

**DATED:** \_\_\_\_\_ **DAY OF** \_\_\_\_\_ **20..**

**SALARY SACRIFICE AGREEMENT**

BETWEEN:

**[THE EMPLOYER NAMED AND DESCRIBED IN  
SECTION 5 OF SCHEDULE 3]**

(the “**employer**”)

and

**[THE EMPLOYEE NAMED AND DESCRIBED IN SECTION 1 OF SCHEDULE 3]**

(the “**employee**”)

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**IT IS FURTHER AGREED AS FOLLOWS:**

**1. INTERPRETATION**

The definition of various terms used in this Salary Sacrifice Agreement is contained in Schedule 1.

**2. SALARY SACRIFICE**

2.1 The employee may specify a proportion of the salary that is to be sacrificed in advance (the "**sacrificed amount**") prior to earning the same during the period covered by this Salary Sacrifice Agreement.

2.2 The employee may elect to take one or more Salary Sacrifice benefits, provided that, the total gross value of the said item or items does not exceed the approved maximum percentage of total annual earnings listed in Section 2 of Schedule 3.

2.3 It is agreed between the parties that:

2.3.1 the employee's election to participate in Salary Sacrifice shall on principle be on a cost neutral basis to the employer;

2.3.2 all costs, incurred by the employer internally, or, externally by its agent the nominee, in respect of the administration of the employee's salary sacrifice shall be deducted either as the employer charge directly from the employee's salary as noted in Section 3 in Schedule 3 or deducted by the nominee from the sacrificed amount as noted in Section 3 of Schedule 3 of the Salary Sacrifice Agreement, and, failing that, the said costs will become payable by the employee to the employer within 21 days of the issuing of a written demand by the employer to the employee and may be recoverable as a debt due to the State of South Australia;

2.3.3 all liability including any FBT liability incurred by the employer in respect of the employee may be deducted by the employer from the employee's total annual earnings;

2.3.4 the employer reserves the right to impose further costs in respect of the administration of this Salary Sacrifice Agreement as it sees fit to be payable by the employee to the employer and these costs incurred by the employer shall be deducted from the sacrificed amount of the employee and failing that such costs will become payable by the employee within 21 days of the issuing of a written demand by the employer to the employee;

2.3.5 each pay period the employer will distribute the sacrificed amount to the nominee;

2.3.6 in order to Salary Sacrifice the employee must nominate a nominee from the panel members appointed under the Panel Agreement by the employer in order to administer the Salary Sacrifice arrangement except where permitted by the employer in instances where the employee sacrifices directly into South Australian Government superannuation schemes;

2.3.7 that any interest derived by the employee in respect of the sacrificed amount will be applied by the employer to defray the costs of the administration of the Salary Sacrifice Agreements.

### 3. REVIEW OF SALARY SACRIFICE

- 3.1 The employee has no right at any time during the period of this Salary Sacrifice Agreement to re-negotiate, vary, or terminate this Salary Sacrifice Agreement except in the following circumstances:
- 3.1.1 at the Expiry Date;
  - 3.1.2 where a new employment agreement has been entered into between the parties and includes, but is not limited to, any of the following circumstances:
    - (a) a promotion of the employee to a different position other than the one the employee had been occupying prior to the promotion;
    - (b) a demotion of the employee to a different position other than the one the employee had been occupying prior to the demotion;
    - (c) a transfer of the employee to a different position other than the one the employee had been occupying prior to the transfer;
    - (d) a re-deployment of the employee to a position other than the one the employee had been occupying prior to the re-deployment;
    - (e) a secondment of the employee to a position other than the one the employee had been occupying prior to the secondment; or
    - (f) where the employee is appointed to a position substantially different to the one that the employee had been occupying.
- 3.2 In the event of any liability taxation or otherwise and howsoever defined arising or expected to arise in relation to Salary Sacrifice on the part of the employer in respect of the employee and/or any conduct of the employee in relation to the employee's salary sacrifice which may result in a contravention of this Salary Sacrifice Agreement, then notwithstanding any provision of the relevant employment arrangements of the employee, the employer without incurring any liability to the employee upon the giving of a written notification to the employee may terminate this Salary Sacrifice Agreement forthwith.

### 4. ADMINISTRATION

- 4.1 It is a condition precedent to this Salary Sacrifice Agreement commencing, that the employee must complete the Form 1 referred to in Schedule 3 to this Salary Sacrifice Agreement and provide a signed Form 1 to the employer and the nominee.
- 4.2 The employee acknowledges that it will not expressly or impliedly, in any manner whatsoever require the nominee to deal with the amounts held by it in respect of the Salary Sacrifice in a manner other than in accordance with this Salary Sacrifice Agreement.
- 4.3 If all or any part of the sacrificed amount that has been distributed to the nominee including any excess FBT amount that cannot be validly and properly sacrificed for whatever reason, then that amount shall be:
- 4.3.1 forthwith returned by the nominee to the employer,
  - 4.3.2 recoverable by the employer from the nominee, and
  - 4.3.3 subjected to all proper deductions by the employer including FBT and

income tax liability prior to remitting any remaining funds to the employee.

- 4.4 In the event of termination of employment with the employer for any reason whatsoever, the calculation of all statutory leave entitlements such as long service leave and annual leave shall be at the rate applicable to the salary pursuant to the relevant employment arrangements of the employee
- 4.5 For the purpose of this Salary Sacrifice Agreement, the employer authorises the nominee to provide to the employee upon written request by the employee,
  - 4.5.1 all books and records in respect of the employee's Salary Sacrifice; and,
  - 4.5.2 the parties agree that this sub-clause survives the revocation or termination of this Salary Sacrifice Agreement.
- 4.6 For the purpose of this Salary Sacrifice Agreement, the employee unreservedly consents to the employer or the nominee disclosing any books and records for the purpose of this Salary Sacrifice Agreement and for the purpose of complying with any audit requirements under the Panel Agreement.
- 4.7 An employer charge which is specified at Section 3 of Schedule 3 is payable by the employee to the employer in respect of the direct or internal administration of the employee's Salary Sacrifice by the employer.
- 4.8 A Nominee Administration fee which is specified at Section 3 of Schedule 3 in respect of the external administration of the employee's Salary Sacrifice by the nominee on behalf of the employer will be deducted by the nominee from the sacrificed amount of the employee in order to defray the employer's costs regarding the administration of the employee's Salary Sacrifice Agreement.

## 5. **FINANCIAL ADVICE**

The employee acknowledges that he/she is responsible for seeking independent and personal financial advice with respect to his or her election to Salary Sacrifice and the signing of this Salary Sacrifice Agreement and that this is not a matter for the employer at all.

The employee is required to sign the Financial Advice Certification Form in Schedule 5 of the Salary Sacrifice Service Agreement and provide a signed copy of that form to the nominee prior to the commencement of a Salary Sacrifice arrangement.

## 6. **SUPERANNUATION**

The employer shall make contributions in respect of the employer's share of the liability accruing in relation to the employee's membership of the Superannuation schemes established under the Superannuation Act 1988 and/or the Southern State Superannuation Act 1994, on the same terms and conditions as applied as at the date of commencement of this Salary Sacrifice Agreement, subject to the employee making any election required under the relevant superannuation legislation to maintain benefits applicable to salary (as defined in the relevant superannuation legislation) applying at the date of the commencement of this Salary Sacrifice Agreement.

**7. ACKNOWLEDGMENTS**

- 7.1 The employee acknowledges that if he/she becomes aware of:
- 7.1.1 his/her cessation of employment; or
  - 7.1.2 promotion, demotion, transfer, re-deployment, secondment, or employment which is substantially different to the one that the employee had been occupying and which is not otherwise listed above in sub-clause 3.1.2 herein,
- he/she will notify the nominee, at least 7 days prior to such an event occurring.

**8. DISPUTES AND COMPLAINTS**

- 8.1 The employee acknowledges that he/she will notify and endeavour to resolve complaints and disputes in respect of the Salary Sacrifice arrangements with the nominee only (and not the employer) in accordance with the dispute resolution process provided in Schedule 3 to the Salary Sacrifice Service Agreement.

**9. NATURE OF RELATIONSHIP BETWEEN THE PARTIES AND LIABILITY**

- 9.1 Neither of the parties has the authority to act for or to incur any liability or obligation on behalf of the other except as expressly provided in this Salary Sacrifice Agreement.
- 9.2 The employee acknowledges that the employer is not liable to the employee in respect of any matter touching or concerning the selection of the nominee, or in any matter howsoever described in respect of the Salary Sacrifice, including:
- 9.2.1 in respect of any information supplied by the employer to any person, and
  - 9.2.2 any monies distributed to the nominee or the recipient.
- 9.3 The employee further acknowledges that the employer is not liable to the employee either directly or indirectly for any acts or omissions whatsoever of the employer, nominee or any other person howsoever described regarding the Salary Sacrifice arrangement.
- 9.4 The employee shall indemnify the employer in respect of the employee's Salary Sacrifice from and against:
- 9.4.1 any income tax or any other taxation liability whatsoever (including any administrative penalty, fine or other amount) that may become payable pursuant to any relevant taxation legislation and rulings;
  - 9.4.2 any Nominee Administration fee in respect of the employee's Salary Sacrifice; and
  - 9.4.3 all other liability howsoever described not otherwise covered by clauses 9.2 and 9.3 above,
- 9.5 The employee will indemnify the employer from and against all charges, costs, damages, disbursements, fees, losses suffered or incurred by the employer as a consequence of any:
- 9.5.1 misappropriation;
  - 9.5.2 failure to account;

- 9.5.3 any other breach/es of this Salary Sacrifice Agreement or the Salary Sacrifice Service Agreement by the nominee of or in relation to any moneys it holds on behalf of the employer;
  - 9.5.4 failure by the nominee to make any payments as directed by the employer on the employee's behalf or employee pursuant to or as authorised by this Salary Sacrifice Agreement; or
  - 9.5.5 any other matter or thing done or omitted to be done by the nominee in relation to the employee.
- 9.6 The employee acknowledges that he/she will indemnify the employer in respect of any and all charges, costs, damages, disbursements, fees, losses suffered or incurred by the employer in respect of, or in any way relating to, the administration of this Salary Sacrifice Agreement or the Salary Sacrifice arrangement.
- 9.7 The employee acknowledges and agrees that this clause 9 survives the expiry or termination of this Salary Sacrifice Agreement.

## 10. TERMINATION

- 10.1 Except as provided herein, the employee does not have the right to revoke or terminate this Salary Sacrifice Agreement.
- 10.2 This Salary Sacrifice Agreement shall expire and terminate:
- 10.2.1 on the Expiry Date; or
  - 10.2.2 on the expiry or termination of the Panel Agreement;
  - 10.2.3 at any time by written agreement between the parties;
  - 10.2.4 if the employee gives to the employer not less than twenty-one (21) days prior written notice terminating this Salary Sacrifice Agreement at any time prior to the Expiry Date;
  - 10.2.5 pursuant to the operation of clause 3.1 and/or 3.2 in this Salary Sacrifice Agreement;
  - 10.2.6 if the employer gives to the employee not less than twenty-one (21) days prior written notice terminating this Salary Sacrifice Agreement at any time prior to the Expiry Date;
  - 10.2.7 at any time and without notice (except as otherwise stated) by the employer if the employee:
    - (a) is in default of any term in this Salary Sacrifice Agreement and such default remains unremedied seven (7) days after a notice in writing specifying the default complained of has been given by the employer to the employee;
    - (b) fails in the opinion of the employer to comply with any provision of this Salary Sacrifice Agreement;
    - (c) threatens to do or does any of the following:
      - (i) enters into bankruptcy either compulsorily or by virtue of Part X of the *Bankruptcy Act*;
      - (ii) makes an assignment for the benefit of his or her creditors, or makes an arrangement of composition with his or her

creditors;

- (iii) has a sequestration order made against his or her estate whether pursuant to the *Bankruptcy Act*, the *Family Law Act* or any other law of the Commonwealth or the State of the Commonwealth of Australia;
- (iv) has any judgment entered or made against it or any similar occurrence under any jurisdiction which affects the employer;
- (v) engages in any conduct prejudicial to the interests of the employer in respect of this Salary Sacrifice Agreement;
- (vi) dies;
- (vii) becomes in the opinion of the employer mentally incapable;
- (viii) fails to comply with the terms of any default notice within the time stipulated,

but without prejudice to any right of action or remedy which shall have accrued or which shall accrue thereafter in favour of the employer.

- 10.3 Notwithstanding anything to the contrary contained in this Salary Sacrifice Agreement, in the event of any breach or suspected breach by the employee of any of clauses of this Salary Sacrifice Agreement, the employer has the option to terminate this Salary Sacrifice Agreement forthwith upon written notice to the employee.

## 11. NOTICES AND COMMUNICATION

Any notice or other communication to or by either of the parties or between the party/ies and the nominee shall be:

- 11.1 in writing addressed to, unless any of the details are amended by notice in writing by one party/nominee to the other party/nominee, the relevant person/s specified in Sections 1, 3 and 5 in Schedule 3 herein; and
- 11.2 be deemed to be duly given in the case of:
  - 11.2.1 delivery in person, when delivered; or
  - 11.2.2 delivery by post, the third day after posting; or
  - 11.2.3 a facsimile, upon a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the receiver's facsimile machine;
  - 11.2.4 in the case of electronic mail, when receipt of the notice or communication is acknowledged by recipient to sender of the same,

but if delivery is not made before 4.00 p.m. on any day it shall be deemed to be received at 9.00 a.m. on the next day in that place.

## 12. ENTIRE AGREEMENT AND MODIFICATIONS

- 12.1 Subject to this clause, the Schedules to this Salary Sacrifice Agreement and the documents described in Schedule 3 are incorporated into and form part of this

Salary Sacrifice Agreement and are binding on the parties.

- 12.2 This Salary Sacrifice Agreement constitutes the entire Agreement of the parties relating to Salary Sacrifice and supersedes all prior agreements, understandings and negotiations relating to Salary Sacrifice.
- 12.3 No waiver, addition to or modification of any provision of this Salary Sacrifice Agreement shall be binding upon the parties unless agreed to in writing.

13. **PRECEDENCE OF AGREEMENTS**

- 13.1 The parties agree that, in the event of any conflict, discrepancy or inconsistency between this Salary Sacrifice Agreement and documents named hereunder the following order of precedence shall apply to resolve the same:
  - 13.1.1 the Panel Agreement and its Schedules and/or the documents annexed;
  - 13.1.2 this Salary Sacrifice Agreement and its Schedules and/or the documents annexed;
  - 13.1.3 the Salary Sacrifice Service Agreements and their Schedules and/or the documents annexed.

14. **DOCUMENTS FORMING PART OF THIS SALARY SACRIFICE AGREEMENT**

- 14.1 Documents that are incorporated into and form part of this Salary Sacrifice Agreement and are binding on the parties are:
  - 14.1.1 Salary Sacrifice Agreement and its Schedules and/or the documents annexed;
  - 14.1.2 Salary Sacrifice Service Agreement and its Schedules and/or the documents annexed;
  - 14.1.3 Salary Sacrifice Information Pack.

15. **EXECUTION AND OF THIS SALARY SACRIFICE AGREEMENT**

A hard copy of this Salary Sacrifice Agreement may be executed by the parties, or, in lieu thereof, if the employee consents in writing in the form entitled "*Acceptance of Salary Sacrifice Offer*" annexed in Schedule 3, the parties may agree to be bound by the terms of this Salary Sacrifice Agreement provided an electronic copy of the said Agreement is provided by the Employer to the Employee who acknowledges receipt of same in writing and said form is signed by both the parties.

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## SCHEDULE 1

### DEFINITIONS

- 1.1 In this Salary Sacrifice Agreement, including the above recitals, the following terms have the following meanings:
- 1.1.1 **“Agreement”** means this Salary Sacrifice Agreement and the Schedules attached hereto.
  - 1.1.2 **“books and records”** means either copies or originals of all documents whether written, electronic or otherwise which are associated with or related to the Salary Sacrifice Agreement and such books and records include but are not limited to books of account, statements, financial accounts, charges, securities, guarantees, invoices, receipts, proposals, approvals, cheque butts, deposit books, correspondence, memoranda, notes, depreciation schedules, deeds, contracts, minutes and notices.
  - 1.1.3 **“costs”** means all amounts, charges, expenses and disbursements incurred by the employer in respect of the administration of the employee’s Salary Sacrifice whether performed internally by the employer or by its agent the nominee.
  - 1.1.4 **“employee”** is the person named in Schedule 3.
  - 1.1.5 **“employer”** is the body named in Schedule 3.
  - 1.1.6 **“employer charge”** means the fee charged by the employer to the employee for the administration of the Salary Sacrifice arrangements within the employer’s human resource management system.
  - 1.1.7 **“employment arrangements”** means the relevant enterprise agreement or contract of employment as approved by Government which enables access to salary sacrifice for the employee, resulting from the SA Government Decision;
  - 1.1.8 **“Expiry Date”** means the date upon which this Salary Sacrifice Agreement concludes and which is specified in Section 2 of Schedule 3.
  - 1.1.9 **“financial year”** means the year ended 30 June of each year occurring during the life of this Salary Sacrifice Agreement.
  - 1.1.10 **“losses”** means losses, damages, penalties, interest or costs.
  - 1.1.11 **“nominated percentage”** means the proportion (expressed as a percentage) elected by the employee to be sacrificed of his or her total annual earnings for the term of the Salary Sacrifice Agreement, in advance prior to earning the same from the employer.

- 1.1.12 **“nominee”** is:
- 1.1.12.1 a panel member nominated by the employee to administer the employee’s Salary Sacrifice; and
  - 1.1.10.2 is the person or entity named in Section 3 of the Schedule 3 and the expression includes its successors and permitted assigns.
- 1.1.13 **“Panel Agreement”** means an Agreement entered into between the Minister for Industrial Relations for and on behalf of the Crown in right of the State of South Australia and the panel member in respect of the employee’s Salary Sacrifice.
- 1.1.14 **“panel member”** means the body named in the Panel Agreement and who is also the nominee in this Salary Sacrifice Agreement and the Service Agreement.
- 1.1.15 **“parties”** means the employer and the employee, being the parties to this Salary Sacrifice Agreement.
- 1.1.16 **“recipient”** means the body, corporation or person nominated by the employee pursuant to this Salary Sacrifice Agreement for the nominee to deliver any amount in respect of a Salary Sacrifice benefits and may include the employee in respect of any reimbursement in respect of Salary Sacrifice benefits pursuant to this Salary Sacrifice Agreement;
- 1.1.17 **“relevant taxation legislation and rulings”** means any legislation dealing with the imposition of and recovery of tax and includes, but is not limited to the:
- 1.1.16.1 *Income Tax Assessment Act 1936* and Regulations; and
  - 1.1.16.2 *Income Tax Assessment Act 1997* and Regulations; and
  - 1.1.16.3 *Fringe Benefits Tax Assessment Act 1986* and Regulations; and
  - 1.1.16.4 *A New Tax System (Goods and Services Tax) Act 1999* and Regulations;
  - 1.1.16.5 *A New Tax System (Fringe Benefits) Act 2000* and Regulations;
  - 1.1.16.6 Rulings and/or Draft Rulings from the Commissioner of Taxation.
- 1.1.17 **“sacrificed amount”** is the amount that an employee specifies as a proportion of his/her salary for the duration/term of the Salary Sacrifice Agreement that is to be sacrificed in advance of earning the same.
- 1.1.19 **“Salary Sacrifice”** means the Employee’s Salary Sacrifice which is the subject of this Salary Sacrifice Agreement between the employer to the employee.

- 1.1.20 **“Salary Sacrifice benefits”** means the items described in Schedule 2.
  - 1.1.21 **“Salary Sacrifice Information Pack”** means the Salary Sacrifice Information Pack available to the Employee at the South Australian Government website “[http:// www.pswd.sa.gov.au](http://www.pswd.sa.gov.au) and also in hard copy on request.
  - 1.1.22 **“Salary Sacrifice Service Agreement”** means an Agreement entered into between the employee and the nominee in respect of the administration pursuant to this Panel Agreement and the Schedules attached hereto of the Salary Sacrifice by the employee;
  - 1.1.23 **“taxation liability”** means any liability of any description imposed upon the employer or the employee or any other person or entity pursuant to the relevant taxation legislation and rulings reviewed by the Commissioner of Taxation.
  - 1.1.24 **“total annual earnings”** means the gross or pre-tax wage rate and salary payable to the employee as detailed at Section 2 in Schedule 3.
- 1.2 In the interpretation of this Salary Sacrifice Agreement:
- 1.2.1 the parties acknowledge that statements set out in the recitals to this Salary Sacrifice Agreement are true and correct;
  - 1.2.2 where appropriate, words denoting the singular include the plural and vice versa;
  - 1.2.3 words importing one gender shall include a reference to all other genders;
  - 1.2.4 the headings to the clauses in this Salary Sacrifice Agreement have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms or conditions of this Salary Sacrifice Agreement;
  - 1.2.5 a reference to a person includes a reference to corporations and other entities recognised by law;
  - 1.2.6 reference to a clause or Schedule is a reference to a clause or Schedule of this Salary Sacrifice Agreement; and
  - 1.2.7 reference to any Act, regulation, ruling or by-law shall be deemed to include all amendments thereto and all statutory provisions substituted thereafter.

## SCHEDULE 2

### BENEFITS SCHEDULE

The Salary Sacrifice benefits available in this Salary Sacrifice Agreement are:

- Membership fees and subscriptions to professional associations
- Home office expenses
- Financial counselling fees
- Disability/income protection insurance premiums
- Self education expenses
- Contributions to private superannuation fund
- Own home mortgage payments
- Personal loan service from registered financial institutions
- Private home rental
- School fees including Higher Education Contribution Scheme payments
- Private travel
- Trauma/life insurance premiums
- Childcare through a registered provider
- Aged care and disability care through a registered provider
- Private health insurance contributions
- Own motor vehicle through a novated lease
- Household Utilities [Gas and Electricity Expenses]
- Household Rates [Water and Local Council Rates Expenses]
- Car Parking
- Taxi Travel to and from Work
- Staff fitness/gym facility (in house)
- Own credit/debit card transactions
- Credit/debit card transactions through a credit/debit card offered through a Panel Member

**Note:** Costs and charges incurred in respect of the administration of the employee's Salary Sacrifice can legitimately be a Salary Sacrifice benefit, but **cannot** subsequently be claimed as an income tax deduction.

**SCHEDULE 3**

**Government of South Australia**

**Salary Sacrifice Form 1**

**(Effective from 1 June 2008)**

**ACCEPTANCE OF SALARY SACRIFICE OFFER**