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# SENIOR EXECUTIVE EMPLOYMENT AGREEMENT

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**BETWEEN**

Company Pty Ltd ACN 333 222 111

(the “Company”)

**AND**

Andrew Smith

(the “Senior Executive”).

## SENIOR EXECUTIVE EMPLOYMENT AGREEMENT

THIS AGREEMENT IS DATED THE \_\_\_\_\_ 20\_\_\_\_ .

**BETWEEN:** Company Pty Ltd ACN 333 222 111 (the “**Company**”) of 1 Perth Street  
Perth 5000 ;

**AND:** Andrew Smith (the “**Senior Executive**”) of 1 Brisbane Street Brisbane  
7000.

### RECITALS

- A. The Company carries on the business as described in Item One of the Schedule and each and every other business which the Company might engage in during the Senior Executive’s employment by the Company.
- B. The Company has agreed to employ the Senior Executive in the Position set out in Item Two of the Schedule on these terms and conditions and the Senior Executive has agreed to be so employed on these terms.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

“**Board**” means the board of directors of the Company.

“**Business**” means the business of the Company as described in Item One of the Schedule and each and every other business which the Company might engage in during the Senior Executive’s employment by the Company.

“**Business Day**” means the day on which trading banks are open for business in the State or Territory of Australia in which the Company has its registered office.

“**Confidential Information**” means and includes all Trade Secrets, know-how, drawings, designs, inventions, techniques, processes, marketing plans, analysis, strategies, forecasts, budgets, information relating to products, services, financing, contractual arrangements, agreements with customers or suppliers, this Agreement and other documentation and information which by its nature is confidential or which having regard to the nature of the Business conducted by the Company would be or is capable of being reasonably construed as being confidential to the Company.

“**Dollars**” means Australian Dollars.

“**Duties**” means the duties set out in Item Four of the Schedule together with such other

duties that the Company may require of the Senior Executive and the Duties set out in this Agreement. Duties also include all duties imposed by Legislation or imposed by common law on the Senior Executive.

**“Essential Term”** is a clause expressly stated to be an essential term. Any other clause which is so important to one or other party that its inclusion is essential to that party’s decision to enter into this Agreement is also an essential term.

**“Intellectual Property”** includes all intellectual property of whatsoever kind or nature including without limitation all copyright, designs, trade marks, logos, domain names, business names and patents whether existing now or at any time in the future.

**“Legislation”** means all statutes, Acts, regulations, by-laws, ordinances, statutory codes and other laws that are relevant to this Agreement.

**“Managing Director”** means the executive director appointed by the Board as the Chief Executive Officer of the Company.

**“Position”** means the office title and role described in Item Two of the Schedule which, by virtue of this Agreement, the Senior Executive is to hold in the Company.

**“Related Entity”** has the meaning given to it in Section 9 of the *Corporations Act 2001*.

**“Remuneration Package”** means the total remuneration and benefits set out in Item Five which the Company agrees to pay or provide to the Senior Executive and/or any related Entity during the term pursuant to the employment of the Senior Executive under this Agreement including:

- (a) gross annual salary as set out in Item Five of the Schedule;
- (b) statutory superannuation contributions by the Company;
- (c) any salary sacrifice superannuation contributions made by the Company at the request of the Senior Executive;
- (d) the value of non-cash benefits provided to or on behalf of the Senior Executive including all taxes and charges on those benefits; and
- (e) all fringe benefits tax payable in relation to the employment of the Senior Executive.

**“Schedule”** means the schedule to this Agreement.

**“Subsidiary”** means a subsidiary of the company as defined in Division 1 of Part 1.2 of the *Corporations Act 2001*.

**“Term”** means the period set out in Item Three of the Schedule.

**1.2. “Interpretation”** in this document includes:

- (a) all headings throughout this Agreement have been inserted for the purpose of ease of reference only and shall not define, limit or affect the meaning or interpretation of this

- Agreement or any Agreement created pursuant hereto or in accordance herewith;
- (b) any reference to a party that is a natural person in this Agreement includes his or her heirs, legal personal representatives, assigns and successors in title. Any reference in this Agreement to a party that is a corporation includes a reference to its lawful assigns and successors in title;
  - (c) any reference to any gender includes, where applicable, all genders including the neuter gender;
  - (d) any reference to the singular includes, where applicable, the plural;
  - (e) any reference to a party includes, where applicable, that party's lawful successors, legal personal representatives and lawful assignees;
  - (f) any reference to any act, law, statutory rule or regulation includes any variation, amendment, re-enactment or replacement thereof;
  - (g) all recitals, appendices and schedules form part of this Agreement;
  - (h) any expression used in this Agreement which is defined in the *Corporations Act 2001* shall unless otherwise defined be deemed to have the same meaning in this Agreement as it has in the *Corporations Act*.

## **2. EMPLOYMENT OF THE SENIOR EXECUTIVE**

- 2.1.** The Company hereby agrees to employ during the Term the Senior Executive in the Position on these terms and the Senior Executive accepts these terms and agrees to be employed by the Company in the Position.
- 2.2.** The term of the Senior Executive's employment is set out in Item Three of the Schedule.

## **3. EXECUTIVE'S RESPONSIBILITIES**

- 3.1.** The Senior Executive must throughout the Term of employment:
  - (a) assume and exercise all powers and perform all Duties competently and always in the best interests of the Company. The Senior Executive will in all respects comply with all lawful directions given by the Board by the Managing Director and by such other executive or person as the Board or Managing Director may nominate; and
  - (b) faithfully serve the Company and use best endeavours to promote the interests and welfare of the Company including without limitation the operation, development, marketing, selling, consulting, administering and managing of the Company's Business.
- 3.2.** Apart from ill-health or injury, the Senior Executive undertakes to commit the whole of the Senior Executive's time and attention to performing the Duties during ordinary

business hours and as may be reasonably required for the Business.

- 3.3.** The Senior Executive will not be engaged or concerned or interested in any other business without the prior written consent of the Board.
- 3.4.** The Senior Executive must not receive any payments or other benefits from any person as an incentive or reward for an act or decision relating to the Duties or to any transactions of the Company.

#### **4. DUTIES OF EXECUTIVE**

**4.1.** In addition to the Duties, the Senior Executive covenants and undertakes to the Company that the Senior Executive will in the course of his/her employment by the Company:

- (a) at all times act with due skill and care;
- (b) always act in the best lawful interests of the Company;
- (c) follow all lawful directions which the Company may give the Senior Executive;
- (d) conduct himself/herself in the best interests of the Company;
- (e) avoid all conflicts between the Senior Executive's personal interests and the best interests of the Company;
- (f) protect and promote the Company's reputation;
- (g) act ethically, lawfully and properly in furtherance of the interests of the Company;
- (h) comply with all laws;
- (i) abide by all codes of conduct, policies, manuals and procedures of the Company;
- (j) at all times act in such a manner as not to put at risk of injury any Person;
- (k) take responsibility for his/her own actions and decisions and act with initiative in the exercise of all powers conferred on him by the Company;
- (l) comply with all Occupational Health and Safety procedures and practices of the Company.

**4.2.** The Senior Executive must not, during the course of his/her employment by the Company:

- (a) permit or condone any person or other employee engaging in any unlawful activity or conduct contrary to any Legislation; and
- (b) allow or condone the payment of any sum as a direct or indirect bribe or improper inducement to any person.

#### **5. SALARY & REMUNERATION**

##### **5.1. Remuneration Package**

In consideration of the Senior Executive agreeing to the terms of this Agreement, and subject

to the Agreement and for so long as the Senior Executive complies with this Agreement, the Company undertakes and covenants to provide to the Senior Executive the Remuneration Package, including salary, as set out in Item Five of the Schedule.

## **5.2. Parts of Remuneration Package**

If there is a change in the cost of providing a part of the Remuneration Package, the Company may decide, after consultation with the Senior Executive, to alter the Remuneration Package provided that such alteration does not reduce the total gross value of the Remuneration Package.

## **5.3. Superannuation**

Statutory Superannuation must be paid by the Company pursuant to the *Superannuation Guarantee (Administration) Act 1992 (Cth)* to a superannuation fund selected by the Senior Executive, or if there is no fund chosen by the Senior Executive, to an eligible choice fund nominated by the Company. The Superannuation fund must meet all statutory compliance requirements.

## **5.4. Salary**

Unless otherwise agreed, the salary component of the Remuneration Package is not to be reduced.

## **5.5. Salary Sacrifice**

The Senior Executive may choose to engage in a separate salary sacrifice agreement on the following terms;

- (a) The Senior Executive may elect to sacrifice a proportion of their Salary for non-salary and superannuation benefits subject to compliance with any Australian Federal Legislation;
- (b) Administrative costs incurred as a result of The Senior Executive entering into or amending a salary sacrifice agreement will be met by The Employee;
- (c) Salary for all purposes, including superannuation for The Senior Executive entering into salary sacrifice agreement, will be determined as if a salary sacrifice agreement did not exist;
- (d) Any Fringe Benefit Tax or direct administrative costs incurred as a result of a salary sacrifice arrangement will be met by The Senior Executive;
- (e) Salary sacrifice arrangements will be annual based on the Fringe Benefit Reporting Year with employees being able to renew, amend or withdraw. An employee may withdraw from a salary sacrifice arrangement at any time.

## 6. EXPENSES

- 6.1. The Company will pay all reasonable and proper expenses. Where the Senior Executive incurs any expense, the Company will promptly reimburse the Senior Executive for all authorised expenses or reasonable expenses so incurred by the Senior Executive in the proper and lawful performance of the Duties.
- 6.2. The Senior Executive may be required before being paid any reimbursement for any expense to provide the Company with evidence of the payment, the authority for incurring it or the reasons why it was incurred.

## 7. LEAVE ENTITLEMENTS

### 7.1. Annual Leave

- (a) The Senior Executive is entitled to 4 weeks weeks paid annual leave for each completed year of employment.
- (b) All periods of annual leave must be approved by the Company. Any annual leave untaken accrues from year to year.
- (c) The Company may require the Senior Executive to take any accrued annual leave entitlement at any one time or at times directed by the Company.
- (d) The Senior Executive must not accrue more than 5 weeks weeks annual leave.

### 7.2. Personal Leave and Carer's Leave

- (a) The Senior Executive is entitled to a total of 10 days personal leave and carer's leave per year in circumstances where the Senior Executive is sick or injured and unable to perform the Duties.
- (b) Personal leave and carer's leave accrues only as provided for in Division 7 of Part 2-2 of the *Fair Work Act 2009* (Cth), and not otherwise.
- (c) If required by the Company, the Senior Executive must provide a medical certificate from a medical practitioner evidencing the illness or injury sustained by the Senior Executive.

### 7.3. Long Service Leave

The Company will comply with all applicable long service leave legislation in the State/Territory in which the Senior Executive is employed.

### 7.4. Parental Leave

The Senior Executive is entitled to unpaid Parental Leave in accordance with Division 5 of Part 2-2 of the *Fair Work Act 2009* (Cth).

## 8. CONFIDENTIALITY

- 8.1. Any Confidential Information of which the Senior Executive becomes aware must be kept secret and confidential and must only be used for the purposes of the Business. Confidential Information must not be used by the Senior Executive for the Senior Executive's personal interests or disclosed by the Senior Executive to benefit another Person or cause harm to the Company.
- 8.2. The Senior Executive must not breach any obligation of non-disclosure relating to trade secrets or Confidential Information contained in any agreement between the Company and any other person.

## 9. INTELLECTUAL PROPERTY

- 9.1. The Senior Executive acknowledges and agrees that all Intellectual Property created or discovered by the Senior Executive during the term of the Senior Executive's employment and which relates to or is capable of being used or adapted for use by the Company in the Business belongs to the Company and the Senior Executive will do all things for no fee or payment including assign all the Senior Executive's interest therein and execute all such assignments as assignor so as to ensure that the Company is the sole legal and beneficial owner thereof.
- 9.2. The Senior Executive acknowledges that if the Company requests the Senior Executive to do anything under this clause or assign any Intellectual Property, then the Company will bear all associated expenses and the Company hereby undertakes to the Senior Executive that it will bear all such expenses.
- 9.3. The Senior Executive irrevocably appoints the Company as the Senior Executive's lawful and authorised attorney to sign a document or do any thing and generally to use the Senior Executive's name so as to give to the Company the full benefit of this clause. A certificate in writing, signed by a director or secretary of the Company that a document or act has been executed by the Company as the Senior Executive's attorney under this clause, will be conclusive evidence thereof.

## 10. RESTRAINT

- 10.1 The Senior Executive acknowledges and agrees that in the Position the Senior Executive will develop contacts and relationships with suppliers, customers, contractors and other persons who may deal with the Company and that these contacts and relationships are part of the goodwill of the Company which has great value to the Company.
- 10.2 The Senior Executive undertakes and covenants with the Company that during the

Senior Executive's employment by the Company the Senior Executive will not solicit or exploit or engage in business with, or prepare for soliciting or exploiting or engaging in business in the future, with any persons who are competitors, suppliers, customers, contractors or other persons who deal with the Company.

10.3 In the periods and Locations in Item Six of the Schedule from the termination of the Senior Executive's employment, the Senior Executive covenants and undertakes to the Company that he/she will not directly or indirectly as principal, agent, Employee, contractor, officer or shareholder, engage in or be employed by an entity engaging in any business activity that is competitive with the Business.

10.4 Each restraint, covenant and combination of restraint and covenant contained in this clause is regarded by the parties as separate, distinct and severable. The unenforceability of a restraint or covenant or combination of restraints or covenants will accordingly not affect the enforceability of the other restraints or covenants.

## 11. TERMINATION OF EMPLOYMENT

### Termination at the end of the Term

11.1. At any time after the end of the Term, either party may terminate the employment of the Senior Executive by giving three (3) months' prior notice in writing or, in the case of the Company, subject to the *Corporations Act 2001*, making a payment in lieu of notice.

11.2. During any notice period the Company may:

- (a) direct the Senior Executive that it does not require the Senior Executive to perform any Duties for part or all of the notice period and the Senior Executive must not perform any Duties in that period;
- (b) require the Senior Executive not to attend the Company's premises, in which event the Senior Executive must not attend the Company's premises other than for a reasonable time to remove personal property belonging to the Senior Executive; and
- (c) change the Position of the Senior Executive.

### 11.3. Payments on Termination after the end of the Term

Where the Company terminates the employment of the Senior Executive other than for breach at the end of the Term, the only further payments of salary, benefits or bonuses that must be paid by the Company are:

- (a) unpaid salary accrued to the date of termination or any payment of salary in lieu of notice;
- (b) accrued annual leave and long service leave;

- (c) bonuses which have become due and payable to the Senior Executive before the date of termination; and
- (d) any payment under Clause 11.1 in lieu of notice.

#### **11.4. Termination for Cause**

The Company may terminate the employment of the Senior Executive forthwith without notice on the happening of any of the following events:

- (a) if the Senior Executive becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under any legislation relating to mental health;
- (b) if the Senior Executive is declared bankrupt or enters into a composition or arrangement with or for the benefit of his creditors;
- (c) if the Senior Executive commits a breach of an Essential Term of this Agreement;
- (d) if the Senior Executive is convicted of a serious criminal offence during the Term and the offence impairs the Senior Executive's ability to perform and carry out the Duties under this Agreement or adversely affects the reputation of the Company;
- (e) if the Senior Executive is unable due to injury or ill-health to perform the Duties under this Agreement for thirty (30) consecutive days or for a total period of three (3) months in any period of twelve (12) months;
- (f) if the Senior Executive breaches any of the Duties or continues to neglect or not perform the Duties to a reasonable standard satisfactory to the Managing Director and/or the Board;
- (g) if the Senior Executive unlawfully discriminates or sexually harasses any other person or is involved in any misconduct involving fraud, dishonesty or the lack of good faith on the part of the Senior Executive or any other Employee;
- (h) if the Senior Executive refuses to follow any lawful directions of the Managing Director, the Board or any other Senior Executive to whom the Senior Executive reports, or is insubordinate in a way that would reasonably lead to dismissal or in any way disregards the best interests of the Company.

#### **11.5. Payment on Termination for Cause**

If the Company terminates the employment of the Senior Executive for cause, no further payments of salary, benefits or bonuses will be paid by the Company except for any statutory entitlements including unpaid salary accrued to the date of termination and accrued annual leave and long service leave. The Company will also pay all bonuses which are due and payable to the Senior Executive before the date of termination.

#### **11.6. Termination for Unsatisfactory Performance**

- (a) Subject to paragraph (b), the Company may terminate the employment of the Senior Executive by three (3) months' notice in writing to the Senior Executive or make a payment in lieu of notice if the work performance of the Senior Executive is unsatisfactory but not to a degree which warrants summary dismissal at common law or termination for cause. The Senior Executive's performance will be deemed unsatisfactory if the Senior Executive fails to meet any reasonable performance criteria or stated expectations having regard to the Senior Executive's Position.
- (b) Notice of termination under paragraph (a) may only be given after the following process:
- (i) The Senior Executive has been advised in writing that the Senior Executive's performance is unsatisfactory and the required expectations, criteria and areas of unsatisfactory performance have been clearly documented and advised to the Senior Executive. The expectations criteria and areas must be relevant to the Position.
  - (ii) If there has been no sustained improvement in the Senior Executive's performance after one (1) month, then the Senior Executive must be advised thereof and that unless the performance improves to a reasonably satisfactory standard then the Company may terminate the Senior Executive's employment.
  - (iii) If there has been no sustained improvement in performance over a period of three (3) months, then notice of termination may be given by the Company.
  - (iv) Notice of termination for unsatisfactory performance shall be three (3) months. The Company may at its discretion pay the Senior Executive three (3) months salary in lieu of notice.
  - (v) Clause 11.2 applies.

#### **11.7. Payment on Termination where Unsatisfactory Performance**

Where the Company terminates the employment of the Senior Executive for unsatisfactory performance, the only payments of salary, benefits or bonuses to be paid by the Company are:

- (a) unpaid salary accrued to the date of termination or any payment of salary in lieu of notice;
- (b) accrued annual leave and long service leave; and
- (c) bonuses which are due and payable to the Senior Executive before the date of termination.

(d) Any payment under clause 11.6.

#### **11.8. Payments on Termination**

The Company will pay all termination payments under this clause within seven (7) days of the date of termination.

#### **11.9. Compensation**

- (a) Except as provided in clause 11.10, in the event of termination of employment or the expiry of the Term, the Senior Executive will not be entitled to compensation other than as specifically provided for in this Agreement.
- (b) In addition to the payments in clause 11.3, the Company must also pay the Senior Executive agreed compensation to be calculated as set out in Item Five of the Schedule.

#### **11.10. Termination**

The Company may at any time terminate the Senior Executive's employment notwithstanding that the Term has not expired, notwithstanding that the Senior Executive's performance has been satisfactory and there is no right to terminate for cause. The Company must give the Senior Executive at least three (3) months' prior written notice and is liable to pay to the Senior Executive net payments referred to in clause 11.3.

#### **11.11. Payments to the Company**

Without in any way prejudicing the Company's rights to recover all moneys owing to it by the Senior Executive, in the event of termination of employment the Company may, if permitted by Legislation, offset from the Senior Executive's final pay all debts owing to the Company by the Senior Executive.

#### **11.12. Employee's assistance with legal proceedings**

After the Senior Executive's employment ends, the Company may require the Senior Executive to assist in any threatened or actual legal or other proceedings in which the Company is involved and the Senior Executive will be reimbursed for all reasonable expenses incurred by the Senior Executive. The Senior Executive covenants and agrees to provide all such assistance.

### **12. SURVIVAL OF OBLIGATIONS**

All the obligations of the Senior Executive in respect to restraints, confidentiality and covenants intended to apply after termination will survive termination of employment and continue to be binding.

### 13. NOTICES

**13.1.** Every notice given by one party to the other under this Agreement:

- (a) must be in writing addressed to the recipient party at that party's last known address. If to the Company, the notice can be addressed and served at its principal place of business or at its registered office as follows.
- (b) A notice will be deemed in writing and properly served if it is signed and personally served or posted by pre-paid post to the recipient party or, if by facsimile, it is sent by facsimile transmission.
- (c) A notice is deemed as being served by the sender on the recipient on the day it is delivered to the recipient or, if it is posted, it is deemed received three (3) days from, but not including the date of postage, or it is deemed received one (1) working day after the day the transmission report confirms that all pages of the notice have been sent to the recipient's facsimile number.

### 14. RELATIONSHIP

The parties acknowledge that this Agreement is a contract of employment and creates the relationship of employer on the part of the Company and Employee on the part of the Senior Executive and no other relationship between the parties exists, in particular, there is no relationship of principal and contractor or any partnership. The Senior Executive acknowledges that as an employee he/she owes fiduciary duties and common law duties to the Company.

### 15. AMENDMENT

Every change, variation or amendment of this Agreement must be in writing signed by both parties.

### 16. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of Australia and both parties submit to the exclusive jurisdiction of the courts of Australia.

### 17. SEVERABILITY

- 17.1.** Any clause in this Agreement that is illegal in any relevant jurisdiction is void and of no effect to the extent of that illegality in that jurisdiction but not otherwise.
- 17.2.** Such illegality shall not render the remainder of the clauses in the Agreement void or unenforceable or effect the validity or enforceability of that clause in any other jurisdiction in which it is legal and enforceable. This is so even where the clause that is unenforceable is an Essential Term.

**18. WAIVERS**

**18.1.** Any waiver of any breach of this Agreement must be in writing and signed by the party granting the waiver.

**18.2.** A breach is not waived by any failure to or delay in the exercise, or only partial exercise, of any right thereby arising.

**19. WHOLE AGREEMENT**

This Agreement represents the entire agreement between the parties and is in substitution of all previous agreements of employment between the Company and the Senior Executive, all of which are deemed to have been terminated by mutual consent from the date on which this Agreement commences. All representations, undertakings and prior statements as to the termination package, the terms or conditions of employment or salary are, by this Agreement, expressly abandoned by the Senior Executive, who expressly states that on the Senior Executive's part there is no reliance on any such prior representations, undertakings and/or prior statements except to the extent to which they are embodied in this Agreement.

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU PROVIDE THROUGH THE BUILDING PROCESS

**SIGNED AS AN AGREEMENT**

**SIGNED BY** )  
**Company Pty Ltd** )  
**ACN 333 222 111** pursuant to )  
s127 of the *Corporations Act 2001* )  
in the presence of:

\_\_\_\_\_  
Signature of Director  
Print Name:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Signature of Director/Secretary  
Print Name:

**SIGNED BY** )  
**Andrew Smith** )  
in the presence of:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Signature

**SAMPLE ONLY**  
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PROVIDE THROUGH THE BUILDING PROCESS

