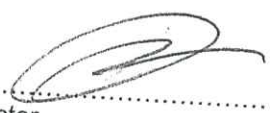
Executed as an Agreement:

SIGNED for and on behalf of THE )  
UNIVERSITY OF MELBOURNE by )  
its authorised officer: )

  
.....  
Authorised Officer

JAKOB MUSZYNSKI  
.....  
Name of signatory

SIGNED for and on behalf of the )  
AGENCY by its authorised officer: )

  
.....  
Director

DAVID GOODREM  
.....  
Name of Director

.....  
Director/ Company Secretary

.....  
Name of Director/ Company Secretary

[The last party to sign this Agreement must complete the date field on the first page]

**Schedule 1**

**Details**

**ITEM 1**

**AGENCY**

**NAME:** Six Degrees Executive Pty Ltd

**ABN:** 14108863850

**ADDRESS:** Level 14, 627 Chapel St South Yarra VIC 3141

**Contact Person:** Jeff Quirol (AR Officer) –  
accounts@sde.com.au

**University Contact Person for Notices:**

Associate Director, Procurement  
The University of Melbourne  
11 Barry St, Carlton VIC 3053  
Attention: Jakob Muszynski  
E: Jakob.muszynski@unimelb.edu.au

## **ITEM 2 SERVICES**

### **1. RECRUITMENT SERVICES**

- 1.1 The Agency will search for candidates to fill a position of **Procurement Manager – Technology**
- 1.2 The Agency must ensure that it has obtained all consents and approvals from each candidate to be engaged in the recruitment process as required by law.
- 1.3 The Agency must advise the University in advance of accepting an assignment of any agreements or arrangements in place that may impede the Agency's ability to approach potential candidates including any potential conflicts of interest arising from engagements with other institutions.
- 1.4 The Agency must be considerate of the University's objectives relating to gender diversity in sourcing candidates and formulating longlists.
- 1.5 The Agency shall not:
  - (a) approach a candidate that has been placed at the University by the Agency for another role for the duration of the contract term;
  - (b) conduct a search for a similar role at a similar time for equivalent institutions within the State of Victoria (defined as a member of the G08) unless agreed to by the University;
  - (c) directly or indirectly, approach University employees within the Faculty/Budget Unit/Division during a live search assignment for the purpose of placing them as candidates for any positions with any other organisation;
  - (d) engage in search assignments where the vacancy has been created due to the Agency placing the University employee at another organisation unless the Agency discloses this to the University and the University agrees that the Agency is the best placed Agency to fill the position. For avoidance of doubt, no element of the foregoing precludes the Agency assisting or placing in employment University employees who approach the Agency of their own volition.
- 1.6 The Agency must:
  - (a) confirm with each candidate that they have not been submitted to the University (including by the candidate or another agency);
  - (b) inform each candidate at the beginning of the recruitment process that they may be subject to a background check including a police check;
  - (c) review the CV of each candidate;
  - (d) undertake an initial screening of candidates through face to face interviews;
  - (e) shortlist its candidates;
  - (f) confirm the candidate's qualifications, institutions, and qualification conferral dates;
  - (g) confirm the identity and address of the candidate;
  - (h) to the extent possible by carrying out two reference checks confirm the employment history of the candidate over the previous 5 years;
  - (i) confirm that the candidate has a right to work in Australia;

- (j) conduct general background internet checks for any other relevant information the University should be aware of. e.g. adverse information in the public domain or social media;
- (k) contact at least two referees of the candidate to verify that the referees are willing to recommend the candidate. Notwithstanding the former, in the event a candidate is unwilling to provide a referee at this stage, the Agency will notify the University promptly for further instructions; and
- (l) provide any other relevant information of the candidate.

1.7 The Agency will work with the University through the interview phase and be the primary point of contact with all candidates supplied by the Agency.

1.8 The Agency must work with the University in relation to the employment process with all successful candidates submitted by the Agency and liaise with unsuccessful candidates.

## 2. FEES AND PAYMENT

2.1 The University will pay the Agency a fee (Recruitment Fee) calculated as follows.

- (a) Recruitment Fee For Exclusive Arrangement = Total Annual Remuneration (TAR) x 15%  
%
- (b) The Recruitment Fee shall only be payable by the University if a candidate submitted by the Agency is appointed to the Position. The fee is contingent and only payable upon success;
- (c) A maximum fee of \$35,000 will apply.

2.2 The Recruitment Fee will not be payable where:

- (a) the candidate has, prior to the date that the Agency submits the candidate, independently applied for a publicly advertised role within the University and is subsequently employed in that role;
- (b) the Position has been filled internally;
- (c) the University notifies the Agency that a Position is no longer required;
- (d) a third-party supplier puts forward the candidate for a subsequent employment opportunity with the University;
- (e) more than 6 months has elapsed from the initial representation of the candidate to the University by the Agency and, by that time, the candidate has not been employed by the University for any employment opportunity.

2.3 If during the first 6 months of a candidate's employment, the candidate resigns or is terminated by the University for any reason, then the Agency must provide the recruitment services set out in Item 2 of Schedule 1 again in order to find a suitable replacement candidate. There will be no recruitment fee payable from the University to the Agency for assisting to find or employ a replacement candidate. If the Agency is unable to find a suitable replacement candidate, the Agency will return any fees paid to the Agency by the University for the relevant role.

2.4 The Agency will not be required to provide a replacement candidate where the placed candidate has died or become permanently disabled or the University makes the Position redundant.

## 3. EXPENSES

3.1 The University will not reimburse the Agency for out of pocket expenses.

4. **INVOICING AND PAYMENT**

4.1 The University will pay an invoice issued within 30 days of the end of the month in which the invoice is received.

4.2 The University need not pay any invoice unless the invoice sets out all necessary detail to clearly identify the position to which the invoice relates and correctly reflects the Fees in the opinion of the University.

