

CONTRACT OF SERVICES – PTY LTD

Between and The Recruitment Company

Preamble

- A. The Contractor carries on a business which supplies the services of personnel with expertise in providing the services as identified in the Schedule (the “**Services**”).
- B. The Recruitment Company (TRC) wishes to engage the Contractor to provide the services of personnel (known as the “**Contractor’s Nominee**”) who have expertise in providing the Services.
- C. The Contractor agrees to provide the services of the Contractor’s Nominee to the Client of TRC in accordance with this Agreement.

1.0 The Contractor's obligations

- 1.1 The Contractor will complete the tasks specified by the Client from time to time within the time frames and to the standard specified by the Client.
- 1.2 The Contractor acknowledges that prior to entering into this Agreement, they have reviewed the terms and conditions of the Agreement and that they have had sufficient time to make a decision as to the fairness of the Agreement before executing this Agreement.
- 1.3 The Contractor will ensure that the Services are performed to the best of the Contractor’s abilities at all times and that the Contractor possesses all skills and qualifications appropriate for the provision of the Services.
- 1.4 Where the Contractor is required to use their own equipment to perform the tasks and duties set out by the Client, the Contractor warrants that the equipment is in proper working order and that all software used is licensed and virus free. The Contractor understands that the Contractor must not introduce by any means any software, program or data into the Client’s computer equipment without authority from the Client. The Contractor agrees to take responsibility for the downtime of the Contractor’ own equipment and will not charge TRC or the Client for this downtime. The Client’s software system is not to be copied.
- 1.5 The Contractor warrants that the Contractor is legally eligible to work in Australia for the duration of the Agreement and agrees to provide evidence of this if required.

2.0 Relationship Between the Parties

- 2.1 The Contractor provides the Services as an independent contractor on an on hire basis from hire to hire. The Contractor is not TRC’s employee, partner, legal representative, agent, joint venturer or franchisee. The Contractor has no right or authority to bind TRC, assume or create any obligations for or on behalf of TRC, or make any representations or warranties for or on behalf of TRC as the Contractor is

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conducting his/her own business in providing the Services to the Client and is not integrated into the business conducted by TRC. The Contractor is not entitled to any benefit from TRC usually attributable to an employee as no employment relationship exists between TRC and the Contractor.

- 2.2 The Contractor acknowledges that TRC has no control over the way, method and manner in which the Services are provided by the Contractor to the Client.

3.0 Rate and Payment

- 3.1 The Contractor shall submit to TRC a tax invoice fortnightly in line with TRC's Contractor payment cycle (as amended from time to time) stating the Contractor's ABN for the hours recorded in the timesheets at the rate specified in the Schedule and the payments on the tax invoice shall be GST inclusive but must show the amount of GST.
- 3.2 TRC will pay the Contractor in accordance with the payment cycle for the hours recorded in the timesheets at the rate specified in the Schedule (the "Fee"). The Fee is exclusive of GST.
- 3.3 The Contractor will be paid the Fee for providing the Services for the number of days or hours recorded on the timesheets provided to the Contractor by TRC and approved by the Client and in accordance with the pay cycle specified in the Schedule.
- 3.4 The Contractor agrees that payment of the Fee constitutes full payment for the provision of the services in accordance with the invoice.
- 3.5 The Contractor will provide to TRC evidence of all payments to the Contractor's Nominee of any statutory or legal entitlements due to the Contractor's Nominee should TRC request such evidence during or after the operation of this agreement. The Contractor will indemnify TRC in respect of any statutory entitlements due to the Contractor's Nominee and the legal costs of commencing or defending any claim relating to the Contractor's Nominees' statutory entitlements.
- 3.6 The Contractor will be responsible for all payments in relation to income tax, withholding taxes, indemnified taxes, group tax deductions and other taxes or levies and all other payments including superannuation in respect of the Contractor's Nominee. The Contractor shall, if called upon by TRC, provide to TRC a declaration in the form prescribed by law stating that all such statutes and legal entitlements have been paid by the Contractor to the Contractor's Nominee. TRC may withhold payment if such declaration is not provided.
- 3.7 The Contractor shall indemnify TRC in respect of any claims made against TRC by the Contractor's Nominee who performs work on behalf of the Contractor in accordance with this Agreement. Such indemnities shall include any legal costs and shall continue after this Agreement comes to an end.
- 3.8 The Contractor will ensure that the Contractor's Nominee will do all things necessary to fulfil the Contractor's obligations under this agreement.
- 3.9 TRC will be solely liable for paying payroll tax on the payments to the Contractor.

- 3.10 The Contractor will ensure that the Contractor's Nominee will work the days and hours as agreed with the Client and will only work outside of ordinary working hours with the approval of the Client.

4.0 Expenses

- 4.1 As the Contractor provides the Services to the Client on an on hire basis, the Contractor will provide the Services at its own cost, and unless expressly authorised by TRC, will not be entitled to be reimbursed for any out of pocket expenses incurred by the Contractor in connection with the provision of the Services and will be solely responsible for and solely bear:

- (a) the payment to the Contractor's employees, contractors and agents of remuneration and benefits including salaries and wages, annual leave, sick leave, superannuation, long service leave and all other benefits to which any of them may be entitled under any contract of service or contract for service with the Contractor or under any award, industrial instrument, statute or common law;
- (b) the payment of all taxes and duties in respect of such remuneration and benefits; and
- (c) compliance with, and costs of compliance with, all other statutory or other legal or contractual requirements with respect to the Contractor's engagement under this agreement.

- 4.2 Work related expenses will be reimbursed by TRC to the Contractor if:

- (a) The expense is incurred at the written request of the Client;
- (b) The expense is properly substantiated and are associated with the service;
- (c) A receipt showing the provider's ABN is submitted along with details of the expense;
- (d) TRC's Expense Claim Form is completed (copy obtainable from TRC).

5.0 Insurances

- 5.1 Before providing the Services, the Contractor shall take out and maintain for the full duration of this agreement all necessary statutory insurances including Workers Compensation, Professional Indemnity and Public Liability insurance in respect of the Contractor and/or the Contractor's Nominee and provide evidence to TRC that such insurance is being maintained and if such insurances are not available to the Contractor, TRC will charge the Contractor for any insurance it may facilitate..

6.0 Contractor's Nominee

- 6.1 The Contractor's Nominee shall be able to render the services to the Client provided such person is approved in writing by the Client and TRC has raised no objection in writing to that person providing the services.

7.0 Occupational Health and Safety

- 7.1 The Contractor must at all times ensure that they familiarise themselves with the relevant health and safety legislation at the Workplace.

8.0 Timesheets

- 8.1 The Contractor is responsible for providing accurate timesheets and for ensuring that these are approved by an authorized approver for the Client.
- 8.2 Unless otherwise specified by the Client the Contractor will complete these timesheets on TRC's electronic timesheet system or as advised by TRC from time to time.

9.0 Confidentiality and Ownership of Confidential Information

- 9.1 Ownership of the Client's Confidential Information will vest in the Client.
- 9.2 The Contractor covenants to TRC that:
- (d) it will not, either during the operation of this Agreement or at any time thereafter, use or disclose to any person or entity any of the Confidential and/or Proprietary Information;
 - (e) it will hold the Confidential Information on trust for the true owner;
 - (f) it will use its best endeavours to prevent the unauthorised use or disclosure of any of the Confidential Information by third parties; and
 - (g) TRC may at its sole election assign the covenant as contained in this part.
- 9.3 The Contractor must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information and unauthorised use of any proprietary information, including the following precautions:
- (h) the Contractor must at all times store all Confidential Information safely and securely;
 - (i) the Contractor must immediately notify TRC in writing of any actual, threatened or suspected unauthorised disclosure of any Confidential Information; and
 - (j) the Contractor must take all reasonable measures to minimise any unauthorised dissemination of any Confidential Information which is in any way related to or resulting from an act or failure to act by the Contractor.

10.0 Intellectual Property

- 10.1 The Contractor acknowledges that:
- (a) All Intellectual Property created or conceived by the Contractor during the operation of this Agreement will vest in the Client and the Contractor assigns such Intellectual Property to the Client.
 - (b) The Client shall have the sole right to use and exploit all such Intellectual Property without the Contractor's involvement or additional compensation to the Contractor.

11.0 Ending This Agreement

- 11.1 The Contractor and TRC may end the Agreement by giving each other written notice for the appropriate period as specified in the Schedule, or, in TRC's case should it so choose, payment in lieu of notice. Should TRC decide to terminate the Agreement reasons will be given for terminating the Agreement and in this regard TRC's reason shall be final and no other communication shall be entered into between TRC and the Contractor.
- 11.2 TRC may terminate this Agreement without any prior written notice if:
- (a) The contractor fails to perform the Services to the reasonable satisfaction of the Client and the Client advises TRC that it requires TRC to immediately remove the Contractor from the workplace;
 - (b) The contractor fails to rectify any breach of this Agreement or default in performance of the Contractor's obligations under this agreement within seven (7) days of TRC giving the Contractor written notice of that breach or default;
 - (c) The contractor is guilty of misconduct in the conduct of the Services without due diligence and skill in the performance of the Services;
 - (d) The contractor acts in any manner which in TRC's opinion damages or may damage TRC's relationship with the Client or the Client's reputation;
 - (e) The contractor fails to provide the declaration sought by TRC in relation to their employees, contractors or agents engaged by the Contractor pursuant to this Agreement; or
 - (f) The contractor breaches or is alleged to have breached a workplace policy of the Client which is sufficient to warrant a workplace investigation.
 - (g) The Client becomes insolvent or notifies TRC that is unable to meet its financial obligations to TRC
- 11.3 If this Agreement is terminated:
- (a) TRC does not have liability to the Contractor for any loss (including loss of profits and economic or consequential loss), costs, damages, compensation or any other amount in respect of that termination and in this regard the Contractor releases and forever abandons any claims against TRC it may have; and
 - (b) TRC may retain any money due to the Contractor and use same as an offset in connection with this Agreement if the Client has notified TRC or if TRC are otherwise aware of any claim (including actual and potential) by the Client in connection with the Services. TRC may apply any money withheld by it to the reasonable resolution of any claim by the Client, and will pay the balance to the Contractor once all outstanding claims have been met.

12.0 Non Disparagement

- 12.1 This Agreement is confidential to TRC and the Contractor. The Contractor or TRC may not disclose or allow to be disclosed the content of this Agreement except to the extent that the disclosure is reasonably required to give effect to this Agreement or is required by law.

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12.2 The Contractor and TRC agree that they shall not, during the course of this Agreement, mutually disparage one another so as to adversely affect the Contractor and TRC's good name and reputation.

13.0 Disputes

13.1 Should any dispute arise out of this Agreement, the parties agree that they will first attempt to deal with that dispute at the workplace level. If that dispute is not resolved within seven (7) days of either party notifying the other party that the dispute has arisen, it will be referred to arbitration at the cost of the party who raised the dispute.

14.0 Restraints

14.1 In consideration of the payments made to the Contractor under this Agreement, the Contractor covenants to TRC as follows:

- (a) that they will not, either in their own right or on behalf of any other person, corporation or legal entity, enter into any negotiations directly with the Client or any other third party on behalf of the Client whereby the Contractor or any person, consultant or corporation on behalf of the Contractor will provide the Services to the Client without first obtaining the prior written consent of TRC. The obligations that the Contractor has under this part will continue for a period of 12 months after the termination of this Agreement or any other subsequent agreement between TRC and the Contractor. In the event that the court finds that the obligations for the restrictions under this part of 12 months are too broad, the Contractor agrees that they will apply in lieu of 12 months a period of six (6) months;
- (b) that the Contractor will not, for a period which is the aggregate of the time in which the Contractor has provided the Services or in accordance with this agreement to TRC during the previous twelve month period, purport to encourage or solicit any employee, contractor or third party with whom the Contractor has had direct contact with while providing the Services under this agreement and who provides the Services to TRC to cease providing those Services to TRC or to any client of TRC where TRC receives a benefit for those persons providing those Services to the Client of TRC; and
- (c) that the Contractor will not during the operation of this agreement enter into any negotiations or agreement with the Workplace in respect of remuneration or benefits and the Contractor acknowledges that TRC is the only entity to negotiate and determine the remuneration paid by the Workplace to TRC for the Contractor providing the Services.

15.0 Jurisdiction

15.1 The construction, validity and performance of this agreement shall be governed by the laws of New South Wales and have exclusive jurisdiction in New South Wales and sitting in the City of Sydney in the central business district.

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16.0 Whole of Agreement

16.1 This Agreement constitutes the entire agreement of the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings, arrangements and negotiations in respect of the on-hire Services.

17.0 Miscellaneous

17.1 This Agreement can only be varied by agreement in writing.

17.2 The clauses of this Agreement contain the entire agreement between the Contractor and TRC. We both acknowledge that there are no promises, terms, conditions or obligations oral or written, expressed or implied, other than those contained in this Agreement.

17.3 Each clause in this Agreement is severable from the other clauses. If a clause or part of a clause becomes unenforceable for any reason this shall not affect the validity of the remainder of the clause or Agreement.

17.4 If either the Contractor or TRC grant an extension of time or indulgence to the other party this will not operate as a waiver of any rights.

17.5 This Agreement will be interpreted in accordance with the law of the state referred to in the Schedule.

17.6 By signing this Agreement, the Contractor agrees and confirms, that they have read and agree to adhere to TRC's Equal Employment and Harassment and Occupational Health and Safety policies.

17.7 If the Contractor accepts an assignment with TRC and its clients then it is deemed that the Contractor accepts the terms of this Agreement irrespective of whether the Contractor has signed it.

17.8 The address for service and deemed service of notices is as shown in the Schedule.

18.0 Definitions

- 18.1 "TRC" means The Recruitment Company PTY Ltd, ABN 53 093 041 831.
- 18.2 "Client" means the person and/or (organisation) as specified in the Schedule or as advised in writing by TRC to the Contractor and the place where the Contractor will carry out the Services.
- 18.3 "Confidential Information" means all information concerning:
- drawings;
 - maps;
 - plans;
 - designs;
 - diagrams;
 - tables;
 - charts;
 - specifications;
 - TRC documents or Client documents;
 - Computer material;
 - Information in whatever form embodied in samples;
 - Models and any other objects or matter;
 - Any computer or other program or work systems;
 - Procedure;
 - Process;
 - Formula;
 - Method of production;
 - Invention or other discovery;
 - any Client material, whether written or electronic, that the Client identifies as confidential and/or proprietary to the Client or such material that is by its nature confidential and/or proprietary to the Client;
 - TRC's trade secrets, Confidential and/or Proprietary Information and the Client's trade secrets; and
 - other information designated as confidential and/or proprietary by TRC
- which the Contractor receives, becomes aware of, develops, creates or generates in the course of rendering Services pursuant to this Agreement.
- 18.4 "Contractor" means the corporation as specified in the Schedule engaged to provide the services of the Contractor's Nominee to the Client of TRC in accordance with this Agreement and includes the Contractor's Nominee.
- 18.5 "Contractor's Nominee" means a person, agent or contractor as specified in the Schedule, who may carry out the Services on behalf of the Contractor in accordance with this Agreement as specified in Clause 7.1 hereof.
- 18.6 "Contract period" means the period of time specified in the Schedule.
- 18.7 "Workplace" means the place where the Contractor or others render the Services in accordance with this agreement.

THE SCHEDULE

Date of agreement:

Client

Contact

Contract start and end dates:

Nominated Contractor:

Company name:

ABN:

Services:

Rate:

Pay cycle:

Notice period:

Applicable law (State):

NSW

Signed for and on behalf of:

The Recruitment Company

Name:

Signature:

Date:

Signed for and on behalf of:

Name:

Signature:

Date:

Signed for and on behalf of:

Name:

Signature:

Date:

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