LABOUR HIRE TERMS AND CONDITIONS

1. Creation of Contract

1.1 To acquire the Services:

(a) the Client may request the Services by issuing a Job Order to Engage by email or by telephone; and

(b) Engage may accept a Job Order by issuing a Job Order Confirmation to the Client by email or by telephone, or by supplying a Worker to the Client in response to the Job Order.

and the Contract is formed on the earliest date that Engage issues a Job Order Confirmation and the date that Engage first supplies a Worker in response to the Job Order.

1.2 The Contract comprises only:

(a) the Job Order Confirmation and all documents attached to or expressly incorporated into the Job Order Confirmation;

(b) the Pricing Schedule;

(c) these General Conditions;

(d) the Job Order; and

(e) any other terms the parties expressly agree in writing to include in the Contract,

(together, the **Contract**), but excludes the Excluded Terms.

1.3 If there is any inconsistency between the documents forming the Contract, they prevail in the order listed in clause 1.2.

1.4 Any extension of an assignment, additional shift or replacement Temporary Worker requested by the Client and supplied by Engage forms part of the existing Contract, unless Engage notifies the Client otherwise.

1.5 Without limiting clause 1.1, if the Client interviews a Worker, accepts or engages a Worker, allows a Temporary Worker to commence work, makes any payment of a Service Fee, or passes information about a Worker to a third party after receiving these General Conditions, the Client is deemed to have accepted these General Conditions.

2. Labour Hire Services

2.1 Engage will supply Temporary Workers to, and introduce candidates for permanent positions to, the Client (and any Related Body Corporate of the Client named in a Job Order) in accordance with each Job Order Confirmation and the Contract.

2.2 While providing the Services, Engage must:

(a) use reasonable endeavours to ensure that each Worker is appropriately trained and experienced for the role;

(b) use reasonable endeavours to ensure that each Worker holds all qualifications, licences and accreditations required for the role; and

(c) hold all licences, permits and authorisations required to provide the Services, including any labour hire licence.

2.3 The Client acknowledges that Engage:

(a) does not provide any insurance for or on behalf of the Client, other than insurance Engage is required by law to hold in respect of Temporary Workers;

(b) does not guarantee any Worker's performance, or the accuracy of references or other information about a Worker's skills, qualifications, experience or integrity provided by the Worker, a referee or any other third party, and is not liable for any such information passed on to the Client;

(c) is not a registered migration agent and does not give migration, visa or residency advice to the Client or any Worker; and

(d) is not liable for any Loss, expense or delay arising from any failure or inability to supply a particular Worker, or to supply a Worker for all or part of an assignment.

2.4 The Client must satisfy itself that each Worker is suitable for the work it requires and relies on its own assessment in doing so.

2.5 If the Client requires the services of a Worker who has previously worked for, or been introduced to, the Client through Engage, the Client must request those services through Engage and must not contact or negotiate directly with the Worker, or refer the Worker to any third party. Clause 5.2 or clause 6.8 (as applicable) applies to any resulting employment or engagement.

3. Supervision and Cancellation

3.1 From the time a Temporary Worker reports for duty and for the duration of the assignment, the Client is responsible for the day-to-day supervision, direction and control of the Temporary Worker, and must comply with its obligations under clause 7.

3.2 The Client is responsible for the acts, errors and omissions (whether negligent, wilful or otherwise) of Temporary Workers while under its supervision, direction or control, and Engage is not liable to the Client for any Loss caused by or contributed to by them, except to the extent caused by Engage's fraud, criminal acts or Wilful Misconduct.

3.3 The Client must ensure each Temporary Worker only performs the duties described in the Job Order Confirmation and for which the Temporary Worker holds the appropriate qualifications, licences, experience and training.

3.4 The Client must comply with all laws relevant to the assignment, including laws relating to employment, discrimination, harassment, privacy and work health and safety.

3.5 The Client must notify Engage in writing:

(a) before making any material change to a Temporary Worker's duties, classification, hours, shifts, location, equipment or working conditions; and

(b) promptly of any performance issue, misconduct allegation, complaint or other material concern involving a Temporary Worker.

3.6 The Client must give Engage at least 8 hours' notice of the cancellation or postponement of a Temporary Worker's shift. If less notice is given, the Client must pay Engage a Cancellation Fee equal to four hours at the applicable hourly rate.

3.7 If the Client decides not to proceed with the permanent placement of a candidate introduced by Engage after Engage has performed the Services, the Client must pay Engage a Cancellation Fee of one third of the Service Fee that would otherwise have been payable.

3.8 Where a Temporary Worker is required to travel for the assignment, the Client must pay all reasonable travel, accommodation and other out-of-pocket expenses, which Engage may invoice separately.

4. Responsibility for Worker Entitlements

Engage is responsible for payment of the following to Temporary Workers, and the Client is solely

responsible for the payment of the following in to Permanent Workers:

(a) all remuneration and entitlements, including the management of leave entitlements;

(b) workers' compensation insurance, PAYG withholding, superannuation, payroll tax and other taxes, imposts or levies imposed by law; and

(c) any payment on termination of employment or engagement.

5. Non-Solicitation and Conversion

5.1 During a Temporary Worker's assignment with the Client and for six months after the Temporary Worker ceases to be supplied to the Client, the Client must not, and must ensure its Related Bodies Corporate do not, without Engage's prior written consent, directly or indirectly:

(a) solicit the Temporary Worker for employment or engagement; or

(b) employ or engage the Temporary Worker.

5.2 If the Client or its Related Body Corporate employs or engages a Temporary Worker in any capacity during the period in clause 5.1, the Client must pay Engage the Conversion Fee, calculated by reference to the continuous period the Temporary Worker was supplied to the Client immediately before that employment or engagement:

(a) up to and including 1 month: $3,999;

(b) more than 1 month and up to and including 2 months: $2,999;

(c) more than 2 months and up to and including 3 months: $1,999;

(d) more than 3 months and up to and including 4 months: $999; and

(e) more than 4 months: no fee.

6. Fees and Payment

6.1 The Client must pay Engage the Service Fee which, unless otherwise stated in the Job Order Confirmation, is calculated in accordance with the Pricing Schedule as:

(a) for Permanent Workers, a percentage of the total annual remuneration package the Client agrees to pay the Permanent Worker, including superannuation and non-cash benefits; and

(b) for Temporary Workers, an hourly rate, with a minimum of four hours per shift, including any overtime, penalty rates and allowances payable to the Temporary Worker.

6.2 Engage will issue Tax Invoices for Permanent Workers on or after the date the Permanent Worker starts work (unless the Job Order Confirmation states otherwise), and for Temporary Workers weekly in arrears (or at other intervals notified by Engage) based on the hours worked. The Client must ensure each Temporary Worker's hours worked (including the start and finish times of any overtime worked) are provided to Engage in writing each week, by timesheet or otherwise.

6.3 All amounts payable under the Contract are exclusive of GST, unless stated otherwise. The Client must pay any GST on a taxable supply under the Contract at the same time as the amount to which it relates.

6.4 The Client must pay undisputed amounts within 14 days of the invoice date, unless otherwise agreed in writing.

6.5 The Client must raise any query or dispute regarding a Tax Invoice in writing, with reasons, within 14 days of the invoice date, failing which the Tax Invoice is deemed accepted as accurately reflecting the amount due.

6.6 Unpaid invoices will attract interest at the Cash Rate Target at the time plus an additional 6% per annum. Interest will be calculated daily and compounded monthly, from and including the due date for payment up to, but excluding, the actual date of payment.

6.7 The Client must pay, and Engage may adjust the Service Fee by written notice to recover, any increase in Engage's costs of supplying a Temporary Worker arising from:

(a) a change in law, an award or statutory on-costs, from the date the change takes effect (including any backdated amounts already invoiced);

(b) a change in the duties, classification, hours, shifts, location, workplace instrument or other circumstances of the assignment, or information supplied by the Client being incorrect, incomplete or changing after the assignment starts; or

(c) additional entitlements, including long service leave, that accrue in relation to the Temporary Worker's assignment with the Client.

6.8 Despite anything else in the Contract, the Service Fee is payable if a person introduced by Engage (other than a Temporary Worker, to whom clause 5 applies) is employed or engaged by the Client, its Related Body Corporate or a third party to whom the Client refers the person, within 12 months of Engage's introduction or the end of the person's last assignment with the Client.

6.9 The Client must pay on demand all costs and expenses (including legal costs on a full indemnity basis and debt collection agency fees) incurred by Engage in recovering overdue amounts or otherwise enforcing the Contract.

7. Work Health and Safety

7.1 Each party must comply with WHS Law and, to the extent it has the capacity to influence and control the matter, take all reasonably practicable steps to:

(a) eliminate or minimise risks to the health and safety of Temporary Workers;

(b) ensure plant, equipment, facilities and systems of work are safe and without risks to health; and

(c) provide the information, instruction, training and supervision necessary for Temporary Workers to perform their role safely.

7.2 Each party must notify the other as soon as reasonably practicable (and in any event within 24 hours) of any injury to a Temporary Worker, any notifiable incident under WHS Law involving a Temporary Worker and any notice or correspondence from a regulator concerning the health and safety of Temporary Workers.

7.3 The Client must:

(a) provide a safe workplace and all personal protective equipment required for Temporary Workers to perform their role;

(b) before a Temporary Worker starts work, provide a site-specific and job-specific induction and give Engage records showing it was completed; and

(c) allow Engage to enter the Client's premises during business hours on reasonable notice (or at any time following an incident) to conduct site assessments, inspections, incident investigations and audits relating to the health and safety of Temporary Workers.

7.4 If a Temporary Worker is injured, the Client must:

(a) cooperate with Engage in the Temporary Worker's rehabilitation, including by providing suitable duties consistent with the treating medical practitioner's advice; and

(b) provide all information and assistance reasonably requested by Engage in relation to any incident investigation or workers' compensation claim.

7.5 Engage may refuse to supply, or immediately withdraw, any Temporary Worker if, in Engage's reasonable opinion, there is an unacceptable health and safety risk. Engage is not liable for any refusal or withdrawal under this clause, and the Client must pay the Service Fee for all hours worked up to the withdrawal.

7.6 The Client is solely responsible for the health and safety of Permanent Workers, and this clause does not impose any obligation on Engage in relation to Permanent Workers.

8. Suspension and Termination

8.1 If a party (**Defaulting Party**):

(a) suffers an Insolvency Event; or

(b) breaches a material term of the Contract (including payment) and fails to remedy it within 10 Business Days of written notice,

the other party may, by notice to the Defaulting Party:

(c) terminate all or part of the Contract, effective on receipt of the notice or any later date specified in it; or

(d) in the case of Engage, suspend the Services until the breach is remedied.

8.2 Termination does not affect any rights, remedies or liabilities of the parties accrued before termination.

8.3 On termination, Engage must immediately cease providing the terminated Services.

8.4 If Engage terminates under clause 8.1, the Client must pay Engage all costs reasonably incurred by Engage in connection with the termination (including cancelling or adjusting subcontracts and other commitments made for the Services) and any other direct loss suffered by Engage as a result of the termination.

8.5 Clauses 4, 5, 10, 11,12 13 and 14, and any other provision which by its nature is intended to survive, survive termination or expiry of the Contract.

8.6 Without limiting clause 8.1, if any amount payable by the Client is overdue, or an Insolvency Event or change in control of the Client occurs, Engage may immediately, by notice, suspend the Services, withdraw any Temporary Worker and declare all amounts owing by the Client (whether or not then due) immediately due and payable.

9. Insurance

9.1 While any Contract remains in force, the Client must effect and maintain:

(a) public liability insurance to a minimum value of $10,000,000 for each occurrence in respect of death, injury or property damage arising from the Client's operations, including the acts and omissions of Temporary Workers while working under the Client's supervision, direction or control;

(b) any insurance required by law; and

(c) if Temporary Workers drive or operate vehicles, plant or equipment owned, hired or supplied by the Client, comprehensive motor vehicle insurance (including third party property damage) and any other insurance necessary to cover that use, which extends to Temporary Workers as drivers or operators.

9.2 Upon request by Engage, the Client must provide Engage with a certificate of currency for each insurance required under clause 9.1 and must promptly notify Engage if any such insurance is cancelled or materially reduced.

10. Limitation of Liability

10.1 Subject to this clause 10, Engage shall be responsible for, and shall release, save, indemnify and hold harmless each member of the Client Group from and against all Claims which may be made against the Client Group arising out of the loss, destruction, or damage to any Equipment of the Engage Group, except to the extent that such loss, destruction or damage is caused or contributed to by Client Group's fraud, criminal acts, negligence, Wilful Misconduct, breach of duty or breach of this Contract.

10.2 Subject to this clause 10, the Client shall be responsible for, and shall release, save, indemnify and hold harmless each member of the Engage Group from and against all Claims which may be made against the Engage Group arising out of or in connection with:

(a) the loss, destruction, or damage to any Equipment of the Client Group or a third party; or

(b) the illness, injury or death of any member of the Client Group or any third party;

except to the extent that such illness, injury, death, loss, destruction or damage is caused or contributed to by Engage Group's fraud, criminal acts, negligence, Wilful Misconduct, breach of duty or breach of this Contract.

10.3 Each party's total aggregate liability under the Contract (other than under clauses 10.1 and 10.2) is limited to the higher of:

(a) $1,000,000; and

(b) the Service Fee paid or payable for the 6 months before the Claim arose,

other than for:

(c) Claims for which insurance proceeds are available (and amounts received are not counted towards the limit); or

(d) any Claims caused or contributed to by the fraud, criminal acts or Wilful Misconduct of a party, its Related Bodies Corporate or its Personnel.

10.4 To the maximum extent permitted by law, neither party is liable to the other for Consequential Loss, however arising (including in negligence), except as a result of its fraud, criminal acts or Wilful Misconduct.

11. Confidentiality and Privacy

11.1 Each party must, and must ensure its Related Bodies Corporate, keep confidential the other party's Confidential Information and use it only as necessary to perform the Contract.

11.2 Clause 11.1 does not prevent a use or disclosure:

(a) required by law, the rules of a recognised stock exchange or a regulatory direction;

(b) of information already in the public domain (other than through a breach of this clause 11); or

(c) to the party's professional advisers, auditors or insurers on a confidential basis, to the extent necessary for them to perform their functions.

11.3 Before disclosing under clause 11.2(a), a party must, to the extent practicable and lawful, notify the other

party and give it a reasonable opportunity to oppose or limit the disclosure.

11.4 On request, a party must, and must ensure its Related Bodies Corporate, return, delete or destroy all documents and copies containing or derived from the other party's Confidential Information.

11.5 Each party must comply with the *Privacy Act 1988* (Cth) and any other applicable privacy laws (**Privacy Laws**) in relation to any personal information (as defined in the Privacy Laws) collected, used, disclosed or held in connection with the Contract, including personal information about Workers.

11.6 The Client must use personal information about Workers provided by Engage only for the purposes of the Contract, and must notify Engage promptly of any actual or suspected unauthorised access to, or disclosure or loss of, that personal information.

11.7 This clause 11 survives termination or expiry of the Contract for two years, except that obligations in relation to personal information continue for as long as the relevant party holds that personal information.

12. Variation

12.1 Engage may vary the Pricing Schedule on at least 14 days' written notice to the Client, and the varied Pricing Schedule applies to all Services provided after the notice takes effect, including under existing Job Orders. If the Client does not accept the varied Pricing Schedule, it may terminate the Contract by written notice before it takes effect, subject to paying for all Services provided up to termination.

12.2 Engage may vary these General Conditions from time to time, but a variation does not apply to Job Orders issued before the variation unless the parties agree otherwise in writing.

13. General

13.1 Engage enters into the Contract in its own right and as trustee for its Related Bodies Corporate, and holds its rights under the Contract in either capacity, without limiting any rights granted directly to a Related Body Corporate.

13.2 Engage may perform the Services and issue Tax Invoices through any of its Related Bodies Corporate, and payment to that entity discharges the Client's payment obligation to that extent. For the avoidance of doubt, Engage remains responsible for the performance of the Services and the acts and omissions of each Related Bodies Corporate as if they were the acts and omissions of Engage and such arrangements do not relieve Engage of any obligation or liability under the Contract.

13.3 The Client must ensure each of its Related Bodies Corporate receiving the Services complies with the Contract as if it were the Client, and is liable for their acts and omissions as if they were its own.

13.4 Neither party may assign or novate the Contract or any part of it except with the prior written consent of the other party.

13.5 The Contract, as amended from time to time in accordance with its provisions, represents the entire agreement between the parties and supersedes all prior arrangements.

13.6 Nothing in the Contract creates a partnership, employment, joint venture or agency relationship between the parties, or authorises either party to make commitments on behalf of the other.

13.7 Except as set out in these General Conditions, no variation of the Contract is effective unless it is agreed in writing and signed by authorised signatories for each party.

13.8 Any provision of the Contract that is void, unenforceable or illegal is to be read down or, if that is not possible, severed, to the extent necessary for the Contract to be valid and enforceable.

13.9 A waiver of any term of the Contract is valid only if in writing and signed by the party giving it, applies only to the particular occasion, unless expressed to be continuing, and does not waive any other term.

13.10 The parties will do all things and execute all documents required to permit or facilitate the performance of the transactions contemplated by the Contract.

13.11 The rights and remedies of a party under the Contract are cumulative and not exclusive of any other rights or remedies provided by law.

13.12 Subject to clause 6.9, each party bears its own costs of negotiating, preparing and performing its obligations under the Contract.

13.13 The Contract is governed by the laws of Queensland, and each party irrevocably submits to the exclusive jurisdiction of the Courts of Queensland. This does not limit the application of any mandatory law of the State or Territory in which a Temporary Worker is supplied, including WHS Law.

14. Definitions and Interpretation

14.1 In these General Conditions, unless the context otherwise requires:

Business Day means a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland.

Cancellation Fee means a fee payable under clause 3.6 or 3.7.

Cash Rate Target means for a given date, the cash rate target set by the Reserve Bank of Australia and displayed on that date on the website of the Reserve Bank of Australia (or its successor).

Client means the person who has issued the Job Order to Engage and/or who has signed these General Conditions.

Client Group means the Client, its Related Bodies Corporate, their respective Personnel and invitees (which are not part of the Engage Group).

Confidential Information means any information which is by its nature confidential or commercially sensitive and includes all technical, proprietary and operational information, drawings, techniques, processes, know-how, methods of working, data and specifications, trade secrets, customer information and other commercially valuable information of any kind, and the terms of the Contract.

Consequential Loss means any loss of business, loss of production, loss of goodwill, loss of opportunity, loss of data, loss of reputation, and any loss of actual or anticipated profit or revenue, whether arising directly or indirectly.

Contract has the meaning given to that term in clause 1.2.

Conversion Fee means the fee (plus GST) payable by the Client to Engage under clause 5.2 when the Client or its Related Body Corporate employs or engages a Temporary Worker5.2.

Corporations Act means the *Corporations Act 2001* (Cth).

Defaulting Party has the meaning given to that term in clause 8.1.

Engage means Engage Us Pty Ltd ACN 603 496 215.

Engage Group means Engage, its Related Bodies Corporate, their respective Personnel and invitees (which are not part of the Client Group).

Equipment means, of a person, all equipment, consumables, tools, spare parts, special tools, and other items owned, rented, hired, chartered or leased by that person, provided that any equipment, consumables, tools, spare parts, special tools and other items supplied to or used by a Temporary Worker are deemed to be Equipment of that Temporary Worker only.

Excluded Terms means any terms and conditions provided or referred to by the Client, or any purported variation to these General Conditions, unless Engage agrees in writing that they prevail.

General Conditions means these general conditions.

GST has the meaning given to that term in the GST Act.

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

GST Law has the meaning given to that term in the GST Act.

Insolvency Event means, in respect of a party, that party:

(a) is unable to pay its debts as and when they fall due;

(b) has a controller, administrator, liquidator, provisional liquidator or similar officer appointed;

(c) enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;

(d) has any petition, application, order or resolution for its winding up or dissolution; or

(e) is otherwise deemed to be insolvent under any applicable law.

Job Order means a purchase order or other request placed by the Client with Engage under clause 1.1(a) for Services.

Job Order Confirmation means a confirmation issued by Engage under clause 1.1(b) accepting a Job Order and setting out details of the Services to be provided to the Client and where Engage accepts a Job Order by supplying a Worker, includes the details of the Services set out in that Job Order (as varied by any details notified by Engage).

Loss means any liability, loss, claim, action, damage, cost, charge or expense (including legal costs on a full indemnity basis) of any nature.

Permanent Worker means a person introduced to the Client by Engage or a Related Body Corporate who accepts a permanent position of employment or engagement (whether as an employee, contractor or otherwise) with the Client or its Related Body Corporate.

Personnel means, in relation to a party, any employee, officer, agent, contractor or subcontractor of that party (but excluding the other party and its Personnel), and includes Temporary Workers in relation to Engage (other than while under the Client Group's supervision, direction or control) and Permanent Workers and Temporary Workers (while under the Client Group's supervision, direction or control) in relation to the Client.

Pricing Schedule means Engage's schedule of rates and fees for the Services, as provided to the Client and varied from time to time under clause 12.1.

Related Body Corporate has the meaning given in the Corporations Act.

Service Fee means the fees payable by the Client for the Services, calculated in accordance with clause 6.1.

Services means the labour hire services provided by Engage to the Client under the Contract, including the recruitment, introduction and supply of Workers and any related services specified in a Job Order Confirmation.

Tax Invoice has the meaning given in the GST Law.

Temporary Worker means a person employed or engaged by Engage or a Related Body Corporate (or its subcontractor) and supplied to the Client under a Job Order Confirmation.

WHS Law means:

(a) the work health and safety legislation in the state or territory in which the Workers work;

(b) any legislation, superseding, replacing or amending the above legislation;

(c) any regulations or statutory instruments relating to the above legislation; and

(d) all laws applicable to the Services, or the location at which the Services are performed, concerning health and safety.

Wilful Misconduct means any act or omission by a party, which was committed deliberately with the intention to cause loss, harm or damage and with wanton indifference by that party with respect to the harmful consequences, loss, harm or damage that party knew would result from that act or omission.

Worker means a Temporary Worker or a Permanent Worker, as the context requires.

14.2 In the Contract, unless the context otherwise requires:

(a) references to natural persons include corporations and vice versa;

(b) a provision of these General Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these General Conditions or the inclusion of the provision in the Contract;

(c) words such as "include" or "including" are not words of limitation;

(d) if a party includes two or more persons, an obligation of those persons is joint and several, a right of those persons is held by each of them separately, and any other reference to that party or term is a reference to each of those persons separately;

(e) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning; and

(f) the plural includes the singular and vice versa.