

ULTRO[®]

RECRUITMENT

TERMS & CONDITIONS AND SCHEDULE OF RATES

PRESENTED TO

Client Name (Insert Logo)



DATE

DD, Month 2019

PREPARED BY

Consultant Name

Position Title - Ultro Recruitment

M: 0400 000 000 P: 1300 227 707
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This Agreement is made between Ultro Recruitment (“Ultro”) and the Client, and will serve to confirm Ultro and the Client’s agreement regarding the Client’s hire of Employees, payment terms and agreed conditions for day labour services from Ultro.

By executing the Agreement, the Client confirms that they have read these Terms carefully, and have (where applicable) obtained or have had the opportunity to obtain independent legal advice as to their content.

1. DEFINITIONS

In this agreement the following expressions have the following meanings:

“Agreement” means this document.

“Assignment” means each and every provision of an Employee to the Client for the purposes of performing the Labour Hire Services.

“Business Day” means any day except Saturday or Sunday or a day that is a public holiday throughout the State in which the Labour Hire Services are provided.

“Client” means the person, firm or body corporate together with any related body corporate as defined by the Corporations Act 2001 (Cth) to which Ultro provides Employees pursuant to this Labour Hire Agreement.

“Employee” includes any person who Ultro arranges to provide Labour Hire Services to the Client in connection with an Assignment.

“GST” has the meaning provided in the GST Act.

“GST Act” means A New Tax System (Goods and Services) Act 1999 (Cth).

“Hourly Rate” means the hourly rate of pay payable in respect of an Employee performing Labour Hire Services in respect of an Assignment pursuant to clause 7.1, as amended from time to time.

“Labour Hire Services” means the agreed work to be performed by the Employee in accordance with this Agreement.

“Schedule” means the schedule attached to this Agreement.

“Terms” means the terms and conditions contained in this document.

2. INTERPRETATION

In this Agreement unless the context indicates a contrary intention, the following applies:

- (a) **Numbers.** Words importing the singular include the plural and vice versa.
- (b) **Gender.** Words importing any gender include the other genders.
- (c) **Persons.** References to persons include corporations and bodies corporate.
- (d) **Representatives and assigns.** References to a person include the legal personal representatives, successors and permitted assigns of that person.
- (e) **Statutory amendments.** A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- (f) **Variation.** References to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties.
- (g) **Joint liability.** An obligation of two or more Parties shall bind them jointly and severally.
- (h) **Defined expressions.** If a word or phrase is defined, cognate words and phrases have corresponding definitions.

- (i) **Reconstituted bodies.** References to a body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or the person or body by which its functions have become exercisable.
- (j) **Joint obligations.** An obligation incurred in favour of two or more Parties shall be enforceable by them jointly and severally.
- (k) **Collective references.** Reference to anything (including, without limitation, any Deed) is a reference to the whole or any part of it and a reference to a group of things or person is a reference to any one or more of them.
- (l) **Headings.** Headings are for reference only and do not affect the interpretation of this Agreement.
- (m) **Currency.** Any reference to any payment of money under this Agreement is a reference to that payment in Australian currency unless the context states otherwise.

3. RELATIONSHIP BETWEEN THE PARTIES

- 3.1 The Client engages Ultro to provide the Labour Hire Services as an independent contractor.
- 3.2 While any Employee is providing Labour Hire Services:
 - (a) neither Ultro, nor any Employee, is the Client's employee;
 - (b) no contractual relationship will exist between the Client and any Employee;
 - (c) the Employee is not entitled to any benefit from the Client that is usually attributable to an employee; and
 - (d) Ultro agrees to exercise sufficient control over the Labour Hire Services provided by the Employee to ensure those services comply with the lawful and reasonable directions issued to the Employee by the Client.

4. APPLICATION OF THIS AGREEMENT

- 4.1 This Agreement applies to the provision of the Labour Hire Services to the exclusion of any other terms and conditions, unless such terms and conditions have been accepted by Ultro in writing.
- 4.2 Notwithstanding whether this Agreement has been executed by the Client, the Terms of this Agreement will be deemed to have been accepted by the Client if the Client proceeds to utilise any Employee for the purposes of the Labour Hire Services, places an order for Labour Hire Services or takes any other step to enable those Labour Hire Services to be performed.

5. SUPPLY OF LABOUR HIRE SERVICES

- 5.1 From time to time the Client may request that Ultro supply a specified number of Employees, each of whom are suitable for providing the Labour Hire Services.
- 5.2 The number of Employees the Client may request at any one time will be at the discretion of Ultro.
- 5.3 Ultro will use its best endeavours to provide the Employees to the Client on being given reasonable and sufficient notice of the request from the Client.
- 5.4 Ultro agrees to use reasonable efforts to ensure that all Employees will be suitable for carrying out the Labour Hire Services.

6. TIMESHEETS

- 6.1 For all Labour Hire Services provided to the Client under this Agreement, the Client will ensure that each Employee maintains a timesheet recording the number of hours worked, and when those hours were worked.

- 6.2 All timesheets must be countersigned by the Client or the authorised representative of the Client at the end of each day worked by each Employee and will be deemed approval for payment of the hours logged.
- 6.3 In circumstances where a timesheet is not provided a spreadsheet attached to the invoice must be attached.
- 6.4 It is the responsibility of the Client to ensure all submitted timesheets are reviewed and approved in accordance with Ultro's required payroll process timelines.
- 6.5 Approval of timesheets submitted to Ultro must be within 24 hours of completion of the relevant work completed by the Employee.
- 6.6 It is solely the Client's responsibility to ensure that an authorised representative of the Client has reviewed the accuracy of any time sheet prior to submission to Ultro.
- 6.7 Submission of a timesheet to Ultro will be deemed as confirmation by the Client of the following:
- (a) that the relevant representative of the Client has reviewed the accuracy of the timesheet;
 - (b) all details contained in a time sheet submitted to Ultro are accurate and have been approved; and
 - (c) the relevant representative of the Client has the authority of the Client to approve any timesheet submitted to Ultro.
- 6.8 The Client agrees and acknowledges that approval of a timesheet by the Client's relevant representative will be deemed as acceptance by the Client of the hours worked by an Employee and the invoice raised by Ultro in accordance with the timesheet submitted by the Client
- 6.9 The Client agrees that all timesheets submitted are legally binding on the Client and cannot be disputed or altered post submission to Ultro as a result of the effect of clause 6 of this Agreement and the acknowledgments contained therein.
- 6.10 Clause 6 of the Agreement will apply to any Agreement entered in any State or Territory and cannot be varied.
- 6.11 Clause 6 of the Agreement will apply to all Ultro timesheets including but not limited to paper based timesheets and/or E-Timesheets via Ultro's E-Timesheet portal.
- 6.12 Each E-Timesheets sent for approval to the client by Ultro will be deemed to be accepted in the absence of a response after 72 hours from transmission and the hours listed will be invoiced by Ultro.

7. LABOUR HIRE RATES

- 7.1 Ultro and the Client agree that Ultro will provide Employees on a day labour basis as per the Hourly Rates as particularised in the attached Schedule.
- 7.2 The Hourly Rates are inclusive of:
- (a) all relevant award conditions;
 - (b) annual leave, personal leave and long service leave;
 - (c) income tax and fringe benefits tax
 - (d) payroll tax;
 - (e) superannuation;
 - (f) workers compensation insurance; and
 - (g) public liability insurance.
- 7.3 Ultro may vary the Hourly Rates and Fees from time to time by written notice to the Client.
- 7.4 If the Client makes a request for Labour Hire Services after receiving written notice from Ultro referred to in clause 7.3 then the Client will be deemed to have accepted the variation of this Agreement and the varied Hourly Rates and Fees will apply to any Labour Hire Services requested by the Client and provided by Ultro after the date of the notice.

8. INVOICES

- 8.1 Any amount invoiced by Ultro to the Client will be calculated in accordance with the Schedule.
- 8.2 Any discrepancy or dispute as to an invoice by the Client must be raised within seven (7) days of receipt of the invoice otherwise the Client is deemed to have accepted the invoice as provided.

9. PAYMENT

- 9.1 All invoiced amounts are payable 30 days from the date of Ultro's invoice.
- 9.2 If the Client defaults in the payment of any amount payable under this Agreement, Ultro may suspend the provision of Labour Hire Services under this or any other agreement with the Client and may charge interest on any overdue amount at the Reserve Bank of Australia Cash Rate plus 5% per annum from the due date of the payment until payment is received.
- 9.3 If payment is not received by the due date, Ultro may impose a 5% administrative fee calculated on the balance of any overdue invoice.
- 9.4 The Client indemnifies Ultro for all of its costs incurred (including legal fees on a solicitor client basis) as a consequence of any default by the Client under this Agreement.
- 9.5 The parties agree that the charges and amounts referred to in clauses 9.2, 9.3 and 9.4 are a genuine pre-estimate of Ultro's damages, and are not penalties.

10. GST

- 10.1 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 10.2 To the extent that any supply made under or in connection with this Agreement is taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 10.3 To the extent that a party to this Agreement is required to reimburse or indemnify another party for loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to Claim an input tax credit.
- 10.4 To the extent that any consideration payable to a party under this Agreement is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

11. PAYROLL TAX

- 11.1 Legislation may provide that, as a client of Ultro, the Client is liable for any payroll tax payable when it uses an Employee. Ultro is authorised to collect and pay payroll tax on behalf of the Client if, under any applicable payroll tax legislation, that liability falls on the Client. This clause applies even if no employment relationship arises between the Client and any Employee. The default position is for Ultro to collect and pay payroll tax.
- 11.2 The Fees are inclusive of any payroll tax whether it is paid by the Client or Ultro. If the Client is required to pay payroll tax, the Fees will be adjusted accordingly.
- 11.3 If the Client wishes Ultro to collect and remit payroll tax on its behalf in accordance with clause 11.1, it will sign an authorisation form to be provided by Ultro.
- 11.4 Payroll tax is not subject to GST. Accordingly, should the Client elect for Ultro to collect and remit payroll tax on its behalf, the amount of payroll tax will be itemised separately on all documentation including the invoices.

12. MINIMUM PERIOD OF LABOUR HIRE SERVICES

12.1 The Client agrees that the minimum period for the hire of any Employee is eight (8) hours.

13. CANCELLATION OF LABOUR HIRE SERVICES

- 13.1 The Client must notify any cancellation of any Labour Hire Services immediately.
- 13.2 In the event any Labour Hire Services are cancelled by the Client, the client acknowledges and agrees that Ultro may charge the Client a minimum of four (4) hours for the Labour Hire Services at the applicable Hourly Rate.
- 13.3 Ultro may cancel the Labour Hire Services immediately without prior notice if the Client:
- (a) fails or refuses to pay any amount invoiced to the Client as per the payment terms in clause 9;
 - (b) breaches any health and safety requirement of this Agreement pursuant to clause 15; or
 - (c) there is any change of circumstances which reasonably prevents Ultro from providing the agreed Labour Hire Services.

14. INDEMNITY AND LIABILITY

- 14.1 By executing this Agreement, the Client acknowledges and agrees that Ultro is not performing the works set out in the Assignment description, and is merely the supplier of an Employee to conduct the works as detailed in the Assignment description under the care, control and supervision of the Client.
- 14.2 Without limiting Ultro's liability at law, the Client agrees to indemnify, and keep indemnified, Ultro, its directors, officers, agents and assigns against any liability for any Claims made against Ultro, or its Employees arising out of
- (a) any breach of this Agreement by the Client;
 - (b) the termination of this Agreement because of a breach by the Client;
 - (c) any willful, unlawful or negligent act or omission of the Client or any of its employees;
 - (d) any injury to or death of a natural person and any loss of or damage to a third party's real or personal property caused or contributed to by the Client or any of its employees;
 - (e) any loss of or damage to real or personal property of Ultro, caused by or contributed to by the Client;
 - (f) any breach of this Agreement, or any loss, damage or injury suffered by a third party, caused by any negligence, or deliberate act, by an Employee in the course of performing work during any agreed Assignment;
 - (g) any claim, action, demand or proceeding by a third party against Ultro or any of its Related Bodies Corporate caused by or contributed to by the Client or any of its employees; or
 - (h) any claim, action, demand or proceeding by a third party against Ultro or any of its Related Bodies Corporate arising directly or indirectly out of a breach of this Agreement by the Client or any of its employees, or by any wilful, unlawful or negligent act or omission of the Client or any of its employees, except to the extent that any loss is solely and directly caused by the negligence of Ultro or any of its Related Bodies Corporate.
- 14.3 Clause 14.2 does not reduce Ultro's liability directly incurred, to the extent to which Ultro, or its employees have contributed to any such damage, loss or injury.
- 14.4 The Client agrees it is responsible for the care and supervision of all Employees whilst they are performing Labour Hire Services to the Client.
- 14.5 Ultro is not liable for any loss or damage to any property or for death or personal injury (to the Client's personnel or another person) caused or contributed to by an Employee (whether by negligence or otherwise) during any Assignment to the Client.

- 14.6 Notwithstanding the effect of clause 14.5, Ultro holds public liability insurance covering Ultro and its employees, and the Client has or will obtain public liability insurance to cover the works in the assignment description.
- 14.7 Whilst Ultro will use all reasonable endeavors to meet the Client's requirements and ensure the quality of the Employees, Ultro is not liable for any loss or damage arising from any negligence, dishonesty, carelessness or lack of skill of an Employee.

15. HEALTH & SAFETY

- 15.1 The Client agrees and acknowledges it is responsible for providing a safe and healthy work place and safe systems of work for all Employees.
- 15.2 The Client agrees and acknowledges that it will:
- (a) provide a comprehensive structured site and job safety induction for each Employee;
 - (b) provide adequate instruction and training to each Employee;
 - (c) ensure that the Employees are not exposed to risks to their health or safety or to hazards arising from the provision of Labour Hire Services;
 - (d) ensure that any equipment or facilities provided for use in the provision of Work are safe and without risks to health and safety when properly used;
 - (e) ensure that systems of work and the working environment are safe and without risks to health;
 - (f) advise Ultro prior to any change in the nature of the tasks undertaken, equipment operated, and chemicals (or other consumables) used by Employee; and
 - (g) assist in the rehabilitation of Employees injured at the Client's work site by provision of suitable alternative duties.
- 15.3 The Client warrants that it is responsible for ensuring all work sites the Employee will be assigned to comply with all necessary legal requirements and regulations of the State or Territory in which the Labour Hire Services are provided.
- 15.4 Where necessary, Ultro will attend the Client's work site for the purpose of carrying out occupational health and safety inspections, safety/toolbox meetings with its employees onsite and investigation of incidents and duties.
- 15.5 In the event of injury to the Employee on the Client's site or during the course of an Assignment, the Client must report any incident to Ultro on the same day the incident or injury occurred and provide Ultro with a detailed written report of the incident. Failure to report any injury or incident on the same day it occurred will result in the cancellation of the Labour Hire Services.
- 15.6 Any breach of clause 15 will result in cancellation of the Labour Hire Services by Ultro. Should Ultro be required to cancel any Labour Hire Services pursuant to clause 15, Ultro reserves its rights to pursue any outstanding amounts that may be due and owing by the Client or may have accrued up to the date of the cancellation.

16. RETENTION OF EMPLOYEES BY CLIENT

- 16.1 If the Client (or any of its affiliates, third parties or associated entities or Related Body Corporates) has contact with an Employee through or in connection with an Assignment, and employs or engages any current or former Employee (either directly or indirectly) during that Assignment or within twelve (12) months of the expiration of that Assignment, then Ultro reserves its right to charge the client a fee for the loss of any Employee to the Client.
- 16.2 The Client agrees and acknowledges that if any Employee engaged by the Client on a permanent or temporary basis outside of this Agreement, the client will be required to pay Ultro a placement fee equal to 160 hours of the Employee's Hourly Rate.
- 16.3 The Client agrees that it will not offer to retain or engage any Employee whether directly or indirectly, or permit any other person to offer to retain or engage any Employee, during an Assignment to the Client without seeking prior permission in writing from Ultro.

17. CONFIDENTIALITY

- 17.1 Each party must maintain the confidentiality of, and not disclose, any trade secret, confidential information or commercially sensitive information about the other party or any of its Related Bodies Corporate obtained during the term of this Agreement, other than when required by law or when the information falls into the public domain.
- 17.2 The terms of this Agreement and all candidate or Employee information provided to the Client by Ultro is to be treated as confidential and must be kept confidential by the Client. The Client must not disclose such information to any person other than those employees of the client who have a need to know such information and the Client will ensure those employees maintain the confidentiality of the information provided to them.
- 17.3 The Client must ensure that it complies with all laws in respect of any personal information disclosed to it, including any privacy legislation and must notify Ultro if there is any breach of its privacy obligations in respect of the personal information of any candidate or Employee.
- 17.4 For the avoidance of doubt this clause will survive termination of this Agreement.

18. PRIVACY POLICY

A copy of Ultro's Privacy Policy can be found at <https://www.ultrorecruitment.com.au/page/privacy-policy>, or alternatively, provided to the Client upon request.

19. INSURANCE

- 19.1 During the period of any assignment of Employees to the Client, the Client must have adequate insurance covering the following:
- (a) loss or damage to the Client's property or the property of other persons including machinery, motor vehicles and other plant and equipment and all which may be operated or handled by any Employee; and
 - (b) death or personal injury (to the Client's personnel or any other person) caused or contributed by the Employee whilst on hire to the Client. The insurance must cover Ultro and its employees.
- 19.2 The Client agrees to maintain all necessary insurance policies for the duration of the Employee's Assignment.
- 19.3 The Client agrees to notify Ultro in the event any policy affecting and/or relevant to the Employee is cancelled and or varied, or in the event a new policy is entered into by the Client.
- 19.4 Ultro reserves its rights to suspend any labour hire Assignment in the event an insurance policy is cancelled until a sufficient and adequate policy is obtained by the Client.
- 19.5 The Client must upon request by Ultro, produce proof of any existing policies in place or intended to be in place for the period of the Employee's Assignment.

20. TERMINATION

- 20.1 Either party may terminate this agreement at any time by giving 7 days' notice in writing to the other.
- 20.2 If the Client terminates the Agreement, the Client must pay for any outstanding Labour Hire Services which have not been completed and/or paid for by the date of termination of this Agreement unless Ultro has agreed to waive this requirement in writing. The obligation to pay for any Labour Hire Services under this Agreement or any other payment to Ultro specified in this Agreement survives any termination of it.

21. SEVERABILITY

- 21.1 If any provision of this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement will remain in force.

22. GENERAL

- 22.1 These terms and conditions and any contract to which they apply shall be governed by the laws of the State or Territory the Labour Hire Services are provided and each party submits to the non-exclusive jurisdiction of the courts in the State or Territory the Labour Hire Services are provided in.
- 22.2 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.3 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 22.4 The Client agrees that Ultro may amend this Agreement at any time. If Ultro makes a change to the terms and conditions of this Agreement, then that change will take effect from the date on which Ultro notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Ultro to provide Services to the Client.
- 22.5 The failure by Ultro to enforce any clause of this Agreement shall not be treated as a waiver of that clause, nor shall it affect Ultro's right to subsequently enforce that clause.
- 22.6 The Client shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Client by Ultro nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.7 This Agreement constitutes the entire agreement between the parties as to the subject matters.