**ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

DELRON CLEANING PTY LTD ABN: 84008806004/ ACN: 008806004

**ENFORCEABLE UNDERTAKING**

**PARTIES**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Delron Cleaning Pty Ltd ACN: 008 806 004 (**Company**).

## COMMENCEMENT OF UNDERTAKING

1. This Undertaking comes into effect when:
	1. the Undertaking is executed by the Company; and
	2. the FWO accepts the Undertaking so executed.
2. Upon the commencement of this Undertaking, the Company undertakes to assume the obligations set out below.
3. This Undertaking will expire on 30 October 2020.

**BACKGROUND:**

1. The Company provides medium and large commercial cleaning services for commercial offices including high rise, industrial environments specialising in mine sites, the education sector including universities, public & private schools, health and aged care and sectors of the transport industry. The Company’s operations are performed primarily in Western Australia.
2. The Company is covered by the *Cleaning Services Award 2010* [MA000022] (**Cleaning Award**) in respect of employees who perform duties commensurate with the classification definitions set out in Schedule D of the Cleaning Award.
3. The *Delron Cleaning Pty Ltd (Prospector and Avon Link / Merredin On-Train Customer Service Officers) Enterprise Agreement 2013* (**EA**) covers a small number of employees of the Company.
4. The Company has two franchisees operating franchise locations:
	1. Woodfield Asset Pty Ltd – has operated a franchise at Bunbury (**Bunbury Franchise**) since 31 January 2008.
	2. Fernview Holdings Pty Ltd – operates a franchise at Busselton as a sub-franchise of the Bunbury Franchise.
	3. Redframe Pty Ltd – has operated a franchise at Geraldton since 1 February 2014.
5. The Company was acquired by Ventia Pty Ltd on 31 March 2015.
6. On 4 April 2017, at their own initiative, the Company wrote to the FWO advising that after implementing a new time and attendance system along with a new payroll system on 27 June 2016 it had discovered that the existing payroll system (**Delron Oracle System**) was not compliant with the Cleaning Award or the EA. The Company advised that it had engaged the services of PricewaterhouseCoopers (**PwC**) from October 2016 to audit the entitlements of all affected employees for the period 23 March 2015 to 19 March 2017 (**PwC Audit Period**). The Company has responded to requests for information and worked cooperatively with FWO.
7. On 12 May 2017, the PwC report was finalised for an audit of 52 fortnightly pay runs for 1,188 current and former employees covered by both the Cleaning Award or the EA identifying both overpayments and underpayments and in summary that the total underpayment amount was $447,717.62.
8. The FWO has determined, and the Company admits, that the Company contravened:
9. section 45 of the FW Act by failing to comply with the following terms of the Cleaning Award in respect of the employment of employees:
	* 1. payment of overtime in accordance with clause 28 of the Cleaning Award;
		2. entering into written agreements with part time employees relating to ordinary hours of work at the time of engagement, in accordance with clause 12.4 (a) of the Cleaning Award;
		3. payment of the Broken shift allowance in accordance with clause 17.1 of the Cleaning Award;
		4. payment of the shiftwork penalty in accordance with clause 27.1 of the Cleaning Award; and,
		5. payment of the part time allowance in accordance with 12.4 (b) (iii) of the Cleaning Award.
10. section 535 of the FW Act by failing to make and keep records that set out the hours worked by casual and irregular part time employees as required by regulation 3.33 (2) of the *Fair Work Regulations 2009* (**FW Regulations**).
11. The FWO recognises that the Company performed calculations to determine the quantum of underpayments arising from the above listed contraventions and took steps to contact and make payments to identified employees that had been underpaid. These payments were made prior to the execution of this Undertaking.
12. The Company advised the FWO that the errors resulting in the underpayments were made inadvertently due to the Delron Oracle System not properly aligning with the requirements of the applicable instruments.
13. The FWO acknowledges that the Company with the assistance of PwC completed a self-audit and, of its own volition, undertook the following initiatives which it has completed prior to the execution of this Undertaking:
14. Developed new rosters, timesheets and payroll data entry processes;
15. Training Contract Managers, operational leaders and support staff on:
	* 1. New rosters, timesheets and payroll data entry processes; and
		2. Payslip understanding and Award interpretation;
16. Completion of four parallel pay runs to validate the new system (run between 23 January 2017 and 19 March 2017);
17. Communications with employees to explain payroll system review (27 March 2017);
18. Implementation of a compliant payroll system pay run commencing 20 March 2017 to 2 April 2017;
19. Employee Information Packs sent out to all employees on 3 April 2017;
20. Establishment of employee ‘helpline’ on 3 April 2017;
21. Pay run on compliant system and new payslips issued (5 April 2017);
22. Quarterly PwC audit and integrity checks of payroll system (additional control for monitoring compliance) from June 2017 to the balance of 2017; and
23. Training and guidance to Company franchisees on process and compliance.

## UNDERTAKINGS

1. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following matters in paragraphs 17 to 32.

### FWO MY ACCOUNT REGISTRATION

1. Within 14 days of the execution of this Undertaking:
2. register with the FWO My account portal at www.fairwork.gov.au/register and fully complete the My account profile, including information about the business and industrial instrument coverage;
3. using the FWO’s Pay and Conditions Tool (**PACT**), calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to the Company’s My account profile; and
4. provide to the FWO the My account Customer Registration Number.

### FUTURE WORKPLACE RELATIONS COMPLIANCE

1. The Company will ensure that it complies at all times and in all respects with the FW Act, theFW Regulations, the Cleaning Award, the EA and any other modern award(s) or registered agreements applicable to its employees.
2. In the event of further underpayments being identified relating to the PwC Audit Period, the Company will, within 7 days, advise the FWO of the underpayments and the steps that will be taken to rectify the underpayments.
3. Within 60 days of the execution of this Undertaking, the Company will provide to the FWO details of systems and processes already in place or to be implemented to comply with paragraph 18 above. Without limitation, such systems and processes will relate to:
4. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and breaks;
5. Ensuring that the employment status of each employee (i.e. whether they are full-time, part-time or casual) is adequately communicated to each employee at the commencement of employment; and
6. Ensuring that employees meet the definition of full-time, part-time and casual

employees as outlined in clause 12 of the Cleaning Award.

### WORKPLACE RELATIONS TRAINING

1. Within 120 days of the execution of this Undertaking, the Company will:
2. At its own cost, organise and ensure training as set out in paragraph 21 b is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
3. Ensure that the Training relates to compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Cleaning Award; and
4. Ensure that the Training is conducted by a person approved by the FWO.
5. Within 7 days of the delivery of the Training, the Company will provide to the FWO:
6. An outline of the content of the training;
7. The name of the person or organisation who delivered the training;
8. The method of delivery of the training; and
9. Evidence of attendance at the training, including the name and job title of all attendees and the date of attendance.
10. For a period of 18 months following this Undertaking coming into effect the Company will ensure that Training is conducted in the manner prescribed in paragraph 21 in relation to any new or existing employees or contractors, who, after the commencement of this Undertaking acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company.

### APOLOGY

1. Within 14 days of this Undertaking coming into effect, the Company will send a letter of apology (**Apology Letter**) to each employee affected by the underpayments in the PwC Audit Period in the form of Attachment A to this Undertaking and provide a copy to the FWO.

### AUDIT ACTIVITY

1. The Company will cause to have performed, by an external professional with qualifications in accounting or workplace relations and at the Company’s expense, audits of the Company’s compliance with all Commonwealth workplace laws and instruments relating to the pay and conditions of the Company’s employees (**Audits**) as follows:
2. The Audits will assess a sample of at least 60 employees, or 10% of the Company’s employees covered by the Cleaning Award at the relevant time, whichever is greater, with the sample to be representative of the different work locations, classifications and types or categories of work that apply across the Company’s business;
3. The Audits will be conducted for a two week pay period where the period falls within the following dates:
	* + 1. 3 December 2018 to 17 December 2018 – to be finalised by 1 February 2019;
			2. 5 August 2019 to 1 September 2019 – to be finalised by 30 October 2019; and
			3. 3 February 2020 to 2 March 2020 – to be finalised by 28 May 2020.
4. The Audits will assess the Company’s compliance with the following obligations according to each employee’s classification of work, category of employment and hours worked during the Audit period:
5. Wages or work-related entitlements under the applicable industrial instrument and the National Employment Standards; and
6. Record keeping and pay slip obligation listed within Division 3 of Part 3-6 of the FW Act and within the FW Regulations.
7. In the event that an Audit identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and provide evidence of such rectification to the FWO.
8. The Company will provide to the FWO within 14 days of each of the finalisation dates specified in subclause b:
9. A copy of the Audit report which will include a statement of the methodology used to conduct the Audit; and
10. Details of any contraventions identified in the Audit.
11. The Company will rectify any underpayments arising from contraventions identified in the Audit and provide evidence to the FWO within 30 days of the finalisation date of the Audit.
12. If requested by the FWO, the Company will provide the FWO with all records and documents used to conduct the Audit, including any working documents, within 7 days of such a request.
13. If any employee(s) identified by the Audits as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 25 b above, the Company will make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Consolidated Revenue Fund (**CRF**). (Any employees that have underpayments paid into the CRF can contact the FWO to claim the money).

### PUBLIC NOTICE

1. The Company will:
2. within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, place a public notice in the weekend edition of Australian Financial Review (**Public Notice**), acknowledging that:
3. the contraventions occurred;
4. the Company was responsible for the contraventions;
5. the Company has taken steps to rectify the contraventions and are committed to ensuring ongoing compliance with all its obligations; and
6. the Company sincerely regrets and apologises to all affected employees for its failure to comply with its obligations under Commonwealth workplace laws;
7. The Public Notice must:
8. bear the name and logo of the Company;
9. appear within the public notices section of the paper;
10. be at least 10 cm x 8 cm in size; and
11. be in the form of Attachment B;
12. Within 7 days of the publication of the Public Notice, provide a copy of the public notice to the FWO.

### DONATION

1. Within 30 days of the execution of this Undertaking, the Company will:
2. Make a donation of $20,000.00 to the Cleaning Accountability Framework (www.cleaningaccountability.org.au), to be used for assisting the promotion of compliance with Commonwealth workplace laws in the cleaning industry; and
3. Provide evidence of the donation to the FWO within seven days of payment.

## ACKNOWLEDGEMENTS

1. The Company acknowledges that:
2. The FWO may make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
3. The FWO may release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
4. The FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to this Undertaking (and any of the Attachments hereto) and its terms; and
5. The FWO may rely upon the admissions made by the Company set out in paragraph 12 above in respect of decision making concerning any future non-compliance with the Company’s workplace relations obligations.
6. Consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
7. Consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
8. If the Company contravenes any of the terms of this Undertaking:
9. The FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
10. This Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraph 12 above, and also in respect of the question of costs.

## NO INCONSISTENT STATEMENTS

1. The Company:
2. must not; and
3. must ensure that each of its officers, employees or agents, do not:

make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this Undertaking.

## Executed as an undertaking

Executed by Delron Cleaning Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

|  |  |  |
| --- | --- | --- |
| (Signature of director) |  | (Signature of director/company secretary) |
|  |  |  |

(Name of director) (Name of director/company secretary)

|  |  |  |
| --- | --- | --- |

(Date) (Date)

in the presence of: in the presence of:

|  |  |  |
| --- | --- | --- |
| (Signature of witness) |  | (Signature of witness) |
|  |  |  |

(Name of witness) (Name of witness)

| Accepted by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on: |
| --- |
| Michael Campbell Deputy Fair Work Ombudsman - OperationsDelegate for the Fair Work Ombudsman |  | (Date) |
|  |  |  |
| (Signature of witness) |  | (Name of Witness) |

## Attachment A – Letter of Apology

**<Date>**

**<Employee Name>**

**<Employee Address>**

Dear **<Employee Name>**

**PRIVATE AND CONFIDENTIAL**

I am writing to apologise on behalf of Delron Cleaning Pty Ltd (**Delron**) for non-compliance with Commonwealth workplace relations laws.

We have previously written to you that Delron identified circumstances in which errors were made in an historic payroll system that resulted in incorrect payments to you. Delron has formally admitted to the Fair Work Ombudsman (**FWO**) that these errors meant that Delron did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Delron expresses its sincere regret and apologises to you for failing to comply with its lawful obligations.

Should you have any questions, please contact me via email: <insert email>

Yours sincerely

<insert name>

Director

Delron Cleaning Pty Ltd

## Attachment B – Public Notice

**Contraventions of *Fair Work Act 2009* (Cth) by Delron Cleaning Pty Ltd**

Delron Cleaning Pty Ltd (the Company) recently undertook a review of its wage records.

The Company has identified circumstances in which errors were made in an historic payroll system that resulted in incorrect payments being paid to some employees between March 2015 and March 2017. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) and the Cleaning Services Award 2010 [MA000020] (Cleaning Award).

The Company has formally admitted to the Fair Work Ombudsman (FWO) that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to ensure future compliance, including providing training and conducting future audits, to ensure employees are paid correct rates of pay.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment to ensuring future compliance with Commonwealth workplace relations laws.

If you have general questions regarding conditions of employment, please refer to the FWO website at www.fairwork.gov.au or call the Infoline on 13 13 94.