

SAMPLE CONTRACTUAL PROVISIONS

The following terms are examples which may be included in a common law contract.

1. PARTIES TO THE CONTRACT

The parties to the Employment Agreement (the "Agreement")

This Agreement is made between [employer name] (the "Employer") (ABN _____) situated at [address] in the State of [state] and [employee name] (the "Employee"), who resides at [address].

2. INTERPRETING THE CONTRACT

2. a) Award Conditions

[This states that the Award regulates the Employee's conditions of employment without making the Award part of the contract of employment]

The terms and conditions of your employment will be those that apply from time to time in the _____ Award 2010 ("the Award"). However, the Award is not intended to form part of your contract of employment. Should the Award be varied, the Employer guarantees that your total remuneration will not be reduced by any variations to the Award.

2. b) Explanation of Terms

"Confidential Information" means any and all information, data, reports, operations, know-how, accounts, dealings, records, materials, plans, statistics, finances or other documents and things (other than a document or thing which is already in the public domain), whether written or oral and of whatever type or nature relating to the property, assets, liabilities, finances, dealings or functions of the Employer or any undertaking from time to time carried on by the Employer.

"Confidential Information" means (but is not limited to) any information regarding the Employer's business methods, business policies, procedures, techniques, research or development projects or results, sales information of any kind, financial information of any kind, trade secrets or other knowledge possessed by the Employer which is not generally known by individuals outside of the Employer (including the Employer's employees, consultants, and advisors). Also, "Confidential Information" will additionally include, but not be limited to, the following information of the Employer: Customer lists or other customer information, Sales strategy, tactics, or methods; information pertaining to products or services under development; and all marketing strategies.

"Continuous service" means the period of employment unbroken other than by periods of personal/carer's leave, compassionate leave, parental leave, annual leave, long service leave, and/or community service leave. Any additional leave granted by the Employer will not break service.

“The parties” means the Employer and the Employee

“Redundancy” means a termination initiated by the Employer where the Employer no longer requires the Employee’s job to be performed by anyone because of the operational requirements of the Employer’s enterprise.

“Termination” means the cessation of the employment relationship by either or both parties.

“Week’s pay” means the regular weekly rate exclusive of any additional payments such as allowances.

2. c) Construction

Unless expressed otherwise:

(a) words importing:

- i. the singular include the plural and vice versa;
- ii. any gender includes the other genders;

(b) if a word or phrase is defined cognate (related) words and phrases have corresponding definitions;

(c) a reference to:

- i. a “person” includes a firm, unincorporated association, corporation and a government or statutory body or authority;
- ii. a “person” includes its legal personal representatives, successors and assignees;
- iii. a statute, ordinance, code, regulation, award or other laws includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or any replacements;
- iv. a right includes a benefit, remedy, discretion, authority or power;
- v. an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- vi. provisions or terms of this document or another document, agreement, understanding or arrangement includes a reference to both express and implied provisions and terms;
- vii. time is to local time in eastern Australia;
- viii. “\$” or “dollars” is a reference to the lawful currency of Australia;
- ix. this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
- x. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions and emails;
- xi. anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

2. d) Headings

Headings do not affect the interpretation of this document.

3. TERM OF AGREEMENT

SAMPLE ONE

This Agreement will be effective from _____ to _____.

SAMPLE TWO

Term of Employment

This Agreement will commence on _____ and continue, with no fixed termination date, until either Party gives proper notice of termination as provided for under this Agreement.

SAMPLE 3

The Company will employ you and you will provide personal services to the company from _____ to _____ (the "contract term") as [insert title] and/or perform such duties as may be required by the company. You represent that you are not subject to any other employment Agreements or other obligations that would prevent you from performing or would interfere with your ability to perform your obligations under this Agreement. If you continue as a company employee after the contract term expires, this Agreement will continue in full force.

SAMPLE 4

The term of employment will commence on the date of this Agreement and terminates at close of business on the _____ anniversary following this date. The term of employment will be automatically renewed for an additional _____ period unless either party gives written notice to the other at least 12 months prior to the scheduled termination of the term of employment that the party does not want the term of employment to continue beyond the anniversary.

SAMPLE 5

The Employer employs the Employee for a [specify term] term commencing [specify date] and ending [specify date] (the "Employment Term").

4. PROVISIONS REGARDING EMPLOYEE'S POSITION AND PAY

4. a) Title

SAMPLE ONE

This Agreement will serve to confirm your employment as [position] by _____ ("the Employer").

SAMPLE TWO

This Agreement will serve to confirm your employment as [position] on the Production of _____ by _____ ("the Employer").

4. b) Duties

SAMPLE 1

The Executive will perform the services consistent with his position.

SAMPLE 2: General responsibilities

As an employee of the Employer you must:

- (a) devote the whole of your time, attention and skills during normal business hours, and at other times at the request of the Employer, to the duties of office;
- (b) carry out your duties at necessary places and as directed by the Employer;
- (c) faithfully and diligently perform the duties and exercise the powers:
 - (1) consistent with your position; and
 - (2) assigned to you by the Employer; and
- (d) act at all times in the best interests of the Employer.

SAMPLE 3: Engagement

The Employer will employ you in the position described in item 2 of the Schedule, and you will serve the Employer in that capacity for the remuneration, and on the other terms and conditions, contained in this Agreement. You may be required to perform other duties to meet operational requirements. These duties could involve a temporary secondment to other positions within the Employer including shift work.

4. c) Professional requirements/licenses

SAMPLE 1

The Employee currently possesses the appropriate _____ license necessary for employment as a _____.

SAMPLE 2

The Employee will hold and maintain a valid driver's license throughout his/her employment.

SAMPLE 3

The parties acknowledge that the Employee is in the process of obtaining, but does not currently possess, a _____ license which is required for him/her to fulfil his/her obligations under this Agreement. The Employee agrees to use his/her best efforts to obtain the licence as soon as possible, and to keep the Employer informed of the status of his/her application for certification.

4. d) Salary

SAMPLE 1: Full Time Employee

During the period that you serve the Employer under this Agreement, the Employer must pay to you a salary of [salary per year, month, fortnight or week] which will be paid into your nominated bank account.

SAMPLE 2: Full Time Employee

The Employee will receive a salary of [enter salary] per [year, month, fortnight, week] which will be reviewed by the Employer on an annual basis, at or close to the Employee's anniversary date.

SAMPLE 3: Full Time Employee

The Employee will receive a salary of [enter salary] per [year, month, fortnight, week] which includes payment for all hours worked and all work performed under this Agreement.

SAMPLE 4: Casual Employee

The Employee's rate of pay will be at the base rate of \$_____ per hour with a minimum payment as for ... hours. The Employer will pay the Employee weekly. If a working day is a Public Holiday, the rate per hour will be at _____ with a minimum of _____ hours at the base rate.

The Employee will not be entitled to any Annual Leave or paid Personal/Carer's Leave, but where required by law, the Employer will contribute the required superannuation contribution to a superannuation fund nominated by the Employee. If no superannuation fund is nominated by the Employee, then the Employer will make contributions into _____ fund.

4. e) Method of Payment/Schedule

SAMPLE 1: Payment Method and Schedule

The Employee's salary for each [month/fortnight/week] will be paid, [in arrears/in advance/a fortnight in arrears], by electronic funds transfer to the Employee's nominated bank account on the (nth) day of the month.

SAMPLE 2: Weekly Electronic Payment

The Employer will pay the Employee weekly via electronic bank transfer directly into the Employee's bank account in accordance with the information provided by the Employee to the Employer.

SAMPLE 3: Commission

- (a) The Employee is entitled to commission calculated by reference to (means of calculation).
- (b) Commission payments will be paid by (means of payment) on the (nth) day of each (month/week) in respect of the period (define period).
- (c) The Employer reserves the right in its absolute discretion to terminate or amend the commission arrangements applicable to the Employee without notice at any time or to exclude the Employee from participation in any commission arrangements without giving any reason.

4. f) Hours of Work

SAMPLE 1

- (a) The ordinary work week will be 38 hours to be worked during the hours specified in Schedule 1.

- (b) The Employee may be required to work reasonable additional hours to meet the operational requirements of the workplace.
- (c) The Employer will consider the Employee's personal circumstances, such as family responsibilities and any health or safety risks that overtime hours might create, in addition to the operational requirements in assigning these hours.
- (d) The Employer will provide reasonable notice of additional hours.
- (e) The Employee will provide reasonable notice of any personal circumstances or obligations that the Employer should consider in planning additional hours.
- (f) The Employee expressly acknowledges that his/her salary includes compensation for reasonable additional hours.

SAMPLE 2

The Employee will work regular office hours. In addition, the Employee will work all hours necessary to fulfil his/her duties. The Employee expressly acknowledges that his/her salary and benefits includes compensation for additional hours.

SAMPLE 3:

The Employee's hours of work are 38 hours per week. The Employee may be required to work reasonable additional hours and the Employee's salary includes an allowance of \$_____ to compensate for these hours.

4. g) Overtime Pay

SAMPLE 1

The Employee will receive overtime pay at the rate of one and one-half times his/her regular hourly rate (based on a 38-hour week) for time worked beyond 38 hours in a week or 7.5 hours in a day, exclusive of meal periods.

4. h) Time Off in Lieu

SAMPLE ONE: Compensation for Additional Hours

- (a) The Employer will provide the Employee [one/one and one-half hour] compensation time off in lieu of pay (TOIL) for each hour the Employer requires the Employee to work beyond 72 hours in a 14-day period. Meal breaks will not be included in calculating the number of hours worked.
- (b) TOIL will be taken within one year of the date accrued.
- (c) TOIL not taken within one year of the date accrued will be paid at the rate of [straight time/time and one-half]. Payments for TOIL will be made on the 30th of June or 31st of December immediately following the date by which it should have been taken.
- (d) Accrued TOIL will not be payable upon termination.

4. i) Breaks

SAMPLE ONE

The Employee will receive a one-hour meal break no later than 5 hours after he/she commences work. Meal breaks will not be considered time worked.

SAMPLE TWO

The Employee will have no less than ten hours break between work days, except in an emergency.

4. j) Superannuation

SAMPLE ONE

- (a) The Employer will contribute on behalf of the Employee superannuation as specified in the *Superannuation Guarantee (Administration) Act 1992* (Cth), as amended from time to time.
- (b) Contributions will be made monthly to the superannuation fund nominated by the Employee.
- (c) If the Employee does not nominate a superannuation fund, contributions on his/her behalf will be made to Employer's default fund _____ regulated under the *Superannuation Industry (Supervision) Act of 1993* (Cth).

SAMPLE TWO

- (a) Superannuation will be paid on your behalf in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth) ("the Act"). For the purposes of this Act, the ordinary weekly earnings will be 38 hours per week.
- (b) A contribution rate of 9.5% of ordinary weekly earnings, as amended by statute from time to time, will be contributed by the Employer to a fund or scheme of your choice within the meaning of the Act. The Employer's superannuation scheme and details will be made available to you.
- (c) Under the governing rules of the fund or scheme selected, personal contributions may be made.
- (d) The Employer may agree to enter into a salary packaging arrangement. However, such an arrangement must conform to current taxation laws and the Employer will not be liable for any additional tax, penalties or other costs payable by the Employee.
- (e) In the event of any unforeseen circumstances or events occurring, the Employer or the Employee may cancel or vary the salary packaging arrangement.

5. LEAVE

5. a) Public Holidays

SAMPLE ONE

- (a) The Employee is entitled to paid Public Holidays as follows:
 - 1 January (New Year's Day)
 - 26 January (Australia Day)
 - Good Friday
 - Easter Monday
 - 25 April (Anzac Day)
 - the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
 - 25 December (Christmas Day)
 - 26 December (Boxing Day)

- (b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.
- (c) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subclause (a), then the substituted day or part-day is the *public holiday*.
- (d) If any Public Holiday falls on a rostered day off, the Employee will be allowed either:
 - i. an additional day off at a time to be mutually agreed on by the parties or
 - ii. an additional day's pay within seven days of the Public Holiday.

SAMPLE TWO

The Employee is entitled to paid Public Holidays in accordance with the National Employment Standards.

SAMPLE THREE:

- (a) The Employee is entitled to paid time off on all Federal Public Holidays and on State Public Holidays.
- (b) If the holiday falls on a day that the Employee would not have otherwise been scheduled to work (e.g. a regular day off or during a period of leave), the Employer will: i) give the Employee a paid day off in the following seven days or ii) grant the Employee's request for a specific substituted day off; or iii) provide the Employee with an additional day's pay.

SAMPLE THREE

The Employee will be entitled to paid time off on all Federal Public Holidays and on State holidays. If the holiday falls on a regular day off, the next regular workday will be substituted as an additional day off.

SAMPLE FOUR

- (a) The Employee will receive paid time off on Christmas, Boxing Day, Good Friday and Easter Monday.
- (b) The Employee will receive seven days additional days of annual leave per year, in lieu of all other public holidays.
- (c) The Employee will be paid double-time for work on Christmas, Boxing Day, Good Friday or Easter Monday.

5. b) Annual Leave

SAMPLE ONE

- (a) The Employee will accrue 4 weeks annual leave progressively per year according to the National Employment Standards.
- (b) Annual leave will be paid at the Employee's regular rate of pay and will not attract annual leave loading.
- (c) Upon Agreement, annual leave which has not accrued may be taken in advance.

- (d) The Employee will receive payment for accrued annual leave at the time of his/her termination. At the time of his/her termination, the Employee will reimburse the Employer for any annual leave taken but not yet accrued.

SAMPLE TWO

- (a) The Employee will accrue annual leave in accordance with the National Employment Standards.
- (b) The Employer and the Employee may agree to the Employee cashing out a particular amount of the Employee's accrued paid annual leave.
- (c) The Employer and the Employee must not agree to the Employee cashing out an amount of paid annual leave if the agreement would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (d) Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.
- (e) The Employer must pay the Employee at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone.
- (f) The Employer may require the Employee to take a period of paid annual leave, but only if the requirement is reasonable.

Note: A requirement to take paid annual leave may be reasonable if, for example:

- (a) the Employee has accrued an excessive amount of paid annual leave; or
- (b) the Employer's enterprise is being shut down for a period (for example, between Christmas and New Year).

Agreements about taking paid annual leave

- (g) The Employer and the Employee may agree on when and how paid annual leave may be taken by the Employee.

Note: Matters that could be agreed include, for example, the following:

- (a) that paid annual leave may be taken in advance of accrual;
- (b) that paid annual leave must be taken within a fixed period of time after it is accrued;
- (c) the form of application for paid annual leave;
- (d) that a specified period of notice must be given before taking paid annual leave.

5. c) Annual Leave Loading

SAMPLE ONE

- (a) The Employee will receive annual leave loading at a rate of 17.5% on annual leave.
- (b) Loading is limited to the yearly four-week annual leave allocation and will not be applied to any other paid days off.
- (c) Loading will not be paid on annual leave taken in advance of the date it is accrued until the time that the leave accrues.

SAMPLE TWO

In lieu of annual leave loading, the Employee will receive an additional [3 days/ 4 days/week] of paid leave per year. Additional leave must be taken after annual leave has been exhausted and may not be carried-over to the following year.

SAMPLE THREE

The Employee expressly acknowledges that his/her salary includes annual leave loading and that he/she is not entitled to additional annual leave loading.

5. d) Personal/Carer's Leave

SAMPLE ONE

The Employee will accrue Personal/Carer's Leave in accordance with the National Employment Standards.

SAMPLE TWO

(a) Entitlement

- i. The Employee will accrue 10 days of paid personal/carer's leave per year progressively.
- ii. Personal/carer's leave may be used as paid sick leave or paid carer's leave as set out below.
- iii. Unused personal/carer's leave will carry-over from year to year.

(b) Paid Sick Leave

- i. Paid sick leave may be taken if the Employee is not fit for work because of a personal illness, or personal injury, affecting the employee.
- ii. Sick leave is not payable if the Employee is receiving worker's compensation benefits.
- iii. The Employee must notify the Employer of his/her absence including the reasons for the absence, as soon as reasonably practicable (which may be a time after the leave has started).
- iv. The Employer may require the Employee to provide evidence that would satisfy a reasonable person that the leave is taken because the Employee is/was unfit for work due to personal illness or injury.
- v. There is no yearly limit on the number of accrued sick days that may be taken in a year.
- vi. The Employee is not taken to be on paid personal/carer's leave on a day or part-day that is a Public Holiday in the place where the Employee is based for work purposes.
- vii. The place the Employee is based for work purposes is the place where the work is performed by the Employee.

(c) Paid Carer's Leave

- i. Paid carer's leave may be taken when an Employee is required to provide care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of a personal illness, or personal injury, affecting the member or an unexpected emergency affecting the member.
- ii. The following are members of an Employee's immediate family: a spouse, a de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or a child, parent, grandparent, grandchild or sibling of the spouse or de facto partner of the Employee.
- iii. De facto partner, in relation to an Employee, means a person who, although not legally married to the employee, lives with the employee in a relationship as a

couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes) and includes a former de facto partner of the Employee.

- iv. The Employee must notify the Employer of his/her absence, including the reasons, as soon as reasonably practicable (which may be a time after the leave has started).
- v. The Employer may require the Employee to provide evidence that would satisfy a reasonable person that the leave was taken because the Employee is/was required to provide care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of a personal illness, or personal injury, affecting the member or an unexpected emergency affecting the member.

(d) Unpaid Carer's Leave

- i. The Employee is entitled to a maximum of two days unpaid carer's leave for each permissible occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of (i) a personal illness, or personal injury affecting the member; or (ii) an unexpected emergency affecting the member.
- ii. The Employee may take unpaid carer's leave for a particular permissible occasion as (i) a single continuous period of up to 2 days; or (ii) any separate agreed periods.
- iii. The Employee cannot take unpaid carer's leave during a particular period if the Employee could instead take paid personal/carer's leave.
- iv. The Employer may require the Employee to provide evidence that would satisfy a reasonable person that the leave was taken for a permissible occasion in the circumstances above.

(e) Documentation

- i. Documentation will be in the form of a medical certificate provided by a registered medical practitioner.
- ii. Where it is not reasonably practicable to acquire a medical certificate, the Employee may provide a statutory declaration in lieu of a medical certificate.
- iii. A statutory declaration of the Employee would be sufficient to document the relationship for the purposes of carer's leave.

SAMPLE TWO

- (a) The Employee will accrue personal/carer's leave at the rate of ten days per year. Such leave may be used for personal illness or injury, personal emergencies, and/or to provide care for a sick or injured member of the Employee's immediate family or household. If the Employee has exhausted his/her paid personal/sick leave, he/she may take up to two additional days of personal/sick leave without pay for each permissible occasion.
- (b) The following are members of an Employee's immediate family: a spouse, a de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or a child, parent, grandparent, grandchild or sibling of the spouse or de facto partner of the Employee.
- (c) De facto partner, in relation to an Employee, means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes) and includes a former de facto partner of the Employee.
- (d) The Employer may require the Employee to provide evidence that would satisfy a reasonable person that the leave was taken for the purpose specified.

5. e) Parental Leave

SAMPLE ONE

The Employee will be entitled to parental leave in accordance with the National Employment Standards.

SAMPLE TWO

Parental leave consists of maternity leave, paternity leave and adoption leave. The period of parental leave is fifty-two (52) weeks. The Employee may request in writing to the Employer at least 4 weeks before the end of the available parental leave period for the Employer to agree to an extension of unpaid parental leave for a further period of up to 12 months, immediately following the end of the available parental leave period. The Employer must agree to the requested extension unless the Employer has reasonable business grounds for refusing. The specific provisions are in the National Employment Standards, which is adopted and made part of this Agreement.

5. f) Compassionate Leave

SAMPLE ONE

The Employee will be entitled to compassionate leave in accordance with the National Employment Standards.

SAMPLE TWO

- (a) The Employee will be entitled to two days compassionate leave for each permissible occasion when a member of the Employee's immediate family, or a member of the Employee's household: (i) contracts or develops a personal illness that poses a serious threat to his or her life; or (ii) sustains a personal injury that poses a serious threat to his or her life; or (iii) dies.
- (b) The Employer may require evidence that would satisfy a reasonable person that the leave is taken for a permissible occasion, which may include but is not limited to a medical or death certificate.
- (c) The specific provisions for compassionate leave are in the National Employment Standards, however they are not intended to form part of the Employee's contract.

5. g) Long Service Leave

SAMPLE ONE

The Employee will receive long service leave as required by the State in which he/she is regularly employed.

SAMPLE TWO

The Employee will receive long service leave in accordance with the National Employment Standards.

5. h) Community Service Leave

SAMPLE ONE

The Employee will receive community service leave in accordance with the National Employment Standards.

SAMPLE TWO

- (a) If the Employee is required to attend for jury service during his/her ordinary working hours, he/she will receive the difference between his/her regular pay for time spent on jury service and any amount paid for the jury service.
- (b) The Employee will notify the employer as soon as possible of the date which he/she is required to attend jury service.
- (c) As a condition of payment under this section, the Employee will give the Employer proof of his/her attendance of the duration of the attendance and the amount received in respect of jury service.
- (d) The Employee is entitled to be absent from his or her employment for an unpaid period, if the Employee is engaging in an eligible community service activity, as defined in the National Employment Standards. The period may consist of: (i) the time when the employee engages in the activity, (ii) reasonable travelling time associated with the activity, and/or (ii) reasonable rest time immediately following the activity.

5. i) Unpaid Leave

SAMPLE ONE

An application for leave without pay for a period of up to 12 months, will be considered on its merits and may be granted by the Employer provided that a) the taking of leave does not conflict with the operational requirements of the Employer's enterprise and b) all other leave entitlements (excluding personal/carer's leave) are exhausted.

6. BENEFITS/PREREQUISITES

6. a) General Employee Benefits

SAMPLE TWO

The Employee will be entitled to the benefits that the Employer applies generally to its employees. Each benefit may be amended, modified or terminated at the Employer's sole discretion.

6. b) Travel

SAMPLE ONE

The Employee will be reimbursed for all reasonable expenses he/she incurs on behalf of the Employer provided that these expenses have been approved by the Employer. In no event will the Employee be entitled to receive payment for use of his/her vehicle, in excess of the deductible amounts allowed by the Australian Tax Office.

SAMPLE TWO: Business Travel

The Employer will pay reasonable expenses incurred by the Employee for approved business travel. The Employee is expected to exercise care and judgment in selecting reasonably priced hotels/motels, meals and transportation. The Employee will submit expense reports with receipts on all business travel on a regular basis.

6. c) Motor vehicle

SAMPLE ONE

- (a) The Employer will provide the Employee with a fully maintained motor vehicle or a motor vehicle allowance in conformity with the Employer's current policy.
- (b) The Employee will:
 - i. hold a valid driver's license throughout the term of his/her employment
 - ii. notify the Employer if his/her driver's license is revoked
 - iii. not drive the Employer provided motor vehicle without a valid license
 - iv. comply with all applicable road regulations while driving a motor vehicle supplied by the Employer and/or while driving in connection with his/her employment.

SAMPLE TWO

The Employee will be reimbursed for actual mileage when using his/her personal vehicle for Employer business as annually established by the Australian Tax Office.

SAMPLE THREE

The Employee will be paid an allowance of \$_____ per month as reimbursement for use of his/her vehicle in performance of his/her duties. There will be no additional mileage allowance or reimbursement.

SAMPLE FOUR

- (a) When it is necessary for the Employee to use his/her privately owned vehicle on Employer business, he/she will be reimbursed at an established mileage rate determined by the Employer.
- (b) If the Employee uses a privately owned vehicle on Employer business, he/she is responsible for complying with established laws and for the protection of personal interests through adequate insurance coverage on the vehicle.
- (c) Any accident occurring while on Employer business must be reported to management promptly.

6. d) Parking

SAMPLE ONE

The Employee will have a reserved parking space in the Employer's parking area.

SAMPLE TWO

The Employer will pay the Employee's monthly parking expenses at the garage in closest proximity to the Employee's customary workplace.

6. e) Equipment (mobile phone, computer)

SAMPLE ONE

The Employer will provide the Employee a _____. The Employee will be responsible for ensuring the _____ is maintained appropriately and will be financially liable for the loss of or damage to the _____. (fill-in blank with mobile phone, computer, etc). The Employer may replace the _____ with a similar or newer model at its discretion.

6. f) Company Credit Card

SAMPLE ONE

The Employer will provide the Employee with a company credit card for business expenses. The Employee will not use the credit card except as authorised for business expenses. In addition to any disciplinary action that may result, the Employee will be financially liable for any non-authorised expenditure and personal expenses charged to the company credit card.

6. g) Education/Training Allowance

SAMPLE ONE

The Employer will pay a study allowance of \$____ per week to assist with professional development including study materials and fees for continuing education.

SAMPLE TWO

The Employee will be reimbursed for all continuing education courses required for him/her to comply with his/her professional licensing requirements.

SAMPLE THREE

After two years of employment, the Employee will be eligible to participate in the Employer's tuition reimbursement plan, under the terms of the plan.

6. h) Sales Incentive Schemes

SAMPLE ONE

The Employee will be eligible to participate in the Employer's incentive scheme under the terms of the scheme.

6. i) Bonuses

SAMPLE ONE

The Employee may participate in the Employer's bonus scheme, full details of which are available on request. The Employer reserves the right in its discretion to terminate or amend any bonus scheme without notice at any time or to exclude you from participation in any bonus scheme without giving any reasons. Profit-sharing or personal performance related bonus payments may be made from time to time at the Employer's absolute discretion.

6. j) Health Club

SAMPLE ONE

The Employee will advise the Employer on a yearly basis if he/she wishes to be a member of the _____ health club. If the Employee advises that he/she wishes to be a member of the above health club, the Employer will pay the Employee's membership fees for the following year.

6. k) Health Insurance

SAMPLE ONE

The Employer will pay the Employee's private health plan premiums.

SAMPLE TWO

The Employer will provide private health cover with [health plan] for Employee, his/her spouse and his/her under-age children under the terms agreed upon between [health plan] and the Employer.

7. TERMINATION

7. a) Probationary Period

- (a) Your employment with the Employer will be subject to a ___ month probationary period ("the probationary period").
- (b) If prior to or at the completion of the probationary period, the Employer is of the view that you have not adequately carried out your duties, the Employer may with one week's prior written notice, terminate your employment.

7. b) Notice

SAMPLE ONE

Termination of this Agreement will be according to the National Employment Standards.

SAMPLE TWO

Either party may terminate this Agreement upon providing the other party written notice of the day of termination (which cannot be before the day the notice is given) as follows:

Period of Employee's Continuous Service	Period of Notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (a) then increase the period by 1 week if the Employee is over 45 years old and has completed at least 2 years of continuous service with the Employer at the end of the day the notice is given.
- (b) If the Employee is not required to work through all or part of the notice period, he/she will receive pay in lieu of the unpaid notice period.
- (c) If the Employee fails to give the notice specified above, the Employer may withhold monies due to the Employee to a maximum amount equal to the amount the Employee would have received under this provision.
- (d) Job search entitlement
Where an Employer has given notice of termination to an Employee, the Employee will be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off will be taken at times that are convenient to the Employee after consultation with the Employer.
- (e) Notice is not payable when a business is transmitted and the entity to which it is transmitted both:
 - i. offers the Employee employment at substantially equivalent terms and conditions, including terms and conditions applicable to notice; and
 - ii. recognises the period of continuous service the Employee had at the time of transmission.

SAMPLE THREE: For Executive Employees/High Income Earners (earning over \$145,400 p.a. as at 1 July 2018.)

Either party may terminate this Agreement on _____ months written notice. The Employer may elect to pay the Employee in lieu of all or part of the required notice.

[NOTE: The following factors should be considered when determining what is a reasonable period of notice on termination: the length of the term which the employee is employed (the longer the term, the greater the notice), the nature of the employment (the more substantial, the greater the notice), the status, seniority and salary of the position (the higher, the more notice), the employee's age (the older, the more notice required), the employee's qualifications and experience (the greater, the more notice required), the employee's length of service and degree of job mobility (the greater the service and the lower the mobility, the greater the notice), what the employee gave up to come to the present employer. The authorities appear to support a range of between six and 12 months for reasonable notice, in the case of a senior executive with a large corporation in anticipated long term employment.]

7. c) Termination for Serious Misconduct

SAMPLE ONE

The Employer may terminate this employment Agreement at any time and without notice for serious misconduct. In the case of termination for these grounds, the Employer will have no obligation to the Employee for salary, bonuses, or other compensation or any other form of benefits under this Agreement except (a) compensation earned prior to the effective date of termination, (b) benefits the Employee has accrued, and/or (c) other benefits mandated under State or Federal law for employees who are terminated.

7. d) Redundancy

SAMPLE ONE

If the Employee is made redundant, the Employee is entitled to receive redundancy pay in accordance with the National Employment Standards.

SAMPLE TWO

(a) If the Employee is made redundant the Employee is entitled to receive redundancy pay as follows:

Less than 1 year	Nil
1 year and less than 2	4 weeks' pay
2 years and less than 3	6 weeks' pay
3 years and less than 4	7 weeks' pay
4 years and less than 5	8 weeks' pay
5 years and less than 6	10 weeks' pay
6 years and less than 7	11 weeks' pay
7 years and less than 8	13 weeks' pay
8 years and less than 9	14 weeks' pay
9 years and less than 10	16 weeks' pay
10 years and over	12 weeks' pay

- (b) An Employee who has been given notice of termination due to redundancy may terminate his/her employment during the notice period without loss of redundancy pay.
- (c) Any sums owed by the Employee to the Employer such as for advanced unaccrued leave or failure to provide notice of termination may be deducted by the Employer from any sums due to the Employee.
- (d) The specific provisions are in the National Employment Standards, which is adopted and made part of this Agreement.

7. g) Return materials

SAMPLE ONE

The Employee agrees that upon termination of his or her employment with the Employer for any reason, the Employee will promptly return to the Employer all manuals, records, training

materials, and other Confidential Information in his or her possession as well as equipment, if any, given to the Employee by the Employer for use in performance of his or her duties.

8. GENERAL PROVISIONS REGARDING THE EMPLOYER

8. a) Policy and Procedures

SAMPLE ONE

The Employee will be advised of and comply with the Employer's policies and procedures as these policies and procedures may vary from time to time.

SAMPLE TWO

Other matters relating to company procedures and policies are contained in the Induction Manual. A copy of this manual has been made available to you and you will be required to attend an induction day programme within the first four weeks of your employment. Please note: it is a condition of your employment that you familiarise yourself with all matters included in the Induction Manual and abide by these policies and future updates as they are provided.

8. b) Business Ethics

SAMPLE ONE

The Employee acknowledges that he/she has been given a copy of the Employer's business ethics policy. The Employee further acknowledges that he/she has read and understands all of the requirements of the policy and acknowledges that at all times during the term of his/her employment will perform his/her services in full compliance with the Employer's business ethics policy, and any revisions or additions to the policy.

8. c) Confidentiality

SAMPLE ONE

The Employee will not:

- (a) disclose directly or indirectly, to any person, for any reason other than the conduct of the Employer's business, any secrets, information, processes, methods, products, record, customer information, prices, commissions or data belonging to the Employer or any of Employer's customers, business associates or associated companies (the "Information"); or
- (b) use the Information for any purpose other than for the Employer's business without the Employer's express approval; or
- (c) disclose the terms of this Agreement to any person other than a spouse or a person, such as an accountant or solicitor, providing legal and/or financial advice.

SAMPLE TWO

The Employee acknowledges that the Employer may provide the Employee access to trade secrets, customers and other confidential data and good will. The Employee agrees to retain this

information as confidential and not to use this information on his or her own behalf or disclose it to any third party.

SAMPLE THREE

- (a) For as long as the Employee remains employed by the Employer and for a period of one year after termination of employment with the Employer, the Employee will not disclose or communicate any "Confidential Information" of the Employer to any person or entity other than the Employer nor use the "Confidential Information" for any purpose or reason other than for the benefit of the Employer.
- (b) For purposes of the previous sentence, "Confidential Information" means (but is not limited to) any information regarding the Employer's business methods, business policies, procedures, techniques, research or development projects or results, sales information of any kind, financial information of any kind, trade secrets or other knowledge possessed by the Employer which is not generally known by individuals outside of the Employer (including the Employer's employees, consultants and advisors). Also, "Confidential Information" will include, but is not limited to, the following information of the Employer: customer lists or other customer information, sales strategy, tactics, or methods, information pertaining to products or services under development and all marketing strategies.

8. d) Intellectual Property

SAMPLE ONE

- (a) All improvements, discoveries, ideas and inventions made or conceived alone or in conjunction with others arising out of or in the course of the Employee's employment, whether or not patentable, ("the inventions") will be the sole and exclusive property of the Employer.
- (b) The Employee will provide prompt written notice of inventions to the Employer.
- (c) The Employee must, upon request and at the Employer's expense, enter into any Agreements reasonably required to assign to the Employer all rights, title and interests in any invention.

SAMPLE TWO

Any writing, invention, process, creative mark or other work which the Employee may make or conceive, either alone or with others, at any time while the Employee is an employee of the Employer which in any way relates to the business of the Employer, will be the sole property of the Employer and the Employee will have no rights in nor claims to (including, but not limited to, rights or claims accruing under the copyright, trademark, or patent laws of any country).

SAMPLE THREE

- (a) Ownership
 - i. All Intellectual Property created by the Employer is owned by the Employer.
 - ii. All Intellectual Property created by you within the scope of your employment is owned by the Employer.
- (b) Use of facilities and resources

Without limiting the generality of any other provisions, all Intellectual Property created by you, with or without the knowledge of the Employer, using facilities or resources of the

Employer, or the Confidential Information, is owned by the Employer, notwithstanding that the creation of Intellectual Property:

- i. is not within the scope of your normal duties;
- ii. is done by you in your own time; or
- iii. involved only partial use of the Employer's facilities, resources or Confidential Information.

(c) Disclosure

You will disclose to the Employer all Intellectual Property created by you which is owned by the Employer as soon as practicable after creation.

(d) Assistance

In relation to Intellectual Property owned by the Employer, if and whenever required to do so by the Employer (whether during your employment or after termination) you will at the expense of the Employer:

- i. apply or join with the Employer or its nominee in applying for any patent, registered design or any other similar protection in Australia or any other part of the world.
- ii. execute all instruments or other documents and do all things necessary for vesting the Intellectual Property and all rights, title and interests to the same in the Employer or its nominee absolutely as sole beneficial owner; and
- iii. provide reasonable assistance to the Employer in connection with any claim or proceedings for infringement of any Intellectual Property.

8. e) Exclusivity

SAMPLE ONE

The Employee may not engage in any employment or provide services to anyone other than the Employer without the Employer's prior written consent.

SAMPLE TWO

- (a) The Employee undertakes to devote all of his/her working time to the tasks with which he/she is entrusted pursuant to this employment contract.
- (b) The Employee will not carry on any other professional activity, directly or indirectly, remunerated or unremunerated, without the prior written approval of the Employer.

SAMPLE THREE

The Employee will not engage in any activity that conflicts with or adversely affects the performance of his/her duties under this Agreement; accept any other employment, whether as an Employee, as a consultant or in any other capacity, whether or not he/she is compensated, or violate any of the policies described in the company's then applicable policy manual.

SAMPLE FOUR

The Employee agrees that his/her employment with the Employer is on an exclusive basis and that, while the Employee is employed by the Employer, the Employee will not engage in any other business activity which is in conflict with the Employee's duties and obligations (including the Employee's commitment of time) under this Agreement.

8. f) Restraint of Trade

SAMPLE ONE

- (a) The Employee will not directly or indirectly compete with the Employer's business during the period of employment and for a period of ____ years following termination of employment regardless of the cause or reasons for termination.
- (b) This prohibition against competing with the Employer will mean that the Employee may not own, manage, operate, consult or be employed in a business substantially similar to, or in competition with, the present business of the Employer or such other business activity in which the Employer may substantially engage during the term of Employee's employment.
- (c) This non-compete Agreement will extend only for a radius of _____ kilometres from the Employer's present location.

SAMPLE TWO

- (a) The Employee acknowledges that the activity he/she is going to carry on will provide broad access to the know-how, techniques, commercial practices and more generally numerous types of confidential information concerning the Employer.
- (b) The Employee acknowledges that the confidential information constitutes one of the Employer's main strengths, so that the Employer has a legitimate interest in including a restraint of trade clause in this employment contract.
- (c) As a result, and in view of the nature of his/her duties, the Employee, upon termination of this Agreement for any reason, will not work with, take an interest in or directly or indirectly solicit, in any way whatsoever, for himself or on behalf of a third party, the Employer's clients as well as the prospects with which the Employee has had a direct relationship during the eighteen (18) months preceding the date of actual termination of the Employee's employment.
- (d) The above undertaking is valid for eighteen (18) months starting with the date of actual termination of the Employee's employment.
- (e) The Employee will not, for a duration of twelve (12) months starting with the date of actual termination of his/her employment, hire and/or to hire away, for himself/herself or on behalf of any third party, any of the Employer's employees.
- (f) In addition, the Employee undertakes, for the twelve (12) months following the actual termination of his/her employment, not to associate himself/herself or intervene, particularly as a partner, employee or consultant, with or for any company involved in the same business, by performing duties similar to the ones performed for the Employer.

8. g) Remedies for Breach

SAMPLE ONE: Remedies in the Event of Breach of Restraint of Trade, Intellectual Property, Confidentiality, and/or Exclusivity Provisions

- (a) The Employee recognises that irreparable damage will result to the Employer and to the business of the Employer, in the event of breach by the Employee of any covenants and assurances contained in paragraphs covering [name of paragraphs].
- (b) As such, in the event of any breach of the covenants and assurances contained in paragraphs [paragraph numbers] the Employer will be entitled to restrain the Employee from any continued violation of any term. This equitable remedy will be in addition to (and not supersede) any action for damages the Employer may have for breach of any part of this Agreement.

- (c) Should either party lawfully terminate this Agreement, this paragraph, as well as those set out above will survive any such termination and remain in full force and effect until the expiration of their legal enforceability.

8. h) Non-Disparagement

SAMPLE ONE

The Employee agrees that, during the term of employment and for one year after termination of employment, he/she will not, in any communications with the press or other media or any customer, client or supplier of the Employer, or any of the Employer's affiliates, criticise, ridicule or make any statement/s which disparages or is derogatory of the Employer or its affiliates or any of their respective Directors or senior officers. No officer or Director of the Employer will, during the same time period, criticise, ridicule or make any statement/s which disparages or is derogatory of the Employee.

8. i) Antidiscrimination

SAMPLE ONE

- (d) Nothing in these provisions allows any treatment that would otherwise be prohibited by the anti-discrimination provisions and applicable Commonwealth or State legislation.
- (e) Nothing in these provisions prohibits:
 - i. any discriminatory conduct (or conduct having a discriminatory effect) that is based on the inherent requirements of a particular position; or
 - ii. any discriminatory conduct (or conduct having a discriminatory effect) that was in good faith to avoid injury to the religious susceptibilities of that religion or creed.
- (f) Disputes arising from this section will not be subject to the dispute resolution provisions of this Agreement.

8. j) Notice Board

SAMPLE ONE

The Employer may notify the Employee of topics of general application to employees by posting the notice on a notice board in an appropriate manner.

9. General Contractual Provisions

9. a) Dispute Resolution

SAMPLE ONE

Any dispute arising from or under this Agreement will be resolved as follows:

- (a) As soon as practicable after the dispute or claim has arisen, the Employee concerned will take up the matter with his/her immediate supervisor affording them the opportunity to remedy the cause of the dispute.
- (b) Where any such attempt at settlement has failed to achieve a satisfactory resolution, or where the matter in dispute is of such a nature that direct discussions between the

Employee and his/her immediate supervisor are inappropriate, the Employee will raise the matter with the industrial relations officer.

- (c) If the matter is not then satisfactorily resolved, the matter will be submitted to the Fair Work Commission for settlement.
- (d) Either party may appoint, in writing, another person or persons to act on behalf of the party.
- (e) The parties agree that during the time when the parties attempt to resolve the matter:
 - i. the parties continue to work in accordance with the Agreement unless the Employee has a reasonable concern about an imminent risk to his/her health or safety; and
 - ii. subject to relevant provisions of any State occupational health and safety law, even if the Employee has a reasonable concern about an imminent risk to his/her health or safety, he/she must not unreasonably fail to comply with a direction by the Employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for he/she to perform; and
 - iii. the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible.

SAMPLE TWO

- (a) In the event that a dispute arises as to the application or interpretation of this Agreement, the parties will endeavour to resolve the dispute without involving a third party.
- (b) If the parties are unable to resolve the dispute amicably, either party may submit it for arbitration at the Fair Work Commission.

SAMPLE THREE

- (a) Any disputes arising under or in connection with this agreement will be resolved by arbitration, to be held in [specify city] in accordance with the rules and procedures of the Fair Work Commission.
- (b) All costs, fees and expenses of any arbitration incurred by the Employee in connection with this agreement, which result in any decision or settlement requiring the Employer to make a payment to the Employee will be borne by the Employer. In no event will the Employee be required to reimburse the Employer for any of the costs and expenses incurred by the Employer relating to such arbitration. The obligation of the Employer under this section will survive the termination of this agreement.

9. b) Entire Agreement

SAMPLE ONE

This Agreement contains the entire agreement between the parties on the subject of the Employee's employment by the Employer and supersedes any and all prior written or oral agreements or representations between the parties on this subject.

SAMPLE TWO

This Agreement sets forth the entire agreement between the parties with regard to the subject matter. All prior agreements and covenants, express or implied, oral or written, with respect to the subject matter, are superseded by this agreement. This is an integrated agreement. Should the language of this contract conflict with any Employer manual or memorandum, the language of this contract will control unless the external document specifically states that it will act as a

modification of company employment contracts and the Employee consents to this modification.

9. c) Modification

SAMPLE ONE

- (a) No waiver or modification of this Agreement or of any covenant, condition, or limitation in the Agreement contained will be valid unless in writing and executed by the party to be charged with it.
- (b) No evidence of any waiver or modification will be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this Agreement, unless such waiver or modification is in writing and executed between the parties and the parties further agree that the provisions of this paragraph may not be waived except as provided in this Agreement.

SAMPLE TWO

This agreement may not be modified, superseded, or voided except upon the written and signed agreement of the parties.

9. d) Survival

SAMPLE ONE

Should either party lawfully terminate this agreement, paragraphs [enter paragraphs] will survive any such termination and remain in full force and effect until the expiration of their legal enforceability.

9. e) Assignment

SAMPLE ONE

This is a personal service contract which must be performed by the individual named in this Agreement as Employee and, as such, performance of the Agreement may not be assigned or subcontracted without the express written consent of the Employer. However, the Employer retains the power to assign or transfer its rights under this Agreement.

9. f) Severability/Waiver

SAMPLE ONE

In the event, any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision will be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement will then continue in full force and effect. If any provision will be deemed invalid due to its scope or breadth, such provision will be deemed valid to the extent of the scope and breadth permitted by law.

SAMPLE TWO

If any provision or portion of this Agreement is determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement will be unaffected and will remain in full force and effect to the full extent permitted by law.

9. g) Compliance with Laws

SAMPLE ONE

The Employee will comply with all applicable international, national and local laws and regulations in the exercise of his/her duties under this Agreement.

9. h) Governing Law

SAMPLE ONE

This Agreement will be governed by and interpreted according to the laws of the State of [state].

9. i) Opportunity to Consult

SAMPLE ONE

The Employee acknowledges that he/she has had an adequate opportunity to read, study this Agreement, to consider it and to consult with a legal representative if he/she so desires.

SAMPLE TWO

By signing this Agreement, the Employee certifies that he/she:

- (a) has received a copy of this Agreement to review and study before signing it;
- (b) has read this Agreement carefully before signing it;
- (c) has had a sufficient opportunity before signing it to ask any questions about it and has received satisfactory answers to all of his/her questions;
- (d) has had an opportunity to discuss the Agreement with his/her own legal counsel
- (e) understood their rights and obligations under this Agreement.

9. j) Execution Tags

SAMPLE 1

This Agreement has been executed by the parties on the dates below and will be effective as from the date and year first written above.

SAMPLE 2

EACH party has executed this Agreement on the date written above.

EMPLOYER:

EMPLOYEE:

By:

By:

—

Title:

Address: _____

Address:

—

_____ E-mail: _____

E-mail:

9. k) Acknowledgement of Receipt of Superannuation Form

SAMPLE ONE

By signing below, the parties acknowledge that the Standard Choice Form for Choice of Superannuation Fund was provided to the Employee upon signing this Agreement.

Employee

Date:

Employer

Date: