

## **CONTRACT OF EMPLOYMENT**

**THIS AGREEMENT** is made on the (insert date of agreement) day of \_\_\_\_\_, 201\_\_\_\_.

BETWEEN:

\_\_\_\_\_  
of \_\_\_\_\_  
(hereinafter referred to as “The **Employer**”)

- and -

\_\_\_\_\_  
(insert employee’s details here), in  
the State of New South Wales (hereinafter referred to as “The **Employee**”)

THE PARTIES HERETO WISH TO RECORD THE TERMS OF THE EMPLOYMENT IN WRITING AND IT IS NOW AGREED AS FOLLOWS;

### **DEFINITIONS AND INTERPRETATION**

#### **Definitions**

**Business Hours** means the hours specified in the Schedule.

**Commencement Date** means the date specified in the Schedule.

**Confidential Information** includes:

- (a) Information about the Employer’s current or future products and services including all information disclosed or communicated to the Employee by the Employer or any other discloser on behalf of the Employer in connection with the Employer’s trade secrets, concepts, research and ideas, drafts, designs, blueprints, strategy tools and any other information;
- (b) all information regarding the business operations and affairs of the Employer including financial information and results, reports, diagrams, tables, marketing and sales procedures, strategic and business plans and forecasts, the Employer’s pricing or terms of trade, profit margins, information about and relating to the Employer’s suppliers and clients and their details and information;
- (c) all documents, precedents and client data bases developed, owned or used by the Employer;
- (d) information about and arising from contracts and arrangements entered into between the Employer and any other party (including customers, suppliers, contractors, agents and directors) and any other agreements such as

information supplied under Non-Disclosure Agreements or other commercially sensitive or confidential material provided by the Employer to its clients or associates in the course of its business;

- (e) information and documents which came into the Employee's possession in the course of and by reason of their engagement by the Employer but excludes information that is publicly available; and
- (f) any information which the Employer advises the Employee is confidential.

**Expiry Date** means the date specified in the Schedule.

**Probation Period** means the period specified in the Schedule, starting on the **Commencement Date**.

## **Interpretation**

In this Contract:

- (a) headings to clauses are for convenience only and do not affect interpretation,
  - (b) the Schedule and any Annexures form part of this Contract;
- and unless the context indicates a contrary intention:
- (c) a reference to any party includes that party's executors, administrators, successors and permitted assigns or nominees, including any person taking by way of novation;
  - (d) a reference to the Employer includes any of the Employer's subsidiaries and its related companies;
  - (e) a reference to a clause is a reference to a clause of this Contract;
  - (f) a reference to any document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
  - (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
  - (h) the word "includes" in any form is not a word of limitation;
  - (i) reference to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other sub-ordinate legislation made under the relevant statute; and
  - (j) the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not.

## **APPOINTMENT AND TERM:**

1. The Employer hereby agrees to employ and the Employee hereby accepts employment with the Employer as described in the Position Description in the Schedule on the terms and conditions contained in this Contract.
2. The Employee's employment commences on the Commencement Date in the schedule.
3. The Employee's employment under this Contract is for a specified term and shall cease upon the Expiry Date referred to the Schedule unless otherwise terminated in accordance with this Contract or by operation of law. If, however, the Expiry Date has not been stated in the Schedule then the Employee's employment is for an indefinite term until otherwise terminated in accordance with this Contract or by operation of law.
4. The Employer may upon reasonable notice direct the Employee to work at different locations.
5. The Employee acknowledges that her/his role and levels of responsibility may be changed during the period of this Contract at the discretion of the Employer. The terms and conditions set out in this Contract will continue to apply to the Employee irrespective of any change to the Employee's position unless otherwise mutually agreed to in writing by the parties.

## **PROBATIONARY PERIOD:**

6. The Employee's employment will initially be subject to the Employee successfully completing the Probationary Period specified in the schedule.
7. During the Probationary Period if the Employee does not perform her/his duties and responsibilities to the satisfaction of the Employer then the Employee's employment may be terminated by the Employer upon one week's written notice or payment in lieu thereof.
8. Upon satisfactory completion of the Probationary Period, this Contract will continue to the expiry date, if any, or otherwise indefinitely until terminated by either party in accordance with the provisions of this Contract.

## **EMPLOYEE'S DUTIES:**

9. During the Employee's employment, the Employee must:
  - 9.1 perform her/his duties in accordance with the Position Description specified in the Schedule as well as carry out any additional duties and responsibilities as specified by the Employer or its nominee from time to time;
  - 9.2 act in the Employer's best interests;
  - 9.3 not use her/his position for an improper purpose or for private benefit;
  - 9.4 faithfully and diligently perform her/his duties;

- 9.5 comply with all lawful and reasonable directions of the Employer or its agents, servants or representatives;
- 9.6 not, without the Employer's prior written consent, act in conflict with the Employer's interests;
- 9.7 disclose to the Employer, at the earliest opportunity, knowledge of all potential or actual conflict of interest, and other matters likely to impact on the performance of the Employee's duties;
- 9.8 on discovery, not allow a potential or actual conflict of interest to continue;
- 9.9 immediately inform the Employer of any matter which may come to the Employee's notice during the operation of this Contract which may be of interest, importance or use to the Employer;
- 9.10 at all times to abide by all statutes, rules and regulations relating to or in any way affecting the Employer and its operations and will indemnify and keep indemnified the Employer absolutely in respect of all claims, actions, demands, losses or proceedings howsoever arising out of any breach of this covenant;
- 9.11 be just and faithful to the Employer and at all times give it full information and truthful explanations of all matters relating to the affairs of the Employer's business and give it every assistance in carrying on the Employer's business;
- 9.12 ensuring that he/she is suitably qualified and possesses all requisite qualifications, skills and training required to legally and professionally fulfill her/his employment requirements;
- 9.13 act professionally and courteously in all dealings with the Employer, its clients, officers, employees, contractors, agents, servants and representatives;
- 9.14 promote the interests of the Employer and give it the full benefit of the Employee's knowledge, ingenuity, experience and technical skill;
- 9.15 act in good faith in all dealings with the Employer; and
- 9.16 comply with the Employer's policy and more importantly with all laws relating to
  - 9.16.1 discrimination, equal opportunity, harassment, victimization and bullying;
  - 9.16.2 safety; and
  - 9.16.3 smoking in the work place.

- 10. Adherence by the Employee to the Policy and Guidelines is strictly enforceable at all times during the operation and/or existence of this contract. Please refer to Policy and Guidelines annexed to this contract.

## **HOURS OF WORK:**

- 11. The Employee will devote substantially the whole of her/his time and attention during the Ordinary Business Hours of the Employer, specified in the Schedule, to the discharge of her/his duties.
- 12. The Employee acknowledges work outside the Ordinary Business Hours may be necessary for the Employee to fulfill her/his employment requirements and

accordingly the hours of work may be varied, increased, or decreased from time to time at the discretion of the Employer.

**SALARY & REMUNERATION:**

13. The Employer will pay the Employee the Remuneration specified in the Schedule.
14. In addition to the Remuneration specified, the Employer agrees to pay the minimum superannuation contributions required for the benefit of the Employee in accordance with the Employer's obligations under law.
15. With the prior written consent of the Employer, the Employee shall be reimbursed for any expenses reasonably and necessarily incurred by the Employee in the performance of her/his employment duties.

**LEAVE:**

16. The Employee will be entitled to Annual Leave as specified in the Schedule.
17. Annual Leave shall be taken at times agreed between the Employee and the Employer. Failing agreement, Annual Leave shall be taken as directed by the Employer.
18. The Employee will be entitled to all declared or prescribed public holidays in the State of New South Wales and where applicable the Commonwealth of Australia.
19. The Employee is entitled to Sick Leave as specified in the Schedule if the Employee cannot attend work due to illness which must be evidenced by a medical certificate issued by a legally qualified medical practitioner.
20. Untaken paid Sick Leave accumulates from year to year but will not be paid out on termination of employment.
21. Unpaid leave shall be taken in the event that the Employee has exhausted all her/his Sick Leave entitlements.
22. The Employee is entitled to Carer's Leave as specified in the Schedule if the Employee needs to care or support an immediate family member or other member of the Employee's household due to their illness or an unexpected emergency.
23. The Employee is entitled to Compassionate Leave as specified in the Schedule in the event of the death or a serious life-threatening illness or injury of an immediate family member or member of the Employee's household.
24. The Employee is entitled to Parental Leave as specified in the Schedule in the event of the birth or adoption of a child.
25. The Employee will be entitled to Long Service Leave as specified in the Schedule.

26. Subject to the requirements stipulated by the Employer and all other relevant Employer policies, if any, the Employee may also be granted other leave (such as study leave) at the Employer's sole and absolute discretion.

**CONFIDENTIALITY:**

27. The Employee agrees and undertakes that he/she will not without the Employer's prior written consent, or as authorized in the performance of her/his duties, disclose to any person any confidential information acquired by the Employee as a direct or indirect result of her/his employment with the Employer at any time during the operation of this Contract.
28. The Employee agrees:
- 28.1 to take all action reasonably necessary to maintain the confidentiality of the Confidential Information and not to disclose the Confidential Information to any person save as permitted under this clause;
  - 28.2 use the Confidential Information only in the course of her/his employment and to the benefit of the Employer;
  - 28.3 not make or assist any person to make any unauthorized use, disclosure or reproduction of the Confidential Information and take all reasonable steps to secure the Confidential Information against theft, loss or unauthorized disclosure;
29. The Employee acknowledges that;
- 29.1 All the Confidential Information belongs to the Employer and does not in any way belong to the Employee even if it is material developed by the Employee in the course of employment;
  - 29.2 Any use of such Confidential Information must always be solely for the benefit of the Employer and therefore must not be removed from the workplace of the Employer except with prior written consent of the Employer; and
  - 29.3 The Confidential Information includes intellectual property of the Employer and any loss of or unauthorized use of that information will be detrimental to the Employer and will adversely affect the Employer's rights, property and its duties and legal obligations and that if the Employee is a party to any such loss then the Employer will have recourse against the Employee, legally, to recover that loss or obtain compensation under this Contract or any law.

**PERMITTED DISCLOSURE:**

30. This Contract does not prohibit the disclosure of Confidential Information;
- 30.1 which is required to be disclosed by law; or
  - 30.2 which the Employer has given its written consent to disclose.

### **SURVIVAL OF OBLIGATIONS OF CONFIDENTIALITY:**

31. The Employee acknowledges that the confidentiality clauses under this Contract are fair, reasonable and necessary to protect the business interests of the Employer.
32. The obligations of confidentiality imposed by this Contract survive the expiration or termination of this Contract and the completion of the Employee's employment.

### **RETURN OF CONFIDENTIAL INFORMATION:**

33. The Employee agrees to deliver to the Employer all documents, prototypes and other materials in her/his possession or control and which contain or refer to the Confidential Information upon demand by the Employer.
34. The return of the Confidential Information under this Contract does not in any way release the Employee from her/his obligations of confidentiality under this Contract.

### **RESTRAINT OF TRADE:**

35. The Employee must not, without the prior written consent of the Employer directly or indirectly be involved, participate or engage in any way in any business, activities, decisions, operations, ventures, undertakings or concerns which, in the reasonable opinion of the Employer directly or indirectly conflicts with the interests of the Employer or otherwise competes with the Employer's business.
36. The Employee acknowledges that any breach by the Employee of this clause would cause irreparable harm and significant damage to the Employer and accordingly that the Employer has the right to seek and obtain immediate injunctive relief in relation to any such breach.
37. The Employee acknowledges that the covenants in respect of non-competition contained in this clause are fair and reasonable and that the Employer is relying upon this acknowledgement in entering into this Contract.
38. If the Employee breaches any provision in this clause then he/she must indemnify the Employer against any resulting loss or expense.
39. For the purposes of this Clause "involved in any way" means and include being involved in a business alone or as a partner, manager, employee, agent, clerk or assistant of any person or corporation or as a director or shareholder who has a capacity to exercise substantial control over any such corporation. This Condition shall ensure to the benefit of the Employer, its successors and assigns.
40. For a period of twelve (12) months and a distance of one (25) kilometer radius from the Employer, after the Employee's employment with the Employer has been terminated for whatever reason, the Employee agrees that it will not;

40.1.1 Canvass, solicit or endeavour to entice from the Employer any person or organisation that was a client of the Employer at the date of the termination;

40.1.2 Counsel any other person to perform any of the acts specified in this clause.

41. The Employee acknowledges that the restraint of trade clauses under this Contract are fair, reasonable and necessary to protect the business interests of the Employer.

42. The obligations of restraint of trade imposed by this Contract survive the expiration or termination of this Contract and the completion of the Employee's employment.

#### **TERMINATION:**

43. This Contract may be terminated without notice by the Employer in the event of the Employee:

43.1 engaging in any act or omission amounting to a serious breach of any of the provisions of this Contract;

43.2 engaging in serious and willful misconduct;

43.3 engaging in conduct which may on the balance of probabilities render the Employer liable for prosecution under any law;

43.4 engaging in conduct which may on the balance of probabilities render the Employer liable under any civil suit in statute, common law or equity;

43.5 becomes of unsound mind or her/his person or estate becomes liable to be dealt with under any law relating to mental health;

43.6 is convicted of a criminal offence;

43.7 refuses to carry out a lawful and reasonable instruction of the Employer in accordance with this Contract; or

43.8 is under the influence of alcohol or other illicit drugs at work.

44. The Employee may terminate this Contract upon four (4) weeks written notice to the Employer.

45. The Employer may, in its absolute discretion, terminate this Contract immediately at any time prior to the expiry of the notice period given by the Employee under the preceding clause by making a payment to the Employee, equal to the value of the Employee's remuneration, in lieu of the period of notice, or for any unexpired part of that notice period.

46. At any other time, and in addition to the terms and conditions of this Contract, the Employer and the Employee may terminate this Contract by mutual agreement in writing

#### **GOVERNING LAW:**

47. This Contract shall be governed and construed in accordance with the laws of the State of New South Wales and where appropriate the laws of the Commonwealth of

Australia and the rights and remedies of the parties hereunder shall be determined in accordance with such laws and each party hereto irrevocably submits to the jurisdiction of the courts of the State of New South Wales or the Commonwealth of Australia as the case may be.

#### **ENTIRE AGREEMENT:**

48. The provisions hereof constitute the entire agreement between the parties hereto relating to the subject matter hereof and shall supersede all previous communications, representations, negotiations, statements, arrangements or understandings and agreement, verbal or written, between the parties hereto with respect to the subject matter hereof.

#### **BINDING AGREEMENT:**

49. This Contract and its contents shall ensure to the benefit of and be binding upon the successors and assigns of the respective parties hereto provided however that the parties hereto shall not sell, assign, transfer or otherwise dispose of their respective rights and/or entitlements hereunder except as expressly provided by this Contract.

#### **NOTICES**

50. Delivery

A notice, approval or consent in connection with this contract must be in writing and delivered on a Business Day, sent by registered mail (airmail if overseas) or by fax to the fax number of the recipient party set out in this clause or by electronic communication to the information system of the recipient party set out in this clause or to such other address, fax number or information system as that party may from time to time notify the other party for the purposes of this Contract.

51. Receipt

A notice given in accordance with this clause will be treated as having been received:

- (a) if it is delivered before 5pm on a Business Day, at the time of delivery otherwise at 9am on the next following Business Day;
- (b) on the third Business Day (or seventh Business Day if sent overseas) after posting;
- (c) if sent by fax, upon production of a correct and complete transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient notified for the purposes of this paragraph (but if the communication is not completed by 5pm on a Business Day, at 9am on the next following Business Day); and

- (d) if sent by electronic communication, upon production of a correct and complete confirmation of delivery report by the information system from which the electronic communication was sent which indicates that the electronic communication has entered the information system of the recipient notified for the purposes of this paragraph (but if the electronic communication has not entered the information system by 5pm on a Business Day, at 9am on the next following Business Day).

52. Addresses for Notices

For the purposes of this Contract, the address for each of the parties is as follows;

**The Employer:**

\_\_\_\_\_  
\_\_\_\_\_

Or such other address as nominated by the Employer from time to time

**The Employee:**

*(insert employee's full name and mailing address here)*

Or such other address as nominated by the Employee from time to time

**AMENDMENTS:**

53. This Contract may not be modified, altered, supplemented or amended nor any covenant or default waived except upon the execution and delivery of a written agreement between the parties hereto.

**SEVERABILITY:**

54. If any clause or part thereof of this Contract shall be judged to be invalid for any reason whatsoever such invalidity shall not affect the validity or operation of the remainder of this Contract and such invalid clause or part thereof shall be deemed to have been deleted from this Contract.

**ASSIGNMENT:**

55. Neither party may assign this Agreement without prior written consent of the other party.

**NO WAIVER:**

56. Failure or omission by the Employer at any time to enforce or require strict or timely compliance with any provision of this Contract will not affect or impair that provision, or the right of the Employer to avail itself of the remedies it may have in respect of any breach of a provision, in any way.

## **SURVIVAL:**

57. If this Contract is terminated for any reason such termination will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Contract (in so far as it imposes obligations on the Employee) which is expressly or by implication intended to come into force or continue on or after the termination.

## **SCHEDULE**

### **POSITION DESCRIPTION:**

(Clause 1)

*(insert details of job description here including key tasks)*

### **COMMENCEMENT DATE:**

(Clause 2)

Starting on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. *(insert commencement date)*

### **EXPIRY DATE:**

(Clause 3)

Not Applicable *(insert termination or expiry date if applicable)*

### **PROBATIONARY PERIOD:**

(Clause 6)

For a period of three (3) *(insert period of probation)* months from the Commencement Date

### **ORDINARY BUSINESS HOURS:**

(Clause 9)

Monday to Friday 9.00 AM to 5:30 PM (forty-five minutes lunch break) *(insert standard business hours here)*

### **REMUNERATION:**

(Clause 11)

\$\_\_\_\_\_ gross per annum plus superannuation *(insert remuneration package here)*

## **LEAVE ENTITLEMENTS:** *(insert leave entitlements here)*

(Clauses 14 to 22)

- **Annual Leave:**

Twenty (20) business days for each completed period of twelve (12) months employment and pro-rata for any incomplete period of twelve (12) months employment.

- **Sick Leave:**

Eight (8) business days for each completed period of twelve (12) months employment and pro-rata for any incomplete period of twelve (12) months employment.

- **Carer's Leave:**

Two (2) business days for each completed period of twelve (12) months employment from her/his accrued Sick Leave entitlements and pro-rata for any incomplete period of twelve (12) months employment.

- **Compassionate Leave:**

Two (2) business days for each completed period of twelve (12) months employment from her/his accrued Sick Leave entitlements and pro-rata for any incomplete period of twelve (12) months employment.

- **Parental Leave:**

Maximum of fifty two (52) weeks unpaid Parental Leave after completing a period of twelve (12) months employment or as otherwise required by any relevant statute.

- **Long Service Leave:**

Initially, after ten (10) years of continuous employment commencing from the Commencement Date for a period equivalent to one-sixtieth (1/60<sup>th</sup>)

Thereafter, after five (5) years of continuous employment commencing from the Commencement Date for a period equivalent to one-sixtieth (1/60<sup>th</sup>)

## EXECUTION & ATTESTATION

EXECUTED by the Employer )  
**PTY.** )  
**LTD. (A.C.N. )** )  
 by being signed by the persons who are )  
 authorized to sign for the company pursuant )  
 to Section 127 of the *Corporations Act* 2001 )

Signature \_\_\_\_\_

Signature \_\_\_\_\_

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Print Name (Director/Secretary)

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Print Name (Director/Secretary)

SIGNED SEALED AND DELIVERED )  
by the Employee \_\_\_\_\_ )  
in the presence of \_\_\_\_\_ )



**CONTRACT OF EMPLOYMENT**

BETWEEN:

---

in the State of New South Wales (hereinafter referred to as “The **Employer**”)

- and -

of   
 in the State of New South Wales  
(hereinafter referred to as “The **Employee**”)