

**Terms and Conditions of Labour Hire Agreement**

**1. Agreement**

This agreement (**Agreement**) is comprised of:

- (a) the Quote provided to the Company;
- (b) these terms and conditions; and
- (c) any other documents and terms as are incorporated in this Agreement by agreement between the parties.

**2. Appointment**

- (a) The Company appoints Hastings Deering (Australia) Limited (HDAL) to provide the Services with effect from the Start Date (as specified on the Quote), and HDAL agrees to be appointed to provide the Services in accordance with the terms set out in this Agreement.
- (b) The relationship between the Company and HDAL for the provision of the Services is that of principal and independent contractor.
- (c) The parties will appoint Representatives to act on their behalf in regards to this Agreement.
- (d) A party may replace its Representative from time to time by written notice to the other party. In the event that a Representative is replaced, then all references to the Representative in this Agreement will be taken to refer to that replacement.

**3. Term**

This Agreement comes into operation on the Start Date and continues until the End Date (as specified in the Quote), unless terminated earlier in accordance with the terms of this Agreement.

**4. Scope of Services**

- (a) The Services will be carried out at the Location specified in the Quote, or at such other places as agreed to between the parties from time to time.
- (b) HDAL will perform the Services in a diligent manner, and have regard to the needs of the Company as advised by the Company Representative from time to time.
- (c) If HDAL becomes aware of any matter which may change or delay the performance of the Services, it will advise the Company. The advice will include particulars of the likely change or delay and recommendations to minimise any adverse effects.
- (d) HDAL will provide the Services in accordance with the policies and procedures that are notified to it by the Company, and it will ensure that any HDAL Personnel or Subcontractors perform the Services in accordance with those policies and procedures.
- (e) HDAL will inform the Company as soon as reasonably possible, should a person who is performing the Services be prevented by resignation, sickness, injury or any other unforeseen circumstances from carrying out the Services. In these circumstances, HDAL will use reasonable endeavours to provide a replacement for that person who has comparable skills and experience.

**5. Remuneration, invoicing and payment**

- (a) In consideration for the performance of the Services, the Company will pay the Hourly Rate, Fees and surcharges to HDAL as set out in the Quote.
- (b) HDAL will prepare and submit an invoice no more than once a month addressed to the Company Representative. Each invoice will:
  - (i) contain a description of the Services performed; and
  - (ii) be a valid tax invoice which in all respects complies with the GST Act.
- (c) Any claim for the payment of a disbursement on an invoice will be accompanied by a copy of the disbursement invoice or payment receipt for that disbursement.
- (d) The Company will pay the invoice within 20 Business Days of receipt.
- (e) If the Term of this Agreement is more than 12 months and is not otherwise provided for in the Quote, HDAL may request an increase to the Fees once every 12 months during the term of this Agreement.
- (f) Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.

**6. Health and Safety**

- (a) HDAL Personnel will comply with the safety rules and regulations which arise under legislation relating to workplace health and safety, and under the Company's policies and procedures which are notified to HDAL.
- (b) The Company must provide HDAL Personnel with:
  - (i) safe access to the Location and any other place where the Services are to be provided;
  - (ii) safe plant and structures;
  - (iii) safe systems of work;
  - (iv) adequate facilities for the welfare at work of the HDAL Personnel, including ensuring access to those facilities; and
  - (v) any information, induction, training, instruction or supervision that is necessary to protect HDAL Personnel from risks to their health and safety arising from work carried out as part of the Services.
- (c) In the event of a workplace health and safety incident involving HDAL Personnel, the parties must co-operate in any subsequent investigation, and work together to either eliminate the risk of the incident occurring again, or if it is not reasonably practicable to eliminate that risk, to minimize the risk as far as reasonably practicable. However, the parties are not obliged to share any information or document that is subject to legal professional privilege.

## 7. Insurances

- (a) HDAL will take out and maintain the following insurances during the term of this Agreement:
  - (i) public liability insurance with an overall limit of \$20,000,000 for any one occurrence, such insurance covering legal liability to third parties in respect of property damage or loss, or personal injury or death arising out of the performance of the Services;
  - (ii) workers' compensation insurance in respect of the performance of the Services by the HDAL Personnel.;
  - (iii) if the performance of the Services involves the use of motor vehicles at the Location, third party liability insurance, for an amount not less than \$20,000,000, covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles; and
  - (iv) if the performance of the Services involves the provision of professional services, professional indemnity insurance providing cover to \$10,000,000 in respect of acts, errors and omissions in the performance of professional services.
- (b) HDAL will ensure that any Subcontractors have in place similar insurances while performing any part of the Services under this Agreement.
- (c) If requested by the Company, HDAL will provide the Company with a copy of the certificates of currency of the insurance required to be maintained in accordance with this Agreement.

## 8. Indemnities

- (a) HDAL indemnifies the Company against any Claim which may be made against the Company or the Company's Personnel by any person in respect of:
  - (i) loss or damage to any property; and/ or
  - (ii) personal injury to, or death of, any person,that is caused by any negligent act or omission of HDAL or the HDAL Personnel in the performance of the Services.
- (b) HDAL's liability to indemnify the Company will be reduced proportionally to the extent that a negligent act or omission of the Company, the Company's Representative or the Company's Personnel contributed to the Claim.
- (c) The Company indemnifies HDAL against any Claim which may be made against HDAL by any person in respect of:
  - (i) loss or damage to any property; and/ or
  - (ii) personal injury to, or death of, any person,that is caused by any negligent act or omission of the Company, the Company's Representative or the Company's Personnel that is in any way related to the Services.

- (d) The Company's liability to indemnify HDAL will be reduced proportionally to the extent that a negligent act or omission of HDAL or HDAL's Personnel contributed to the Claim.
- (e) HDAL indemnifies the Company against any Claim made or brought by the HDAL Representative, HDAL Personnel, or any Subcontractor in respect of and Leave Entitlements and any Work Related Entitlements.
- (f) HDAL is responsible for all Taxation Payments relating to the provision of the Services.

## 9. Intellectual Property

- (a) Each party owns its Intellectual Property that was in existence at the Commencement Date.
- (b) Any Intellectual Property created by HDAL, the HDAL Representative or any HDAL Personnel or Subcontractor while performing the Services after the Commencement Date is the property of HDAL.

## 10. Confidential Information

- (a) Neither party must not, during or after the term of this Agreement, disclose to any person or use for any purpose any Confidential Information, unless the disclosure:
  - (i) is required by law; or
  - (ii) relates to information which is already in the public domain, other than as a result of a breach of confidentiality; or
  - (iii) is required to enable HDAL to provide the Services to the Company, and only to the extent that such disclosure is necessary; or
  - (iv) is agreed in writing by the other party.
- (b) Subject to clause 10(a), each party will take all steps necessary to ensure that Confidential Information is kept confidential and is not used or disclosed by any person in a manner that will or is likely to cause Loss to the other party.
- (c) Upon termination or cessation of this Agreement for any reason, each party must return all documents and materials containing or referring to any Confidential Information which belongs to the other party.

## 11. Business Protection

- (a) The Company warrants that for a period of six months after the termination of this Agreement, the Company will not, without the prior written consent of HDAL, solicit, entice, or attempt to solicit or entice any HDAL Personnel who performed Services under this Agreement during the six months preceding the termination of this Agreement to leave their employment with HDAL to either:
  - (i) take up employment with the Company; or
  - (ii) provide services to the Company as an independent contractor (whether as an individual or through a company or partnership).
- (b) The Company acknowledges that the restraint imposed by this clause is reasonable to protect the interests of HDAL.

## 12. Subcontracting

- (a) The Company acknowledges and agrees that HDAL may engage Subcontractors to provide the Services, or any part of the Services, under this Agreement.
- (b) HDAL's obligations under this Agreement are not reduced or otherwise affected by subcontracting the performance of obligations under this Agreement.

## 13. Termination

- (a) A party may terminate this Agreement immediately by written notice if the other party:
  - (i) commits a material breach of this Agreement and, where that breach is remediable, that breach is not remedied within 5 Business Days after the receipt of written notice to remedy the breach from the first party; or
  - (ii) suffers an Insolvency Event; or
  - (iii) the parties are not able to agree to an increase in the Fees as requested in accordance with clause 5(e).
- (b) Either party may immediately terminate this Agreement for any reason by giving 20 Business Days written notice to the other party.
- (c) If the Company terminates this Agreement pursuant to clause (a) or (b), HDAL is entitled to be paid for the Services performed before the date of termination.
- (d) If the Company terminates this Agreement pursuant to clause 13(a)(a)(iii) or 13(b), then in addition to clause 13(c), the Company must reimburse HDAL for any expenses reasonably incurred by HDAL in anticipation of performing the Services or in returning the HDAL Personnel to their usual place of work with HDAL.
- (e) On termination of this Agreement, each party will return to the other party any equipment, tools, documentation or other materials belonging to the other party within 5 Business Days of the date of termination.
- (f) Termination of this Agreement will not prejudice any rights or remedies already accrued to a party under, or in respect of, any breach of this Agreement.
- (g) Clauses 9, 10, 11, and any other obligations which are expressed to or, by their nature, survive expiry or termination of this Agreement, survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

## 14. Force Majeure Event

- (a) If the Company or HDAL is prevented from performing its obligations under this Agreement by a Force Majeure Event, then:
  - (i) performance of those obligations are suspended to the extent that performance is prevented by the Force Majeure Event; and
  - (ii) the non-performance or delay in performance of this Agreement will be deemed to not be a breach of the Agreement.

- (b) The party affected by the Force Majeure Event must notify the other party immediately after it becomes aware of any Force Majeure Event affecting the provision of the Services and the steps taken to remedy it.
- (c) If a suspension under clause 14(a) exceeds 3 months, either party may immediately terminate this Agreement by written notice to the other party.
- (d) Upon termination under this clause, the parties are only liable for failure to perform obligations which accrued before the occurrence of the Force Majeure Event.
- (e) In the event of termination under clause 14(c), HDAL is entitled to be paid for Services performed before the date of termination.

## 15. Dispute Resolution

- (a) If a Dispute under this Agreement arises, then:
  - (i) the party that wishes to raise a Dispute must notify the other party in writing of the nature of the Dispute (**Notice of Dispute**);
  - (ii) the Notice of Dispute must state that it is a dispute under this clause;
  - (iii) a senior representative from each party with authority to resolve the Dispute will meet within 10 Business Days of the Notice of Dispute to attempt to resolve the Dispute;
  - (iv) any meetings or discussions held between the parties to resolve the Dispute will be held on a without prejudice basis;
  - (v) if an agreement is reached to resolve the Dispute, the agreement will be documented in writing and signed by both parties;
  - (vi) if no agreement is reached between such representatives within 20 Business Days, either party may commence legal proceedings.
- (b) During a Dispute, the parties will continue to perform their obligations under this Agreement, unless the Dispute relates to the health and safety of HDAL Personnel.
- (c) Clause 15(a) does not prevent a party from seeking injunctive relief.

## 16. Additional Provisions

- (a) Either party may assign or novate this Agreement with the other party's written consent.
- (b) If any provision of this Agreement is held to be invalid or unenforceable for any reason, it will be severable and will not affect the remaining provisions of the Agreement.
- (c) This Agreement records the entire agreement between the parties in relation to the performance of the Services, and supersedes all previous negotiations, understandings or arrangements (whether written, oral, express or implied) in relation to the performance of the Services.
- (d) This Agreement is governed by the laws of the State in which the Services are carried out, and the parties

submit to the non-exclusive jurisdiction of the courts of that State or Territory.

- (e) The parties choose for purposes of all notices in terms of this Agreement and the serving of any process, the addresses contained in the Quote.
- (f) Neither party is liable to the other party for any Consequential Loss however caused, including negligence.
- (g) Any waiver of any right arising from a breach of this Agreement must be in writing and executed by the party granting the waiver.
- (h) Any variation to this Agreement must be in writing signed by or on behalf of both parties.
- (i) This Agreement may be executed in any number of counterparts.

## 17. Definitions

The meanings of the terms used in this Agreement are set out below.

**Business Day** means a day on which banks are open for business in Brisbane, Australia, excluding a Saturday, Sunday or public holiday.

**Claim** means any claim, demand, legal proceedings or cause of action:

- (a) based in contract;
- (b) based in tort (including negligence);
- (c) under common law; or
- (d) under statute.

**Company Personnel** means a person employed or engaged by the Company (including an agent or officer of the Company) other than the HDAL Personnel.

**Confidential Information** means:

- (a) trade secrets;
- (b) Intellectual Property;
- (c) business, technological and financial information of a party; and/or
- (d) any information that is marked, or a party is told, is confidential.

**Consequential Loss** means actual or anticipated profits, loss of overheads, unrecovered overheads, loss of opportunity, loss of contract or loss of revenue.

**Dispute** means any dispute, difference or issue between the parties concerning or arising out of or in connection with or relating to this agreement or the subject matter of this agreement or the breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of this Agreement.

**Force Majeure** means an event or circumstance which:

- (a) is beyond the control of the party effected by that event or circumstance; and
- (b) causes or results in a delay in, or prevention of, the performance by the affected party of any of its obligations under this Agreement; and

- (c) cannot be prevented, overcome or remedied by the exercise of reasonable care and diligence by the affected party including:
  - (i) fire, flood, earthquake, cyclone, epidemic or natural disaster;
  - (ii) war, revolution, outbreak of hostilities, riot, civil disturbance, acts of terrorism or any other unlawful act against public order or authority; and
  - (iii) strikes, lock-outs, or industrial action of any kind.

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

**HDAL Personnel** means a person employed or engaged by HDAL to assist in the provision of the Services.

**Insolvency Event** means in relation to a party, that any of the following events or circumstances have occurred:

- (a) the affected party becomes insolvent;
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected party (not being for the purposes of amalgamation or reconstruction of the affected party);
- (c) the affected party is placed under official management or administration (whether voluntary or otherwise);
- (d) any trustee, receiver or receiver and manager is appointed in respect of any material part of the affected party's assets;
- (e) a party is de-registered, or steps are taken to de-register a party;
- (f) a party suspends payment of its debts generally; or
- (g) a party ceases, or threatens to cease, to carry on business.

**Intellectual Property** means all present and future rights to intellectual property including any inventions and improvements, trade marks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula.

**Leave Entitlements** means public holidays, long service leave, annual leave, personal leave, parental leave, compassionate leave or any other leave taken during the term of this Agreement.

**Loss** means any liability, cost, expense, loss or damage.

**Services** means the agreed services specified in the Quote.

**Subcontractor** means a subcontractor engaged by HDAL to perform some or all of the Services under this Agreement.

**Taxation Payments** means taxation payments and levies, including GST, withholding tax, superannuation contributions under the Superannuation Contribution Guarantee legislation, and pay roll tax, in relation to all amounts it is paid by the Company.

**Work Related Entitlements** means remuneration, salary, wages, allowances, loadings, superannuation and expenses payable to the HDAL Representative and/or any HDAL Personnel or Subcontractor in relation to the performance of the Services.