

# Sidekicker

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## Terms of Use Agreement

Between:

Lend Me A Hand Pty Ltd ACN 154 916 917 t/a "Sidekicker" ("**Sidekicker**")

And ("**the Client**")

## Background

- 1.1 Sidekicker provides temporary staff on a labour hire basis.
- B. The Client wishes to engage Sidekicker to provide labour as outlined in the Job Brief posted by the Client on Sidekicker Site.
- C. This Agreement sets out the terms and conditions upon which Sidekicker will provide the Services to the Client.

## IT IS AGREED

### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this Agreement:

**Agreement** means this agreement and any document that varies or supplements it;

**Business Day** means any day which is not a Saturday, Sunday or designated public holiday or bank holiday in Victoria, Australia;

**Confidential Information** means any information of a confidential nature provided by or made available by a Party, or otherwise obtained by a Party, whether before or after execution of the Agreement, in connection with the Party, the Services or this Agreement, including:

- 1.2 all confidential business information, documents, records, financial information, reports, technical information and forecasts which relate to the Party or the Party's business;
- 1.3 the Party's Intellectual Property;
- 1.4 any information created under or arising out of the provision of Services under this Agreement;

but does not include information which:

- (a) is in or becomes part of the public domain, other than through a breach of this Agreement or an obligation of confidence owed to the Party or any of its Representatives;
- 1.2 was known to Party at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or

1.3 was independently acquired by a Party or developed without breaching any of the obligations set out in this Agreement;

**Corporations Act** means the *Corporations Act 2001* (Cth) and any regulations made under it;

**Developed IP** means Intellectual Property that is developed or created by Sidekicker (including by a Sidekick) during, in the course of and for the purposes of providing the Services to the Client, but excludes any pre-existing Intellectual Property of Sidekicker or the Sidekick;

**Force Majeure Event** means any of the following events which are unforeseen by, beyond the control and occurs without fault or negligence by the Party prevented from or delayed in performing the obligation:

(a) acts of God, earthquake, fire, flood, storm;

1.2 war, riot, insurrection, vandalism or sabotage;

1.3 strikes, stoppages, labour disputes and other forms of industrial disturbance;

1.4 explosion; or

1.5 power shortage, breakdown of plant, machinery or equipment,

and for the avoidance of doubt does not include any kind of industrial action;

**GST** has the meaning given to the term in *A New Tax System (Goods & Services Tax) Act 1999* (Cth), related legislation and any delegated legislation made pursuant to such legislation;

**Insolvency Event** in relation to a Party means anything that reasonably indicates that there is a significant risk that that Party is or will become unable to pay its debts as they fall due. This includes:

(a) the suspension or cessation of its business activities;

1.2 its liquidation or insolvency or a step being taken to make the Party bankrupt or to wind the Party up;

1.3 a meeting of the Party's creditors being called or held;

1.4 the Party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;

1.5 the Party being made subject to a deed of company arrangement;

1.6 the appointment of a controller or administrator as defined in section 9 of the Corporations Act;

1.7 a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the person or any of its assets; or

1.8 any other act which shows or tends to show that it is insolvent;

**Intellectual Property** means all present and future rights conferred under statute, common law or equity in and to inventions, know-how, confidential information, trade secrets,

patents, patent applications, registered and unregistered trade-marks, registered and unregistered designs, copyright, circuit layouts and all other rights protectable by law resulting from intellectual activity in, but not limited to, the industrial, scientific, literary or artistic fields;

**Job Brief** means a request for the provision of labour hire services posted by the Client at the Sidekicker Site;

**Loss** means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim proceeding, action, demand or damage; damages of compensation, loss of profits or any other consequential loss;

**Party** means Sidekicker or the Client as the context requires;

**Related Entity** has the same meaning as under the Corporations Act;

**Representative** means any director, officer, employee, agent, contractor, subcontractor, adviser or Related Entity of a Party, and for the avoidance of doubt, when referring to Sidekicker, includes its Sidekicks;

**Services** means the provision by Sidekicker of labour hire services to the Client in response to a Job Brief;

**Sidekick** means an employee of Sidekicker who is selected by Sidekicker to provide services to the Client in accordance with a Job Brief;

**Sidekicker Service** means the platform provided by Sidekicker (including the Site) to facilitate the engagement by hirers of Sidekicks, and includes related sites and services;

**Sidekicker Site** means the website at [www.sidekicker.com.au](http://www.sidekicker.com.au); and

**Term** means the period commencing when the Client posts a Job Brief and ending on the date when the Agreement expires by virtue of the performance of all obligations by the Parties.

## 1.9 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.10 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.11 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.12 a monetary reference is to Australian currency;
- 1.13 a reference to time is to Australian Eastern Standard Time or Australian Eastern Daylight Time (as the case may be);
- 1.14 a reference to a Party includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- 1.15 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- 1.16 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;
- 1.17 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- 1.18 headings are for ease of reference only and do not affect interpretation;
- 1.19 if a Party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly;
- 1.20 an obligation, representation or warranty in favour of more than one person is for the benefit of them jointly and collectively;
- 1.21 any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.22 a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it; and
- 1.23 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.

## **2. Term**

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- 2.1 This Agreement will remain in force for the Term unless terminated earlier or extended in accordance with this Agreement.

## **3. Services**

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### **3.1 Provision of the Services**

Sidekicker will provide the Services to the Client on the terms set out in this Agreement.

### **3.2 Exclusive Use**

All transactions between the Client and a Sidekick where the Client's introduction to the Sidekick was initiated through the Client's use of the Sidekicker Site must be conducted through the Sidekicker Site and the Client and the Sidekick must not take any action designed to or that has the effect of circumventing their obligations towards Sidekicker. Notwithstanding the aforesaid, if the Client wishes to approach a Sidekick for direct employment with the Client (including following completion of the Sidekick's Services), the Client must do so only by using the feature provided within the Sidekick Service to offer the Sidekick an employment opportunity with the Client. A \$1,000 fee may be charged at Sidekicker's discretion for use of this feature.

### **3.3 Non-exclusive appointment**

The appointment of Sidekicker is non-exclusive and this Agreement does not purport to restrict the Client's right to perform any services itself or contract with third parties for the performance of services similar to the Services or the services provided by any Sidekick.

### 3.4 **No guarantee of being able to supply a Sidekick**

Until confirmed by Sidekicker otherwise, Sidekicker does not guarantee that it has a suitable or available Sidekick for every Job Brief that may be posted by the Client or any potential Client.

## **4. Sidekicks**

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### 4.1 **Warranties in relation to Sidekicks**

Sidekicker warrants that, in connection with each Sidekick provided to the Client:

- 4.2 it has complied with all applicable laws, regulations and procedures, including but not limited to any occupational health and safety, workers compensation, superannuation, employment, discrimination and migration laws;
- 4.3 it will be responsible for each Sidekick's statutory or award entitlements, including but not limited to wages, overtime, annual leave, personal leave, long service leave, workers compensation and notice payments;
- 4.4 it will pay all necessary taxes (including fringe benefits tax, income tax and payroll tax) and superannuation in relation to the Sidekick and provide the Sidekick with group tax certificates; and
- 4.5 it will keep all necessary employment records of the Sidekick.

### 4.6 **Standard of Behaviour**

Sidekicker will require that each Sidekick agrees to:

- 4.7 be courteous and diligent at all times while engaged by the Client;
- 4.8 comply with all of the Client's policies and guidelines, including, without limitation, those relating to occupational health and safety;
- 4.9 comply with all reasonable directions of the Client and its Representatives;
- 4.10 keep the Client's Confidential Information confidential;
- 4.11 wear such clothing (including personal protective clothing) and use such equipment while at the Client's facility as is reasonably appropriate or otherwise required by the Client; and
- 4.12 comply with any conditions of entry or other site specific requirements as notified by Sidekicker and/or the Client from time to time; and
- 4.13 not use any property of the Client for any purpose other than to perform the work required by the Client and will return any property of the Client used in the provision of the Services to the Client in good, undamaged, clean, and useable condition.

### 4.14 **Nature of the relationship between the Client and Sidekick**

Nothing in this Agreement creates a relationship between the Client and any Sidekick of employer and employee.

## **5. Sidekicker's obligations**

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### **5.1 Level of Performance**

Sidekicker will seek to ensure that:

- 5.2 the Services are provided promptly, carefully and in a professional manner;
- 5.3 when providing the Services, the Sidekick exercises due care, skill and judgment;
- 5.4 it allocates sufficient resources when carrying out the Services;
- 5.5 it cooperates with the Client in all matters relating to the Services;
- 5.6 the Services are provided to the Client's reasonable satisfaction having regard to the Client's requirements; and
- 5.7 it complies with all reasonable instructions, directions, descriptions and specifications given by the Client.

### **5.8 Compliance with laws and policies**

At all times during the Term, Sidekicker must:

- 5.9 comply with all requirements of any laws relating to the performance of the Services; and
- 5.10 comply with any of the Client standards, operating policies or procedures that are in effect and provided to Sidekicker from time to time.

## **6. Occupational Health and Safety**

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- 6.1 The Client must ensure the health and safety of Sidekicks at all times whilst they are under its management and control. Without limiting this requirement in anyway, the client must ensure that Sidekicks:
  - 6.2 have received any required and reasonably necessary training for the work to be performed; and
  - 6.3 are provided with all safe work procedures relevant to the workplace.
- 6.4 The Client agrees to provide Sidekicker (if requested) with:
  - 6.5 copies of all its induction, training and safe work procedures prior to any Sidekick commencing work; and
  - 6.6 any updates to those procedures as soon as they are produced.

## **7. Reports**

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- 7.1 Sidekicker agrees to keep full records and documentation in relation to the Services during the Term and for a period of seven years after the Agreement ends. Upon request by the Client, Sidekicker must make all documents and records relating to the Services available to the Client for inspection.

## **8. Payment**

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### **8.1 Rates**

The Client will pay Sidekicker for providing the Service in accordance with the rates set out on the Sidekicker Site.

### **8.2 GST**

8.3 All rates on the Sidekicker Site are exclusive of GST.

8.4 In addition to the rates, the Client will pay Sidekicker any GST payable in respect of the Services, on the same date on which payment for the relevant Services are due and payable.

### **8.5 Invoices and payment**

The Client must pay an invoice issued by Sidekicker within 14 days from when it is received.

8.6 the invoice is a tax invoice within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

8.7 the rates claimed in the invoice are due for payment under this Agreement; and

8.8 the invoice is addressed to the Client and identifies this Agreement.

## **9. Warranties**

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### **9.1 General warranties**

Each Party represents and warrants to the other Party:

9.2 it has full corporate power to enter into and give effect to this Agreement and the transactions contemplated by this Agreement;

9.3 it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

9.4 the execution, delivery and performance of this Agreement does not contravene any contractual, legal or other obligations that apply to it; and

9.5 the obligations under the Agreement will be valid, binding and enforceable.

## **10. Liability and Indemnity**

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### **10.1 Sidekicker's Indemnities**

Sidekicker shall be liable for and shall indemnify, and keep indemnified, the Client and its Representatives from and against all Loss in relation to or in connection with:

10.2 personal injury, illness or death of any person where the personal injury, illness or death is caused by or results from any act or omission of Sidekicker or its Representatives;

- 10.3 loss of or damage to any property owned, hired or supplied by Sidekicker or its Representatives;
- 10.4 loss of or damage to any property where the loss or damage is caused by or results from any act or omission of the Service Provide or its Representatives;
- 10.5 a breach by way of any act or omission of Sidekicker or its Representatives of the confidentiality provisions in this Agreement;
- 10.6 a breach by Sidekicker or its Representatives of the Privacy Act or of the Client's privacy policy;
- 10.7 unlawful, negligent, or wrongful act or omission of Sidekicker or its Representatives in connection with the performance of its obligations under this Agreement; and
- 10.8 any breach by Sidekicker or its Representatives of its obligations under this Agreement.

10.9 **Additional Indemnities**

Sidekicker indemnifies and agrees to keep indemnified the Client against:

- 10.10 any loss or penalty under any applicable legislation arising from all employee entitlements of Sidekicks, which, for the avoidance of doubt, will be provided by Sidekicker; and
- 10.11 any loss or penalty under any applicable legislation that the Client may incur in connection with any workers compensation or pay-roll tax liability arising out of the performance of the Services (including in respect of the engagement or employment (as applicable) by Sidekicker of the Sidekicks).

## **11. Intellectual Property**

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- 11.1 Sidekicker acknowledges and agrees that all Intellectual Property and other information that the Client provides or makes available to Sidekicker remains the property of the Client or its licensors. Sidekicker must not and must procure that a Sidekick does not use or reproduce such Intellectual Property or information for any purpose other than for the purpose of performing its obligations under this Agreement.
- 11.2 The Client acknowledges and agrees that Sidekicker continues to own all of its own Intellectual Property existing at the date of this Agreement or coming into existence during the term of this Agreement and that no licence thereto is granted to the Client.
- 11.3 All Developed IP will be owned by the Client without the need for further formality.

## **12. Confidentiality**

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12.1 **Obligations of confidence**

Where either Party receives Confidential Information from the other under this Agreement, each must:

- 12.2 keep the Confidential Information confidential;



- 12.3 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this Agreement;
- 12.4 not, without the other's written consent, disclose Confidential Information to any person other than its Representatives who need the information for the purposes of this Agreement; and
- 12.5 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure, including but not limited to any security measures specified by the other Party.

#### 12.6 **Further permitted use and disclosure**

Notwithstanding clause 12.1, either Party may use or disclose Confidential Information to the extent necessary to:

- 12.7 comply with any law or binding directive of a regulator or a court order;
- 12.8 comply with the listing rules of any stock exchange on which its securities are listed; or
- 12.9 obtain professional advice in relation to matters arising under or in connection with this Agreement.

#### 12.10 **Return of Confidential Information**

Each Party must immediately on demand, or on completion or termination of this Agreement, return to the other Party, or destroy if requested, any documents in its possession, power or control containing Confidential Information.

#### 12.11 **Obligations to continue after Agreement ends**

All obligations of confidence set out in this Agreement capable of surviving termination or expiry of this Agreement shall continue in full force and effect after this Agreement ends.

### **13. Privacy rights and obligations**

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- 13.1 Each Party agrees to:
- 13.2 comply with the *Privacy Act 1988 (Cth)* and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of personal information, as if it were regulated by these laws (whether or not regulated);
- 13.3 comply with any reasonable privacy code or policy which has been adopted by the other as if it were bound by that code or policy.
- 13.4 Sidekicker's Privacy Policy applies to all Users and forms part of this Agreement. Use of the Sidekicker Site confirms that you consent to, and authorise, the collection, use and disclosure of your personal information in accordance with Sidekicker's Privacy Policy.
- 13.5 The Client agrees and acknowledges that one or more Sidekicks that will or may be engaged in the provision of the Services to the Client may be a student of RMIT, and that Sidekicker has entered into an arrangement with RMIT in relation to such students. It is a condition of the Client's entry into this Agreement that the Client

agree and acknowledge that Sidekicker may provide to RMIT certain information (some, but not all de-identified) relevant to the engagement of the Sidekicker by the Client, including usage statistics in relation to the Client and its business, name, address and contact details, details of business size and industry sector, details of the Client's frequency of use of the Sidekicker Service, details of the number of Sidekick hires made by the Client, the duration of each hire engagement, Client spend (and breakdown per use) through Sidekicker in relation to RMIT student Sidekicks, and ratings and reviews for both the RMIT student Sidekick and the Client business, it being understood that RMIT will use the information for its own research and analytical purposes and not for broad disclosure. The Client agrees and acknowledges that it has and will obtain and maintain all necessary consents to the provision of this information to RMIT.

## **14. Termination**

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### **14.1 Termination by notice**

Either Party may terminate this Agreement at any time by giving 30 days' written notice to the other Party.

### **14.2 Termination**

Either Party may immediately terminate this Agreement by written notice to the other if any of the following occurs:

- 14.3 The other Party breaches a term of this Agreement and such breach is not remedied within 7 days of the aggrieved Party so requesting it to be remedied or the breach is of such a nature that it cannot be remedied;
- 14.4 the other Party is the subject of an Insolvency Event;
- 14.5 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 14.6 the other Party or any of their Representatives are found to be guilty of fraud, dishonesty or any other serious misconduct; or
- 14.7 any warranty given in clause 9 is found to be untrue or misleading.

## **15. Consequences of Termination**

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### **15.1 Consequences**

On the expiry or termination of this Agreement for any reason:

- 15.2 each Party retains its rights in respect of any breach by the other Party; and
- 15.3 the Client is not liable to pay for any Services provided after expiry or termination but shall remain liable to pay for Services provided prior to such expiry or termination.

#### **15.4 Return of property**

On the expiration or termination of this Agreement for any reason, Sidekicker must immediately return all of the Client's equipment, information, documents and property used in provision of the Services or otherwise in Sidekicker's possession or control, except to the extent required by law.

#### **15.5 Continuing obligations**

The termination or expiration of this Agreement does not affect accrued rights or remedies.

### **16. Force Majeure**

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16.1 If a Party is prevented from or delayed in performing an obligation under this Agreement (other than an obligation to pay money) by a Force Majeure Event then the obligation is suspended during, but for no longer than, the period the Force Majeure Event continues and such further period as reasonable in the circumstances.

16.2 The Party that is prevented from or delayed in performing the obligation must promptly notify the other Party of its inability to perform the obligation due to the Force Majeure Event.

### **17. Notices**

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17.1 All notices to be given under this Agreement are to be in given in writing.

17.2 Notices must be forwarded to the other Party by prepaid post or registered mail to the addresses set out in this Agreement or otherwise as notified in writing to the other Party from time to time.

17.3 All notices served under this Agreement will be considered to have been received three Business Days after posting, unless sent by facsimile in which case the notice will be deemed to have been received on the date shown on the sender's transmission report.

### **18. Relationship**

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18.1 Nothing contained or implied in this Agreement constitutes a Party the partner, agent or legal representative of the other Party for any purpose, or creates any partnership, employment, agency or trust. Neither Party has the authority to bind the other Party in any way.

### **19. Severability**

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19.1 If any part of this Agreement is held to be invalid or unenforceable in any way, the remaining provisions will not be affected and remain in full force for the Term.

### **20. Assignment**

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20.1 Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

### **21. Waiver**

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- 21.1 A Party's failure to delay to exercise a power or right does not operate as a waiver of that power or right.
- 21.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 21.3 A waiver is not effective unless it is in writing.
- 21.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **22. Variation**

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- 22.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

## **23. Counterparts**

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- 23.1 This Agreement may be executed in any number of counterparts, which taken together, constitute the one agreement

## **24. Governing Law**

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- 24.1 This Agreement will be governed by the laws of the State of Victoria, and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts in that State.

## **25. Entire Agreement**

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- 25.1 This Agreement constitutes the entire agreement between the Parties in respect of the Services, and supersedes all prior agreements, representations, negotiations and correspondence.

## **26. General**

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### **26.1 Warranty**

Except as provided herein and to the extent allowed by law, the Service is provided on an "as is" basis, and without any warranty or condition, express or implied. To the extent permitted by law, Sidekicker and its suppliers specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement.

#### **Executed as an agreement:**

Signed for and on behalf of Lend Me a Hand Pty Ltd

by its authorised representative:

  
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Signature

.....Thomas Amos.....

Name

.....24/04/2018.....

Date

Signed for and on behalf of the Client

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