



Talent Consultancy Agreement

This agreement is dated [#TBC].

between:

[company name], ACN [ACN] of [address](**Company**)

and:

Vital Talent Pty Ltd ACN 604 854 702 c/- FDA Accountants, 4/136-144 Bell St, Coburg VIC 3058 (**Vital Talent**).

BACKGROUND

- A. The Company wishes to receive key person appointment, business acquisition and strategy session facilitation services (**Services**), and Vital Talent has the skills, background and experience in providing the Services.
- B. Vital Talent is willing to provide the Services and the Company is willing to appoint Vital Talent to provide the Services, all in accordance with the provisions of this agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this agreement unless the context indicates otherwise, the following words have the following meanings.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Confidential Information includes any information marked as confidential and any information received by the Company or developed by Vital Talent during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by Vital Talent in the course of Vital Talent's business. This includes all candidate information and related documentation, information, data, , documentation, workings, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as candidate lists, financial information and business plans.

Fees means the rates for Services that are agreed between the parties from time to time, including the fees set out in the Schedule.

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

Intellectual Property includes trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Parties means Vital Talent and the Company, and **Party** means either one of them.

Privacy Policy means Vital Talent's privacy policy, as updated from time to time by notice in writing to the Company.

Related Body Corporate has the meaning given in section 50 of the Corporations Act 2001 (Cth).

Services means the services to be provided by Vital Talent under this agreement and agreed between the parties from time to time.

Supplier's Personnel means any person or persons that Vital Talent designates to perform the Services on Vital Talent's behalf.

Standard Terms means Vital Talent's standard terms of business, set out in the Schedule, and as updated from time to time by notice in writing to the Company.

Termination Date means the date of termination of this agreement by the Company or Vital Talent.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words importing any gender include every gender, words importing the singular number include the plural number and vice versa, words importing persons include firms and companies and corporations and vice versa;
- (b) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this agreement;
- (c) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (d) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (e) the headings to the clauses and schedules of this agreement are not to affect the interpretation;
- (f) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- (g) the word "including" (and related forms including "includes") means "including without limitation".

2 Application of the Standard Terms

- (a) The parties agree that the Standard Terms (as amended, from time to time) form part of this agreement.

3 Services

- (a) Vital Talent will provide the Services to the Company in consideration for the Company paying the Fees to Vital Talent, subject to the provisions of this agreement.
- (b) Vital Talent will agree the time and place for the performance of the Services.

4 Fees

4.1 Payment of Fees

- (a) In consideration of the provision of the Services in accordance with this agreement, the Company will pay Vital Talent the Fees.
- (b) Where Vital Talent's charges are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.
- (c) The Company acknowledges that the Fees are exclusive of any GST that may be charged by Vital Talent to the Company, and therefore, Vital Talent will be entitled to add on GST.

4.2 Invoicing

- (a) Vital Talent will provide the Company with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4.
- (b) Payment will be made by the Company to Vital Talent within 14 days after receiving Vital Talent's invoice.

4.3 Variation of Fees

Vital Talent is entitled to vary the rates during the term of this agreement with written notice to the Company of 14 days prior to the change being implemented.

4.4 Costs and disbursements

Vital Talent is permitted to charge for all costs and expenses incurred in performing the Services, including advertising costs, travelling, photocopying, courier services, postage.

4.5 Failure to pay

If the Company does not make a payment by the date stated in an invoice or as otherwise provided for in the agreement, Vital Talent is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 3% per year above the base lending rate of the Commonwealth Bank, accruing daily;
- (b) require the Company to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) not perform any further Services (or any part of the Services).

5 Company's obligations

- (a) During the performance of the Services the Company will co-operate with Vital Talent as Vital Talent reasonably requires, provide the information and documentation that Vital Talent reasonably requires and ensure that the Company's staff and agents cooperate with and assist Vital Talent.

6 No partnership or employment relationship

- (a) Nothing in this agreement constitutes the relationship of employer and employee between the Company and Vital Talent or between the Company and Vital Talent's Personnel.
- (b) It is the express intention of the Parties that any such relationships are denied.

7 Use of subcontractors

- (a) Vital Talent is permitted to use other persons to provide some or all of the Services.

8 Confidentiality and Privacy

- (a) The Company must keep the Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) The Company is prohibited from dealing with Confidential Information without the express written consent of Vital Talent. This includes dealing with personal information of candidates which is of a personal nature and therefore the requirements of the Company to keep that Confidential Information confidential will be strictly enforced by Vital Talent.
- (c) The Company must comply with the Privacy Policy.

- (d) At the Termination Date, or when earlier directed by Vital Talent:
 - (i) all Confidential Information must be returned to Vital Talent, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that Vital Talent; and
- (e) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 8(a) by the Company; or
 - (ii) was known by the Company prior to Vital Talent disclosing the information to the Company.
- (f) The Company agrees to indemnify Vital Talent fully against all liabilities, costs and expenses which Vital Talent may incur as a result of any breach of this clause 8 by the Company.
- (g) The Company acknowledges that damages may be an inadequate remedy for breach of this clause 8 and that Vital Talent may obtain injunctive relief against the Company for any breach of this clause 8.
- (h) The obligations accepted by the Company under this clause 8 survive termination or expiry of this agreement.

9 Warranties, liability and indemnities

9.1 No warranties in relation to completion

Vital Talent provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date or any other date, whether stated in this agreement or elsewhere.

9.2 Limitation on liability

- (a) The liability of Vital Talent under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Company to Vital Talent under this agreement.
- (b) To the maximum extent permitted by law, including the Australian Consumer Law, in no event shall Vital Talent be liable for any direct and indirect loss, damage or expense – irrespective of the manner in which it occurs – which may be suffered by the Company in relation to the Services.
- (c) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause do not apply to clause 9.4.

9.3 Indemnity

The Company must indemnify and hold Vital Talent harmless from and against all Claims and Losses arising from loss, damage, liability, injury to Vital Talent, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of this agreement or the provision of the Services.

9.4 No reliance

Each of the Parties acknowledges that, in entering into this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

9.5 Survival of obligations

The obligations accepted by Vital Talent and the Company under this clause 9 survive termination or expiry of this agreement.

10 Termination

- (a) Either Party may terminate this agreement by notice in writing to the other if the Party notified:
 - (i) fails to observe any term of this agreement; and
 - (ii) fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 14 days' notice of the breach being given in writing by the notifying Party to the other Party.
- (b) Either Party may terminate this agreement upon the happening of any of the following events:
 - (i) the giving of at least 1 month's written notice by one Party to the other Party of the intention to terminate this agreement;
 - (ii) if the Company enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Company pursuant to the Corporations Act 2001 (Cth); or
 - (iv) if the Company would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).
- (c) The Company may, at its discretion, pay to Vital Talent the equivalent amount of the fees payable by the Company to Vital Talent during the notice period in lieu of any notice period relating to termination of this agreement under paragraph 10(a)(i).
- (d) Upon termination of this agreement any fees, expenses or reimbursements payable by the Company to Vital Talent in respect of any period prior to the Termination Date must be paid by the Company within 14 days after the Termination Date.

11 General

11.1 Force majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that Party.
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this agreement by written notice to the other Party.

11.2 Amendment

This agreement may only be amended in writing signed by duly authorised representatives of the Parties.

11.3 Assignment

- (a) Subject to paragraph 11.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written agreement of the other Party.

- (b) A Party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this agreement.

11.4 Entire agreement

- (a) This agreement contains the whole agreement between the Parties in respect of the subject matter of the agreement.
- (b) The Parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement.

11.5 Waiver

- (a) No failure or delay by Vital Talent in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

11.6 Agency, partnership etc

- (a) This agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this agreement.
- (b) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

11.7 Further assurance

Each Party to this agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this agreement or to make it easier to enforce.

11.8 Severance

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.

11.9 Notices

A notice or other communication connected with this agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this agreement, or sent by email or fax to the email or fax number of the addressee.

11.10 Law and jurisdiction

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

Executed as an agreement.

Executed in accordance with section 127 of the *Corporations Act 2001* by [company name and company ACM]:

Director/Secretary

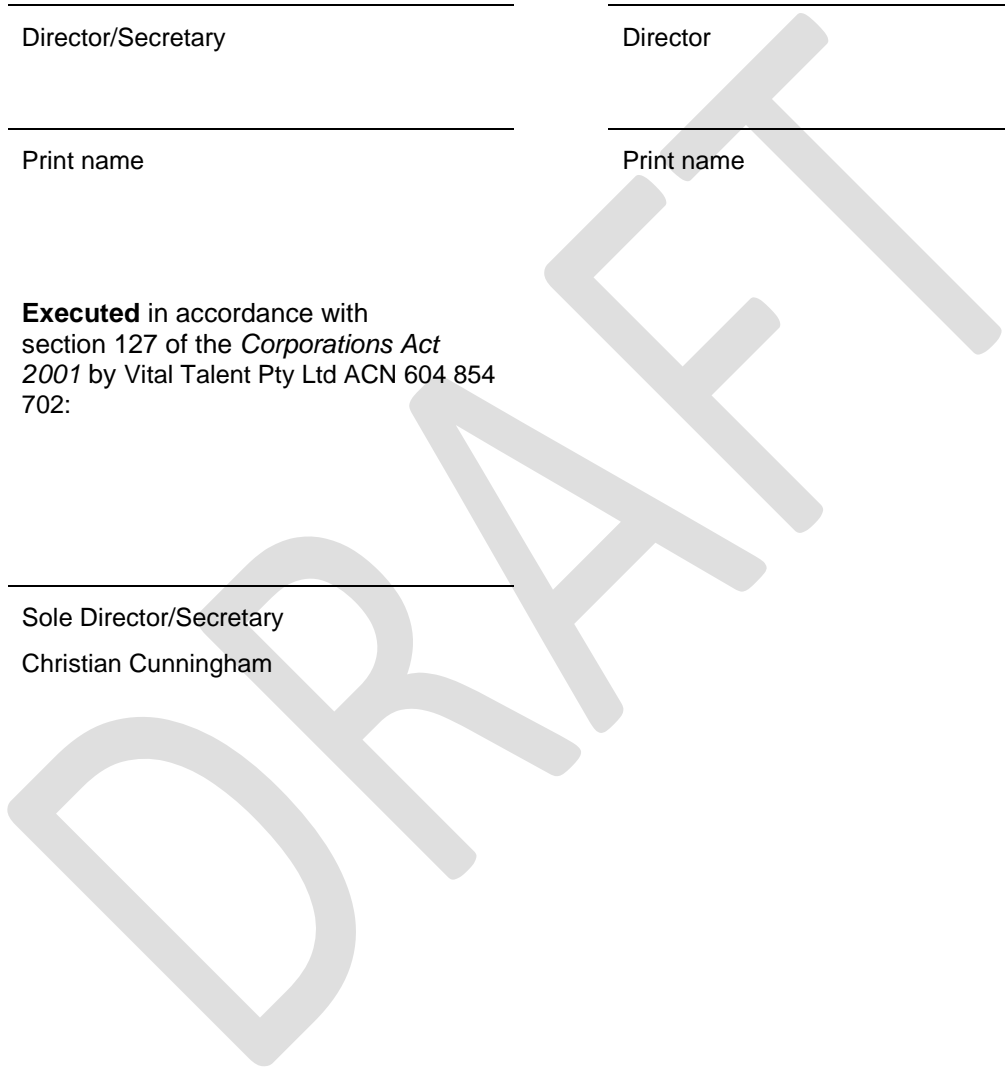
Director

Print name

Print name

Executed in accordance with section 127 of the *Corporations Act 2001* by Vital Talent Pty Ltd ACN 604 854 702:

Sole Director/Secretary
Christian Cunningham



Schedule - Standard Terms

1. If you interview a candidate for employment, or employ a person we introduce to you (**Candidate**), by any means, or, if you on-refer that person to a third party who then employs that person, you will be liable to pay us the Total Fees as set out below, or fees at the rate previously agreed between the parties.
2. You must pay us the Total Fees set out in these Standard Terms, or the fees we have agreed in advance, if you employ a Candidate we have introduced to you within 12 months of the date of our introduction or if you on-refer that person to a third party who employs that Candidate within 12 months of the date of our introduction to you.
3. When a Candidate we introduce to you is employed by you or by a third party to whom you have referred that Candidate, you must immediately tell us of that fact and give us full details of the remuneration package agreed to between that Candidate with that third party.
4. Our fees are (together, the **Total Fees**):
 - A Fee of 15% invoiced when a candidate has accepted a position;
5. If you appoint more than one Candidate from a shortlist, an additional fee for each additional appointment of the additional Candidate (**Additional Fee**) will be payable by you. However, should you consider a Candidate for a position other than the particular assignment, you agree to seek our advice on the Candidate's suitability for the alternative position in case it is possible for us to submit additional candidates that are more suited to that alternative position.
6. 'Total Annual Gross Remuneration' is defined as remuneration agreed between the employer and the Candidate including all remuneration on a pro-rated annual basis. This includes base salary, employer superannuation contributions (including compulsory contributions), allowances, inducement or sign-on payments, anticipated commission and bonus earnings calculated as 'on target earning' and also non-salary benefits such as provision of a vehicle. The value of all non-salary benefits will be reasonably determined by use based on the employee's experience. The appropriate fee percentage is determined by the Total Annual Gross Remuneration and that percentage applies to the entire sum. In the case of a pro-rate offer, the Additional Fee will be calculated on a full annualised fee.
7. Expenses such as travelling, accommodation, overseas telephone calls incurred by us or by applicants attending interviews are charged at cost. We will obtain your prior agreement before incurring expenses exceeding \$150.00. You must pay us all disbursement amounts within 14 days of receipt of an invoice (ie specific advertising, medical checks or other special services of a similar nature). These amounts are payable by you even if you do not employ anyone out of the result of our search.
8. You are confirming your agreement to pay our fees upon authorising a particular assignment via email response to our assignment proposals. Our fees are payable even if you do not employ anyone out of the particular assignment.
9. Our ability to attract good candidates rests on our assurance of security of all the information they provide. It is implicit that this assurance is given also on behalf of our clients and is binding on them. The assurance includes an understanding that no enquiries will be made by us or our client without the candidate's prior authorisation. For this reason, you agree to be bound by our Privacy Policy, as updated from time to time.
10. We reserve the right to vary our fees from time to time and will provide you with written notice of such variation.

11. Where an offer of employment has been made in writing by you and is subsequently withdrawn by you after acceptance by the Candidate through no fault of the Candidate, the applicable final amount will be payable by you.
12. If an appointed candidate is terminated on performance grounds within 6 months from the date of appointment, we will attempt to replace that candidate for a maximum period of 6 months, for no additional professional cost. You can only rely on this provision if all of our invoices have been paid within terms. If you have paid any invoice outside of terms, then we are not obliged to replace the candidate.
13. Whilst we endeavour to select Candidates who are suitable for your needs, we cannot accept liability on behalf of ourselves, our servants or agents for any loss or damage, or other cost irrespective of how they are caused, which you may suffer or for which the you may become liable arising out of, or in connection with, the introduction of the Candidate to you.
14. Insofar as we or any Candidate provides details of a Candidate's medical history, present state of health, previous terms and conditions of employment, names and addresses of previous employers, periods of employment, circumstances in which previous employment terminated, criminal convictions, personal details, ability to work in Australia, visas, work permits, qualifications or education generally, we will have no responsibility and not be liable to you either for ensuring that the details are correct or accurate.
15. Vital Talent does not warrant the suitability of any applicant recommended for employment. The offer of employment to a Candidate, employment of a Candidate and the consequences thereof following the introduction of that Candidate by you are entirely at your own risk.
16. In the event that any details of information supplied by the Candidate or by a third party on behalf of a Candidate including, but without limitation to, past employers or personal referees, are found to be incorrect or misleading, we shall have no liability for any loss, damage or cost which may thereby be occasioned. When applicant's references are checked, our consultants rely on the truthfulness of information provided by referees. Our consultants do not (unless specifically requested in writing) check applicant's criminal, bankruptcy or credit records or verify applicant's claimed academic or other qualifications or attributes.