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EMPLOYMENT AGREEMENT FOR MANAGING DIRECTOR

THIS EMPLOYMENT AGREEMENT DATED _____ 20__

BETWEEN

Company Pty Ltd ACN 111 222 333 having its registered office at 1 Perth Street Perth 5000

(the "Company")

AND

Andrew Smith of 1 Sydney Street Sydney 2000 (the "Managing Director")

FOR FULL TIME MANAGING DIRECTOR

THIS EMPLOYMENT AGREEMENT DATED _____ 20____ .

BETWEEN: **Company Pty Ltd ACN 111 222 333** a company incorporated in Australia and having its registered office at 1 Perth Street Perth 5000 (the “Company”);

AND: **Andrew Smith** of 1 Sydney Street Sydney 2000 (the “Managing Director”).

BACKGROUND:

- A. The Company has agreed to employ the Managing Director on the terms and conditions set out in this Employment Agreement and the Managing Director has agreed to be employed by the Company on these terms and conditions.
- B. In this Agreement a reference to “the Act” means the *Fair Work Act 2009* (Cth).

TERMS & CONDITIONS

1. ENGAGEMENT

- 1.1 The Managing Director is employed by the Company. The Managing Director’s employment commences on 26/02/2010. The Managing Director’s employment with the Company will continue for a period of three (3) years.
- 1.2 The Managing Director must report to the Chair of the Board of Directors and the Board of Directors.
- 1.3 In addition to the Duties set out in Schedule 1 of this Agreement, the Managing Director’s Duties in this position include all those that would normally attach to that type of position. The Company may change these Duties during the course of the Managing Director’s employment after consultation with the Managing Director.
- 1.4 The Managing Director is employed on a full time basis.

2. PROBATIONARY PERIOD

- 2.1 Unless otherwise expressly agreed in writing, the first 3 months of the Managing Director’s employment with the Company are probationary (“the Probationary Period”). This Probationary Period allows the Managing Director to evaluate the position and enables the Company to assess the Managing Director’s suitability for and competency for the position. The Managing Director will be advised if the Managing Director has successfully completed the Probationary Period. The

Managing Director's ongoing employment depends upon the successful completion of the Probationary Period.

2.2 Either party may terminate the employment at any time during the Probationary Period by giving 1 week's notice or payment in lieu of notice.

3. **MANAGING DIRECTOR'S OBLIGATIONS**

3.1 The Managing Director must at all times in the course of the Managing Director's employment:

- (a) act honestly and always in the best interests of the Company;
- (b) promptly follow all lawful and proper directions of the Company in respect to the carrying out of his/her Duties;
- (c) punctually attend each work day at the designated place of work at the times stipulated by the Company;
- (d) carry out all of his/her Duties carefully, responsibly and competently; and
- (e) co-operate and assist the Board of Directors and other Managing Directors as and when required,
- (f) avoid all conflicts between the Managing Director's interests and those of the Company,
- (g) comply with all laws,
- (h) protect and promote the Company's reputation,
- (i) comply with all occupational health and safety laws, policies and procedures,

3.2 Except with the prior consent of the Company, the Managing Director must only use computers, telephones, equipment, machinery and vehicles ("Items") belonging to the Company for proper and legitimate purposes of carrying on the Company's business and in fulfilling the Duties. The Managing Director must not use any of the Items for the Managing Director's personal benefit without the prior written permission of the Company.

3.3 The Managing Director must at all times in dealings with other Directors, customers, and contractors conduct himself/herself in a manner that promotes and protects the image, reputation and goodwill of the Company and Company's business.

3.4 The Managing Director must not:-

- (a) smoke in the workplace;
- (b) consume alcohol or take prohibited drugs in the workplace;
- (c) come to work intoxicated; and/or
- (d) come to work under the influence of prohibited drugs.

3.5 The Managing Director will not be engaged or concerned or interested in any other business without the prior written consent of the Board of Directors.

3.6 Except in accordance with this Agreement, the Managing Director must not receive any payments or other benefits from any person as an incentive or reward for an act or decision relating to his/her Duties or to any transaction of the Company.

4. REMUNERATION

4.1 The Managing Director's Remuneration is set out in Schedule 2 to this Agreement.

4.2 The Managing Director's Remuneration will be reviewed on an annual basis by the Board of Directors.

5. HOURS OF WORK

5.1 The Managing Director is required to work a standard 38 hours per week. The Managing Director may be required to work reasonable additional hours.

5.2 The Managing Director's ordinary daily hours of full time work shall be 7.6 hours per day.

5.3 The Managing Director's work hours are flexible and may be subject to change during the course of the Managing Director's employment with the Company.

6. PUBLIC HOLIDAYS

6.1 In accordance with Division 10 of Part 2-2 of the Act, the Managing Director is entitled to a paid day off on a public holiday. The Company may however require that the Managing Director work on a particular public holiday. The Managing Director may refuse that request (and take the day off) if the Managing Director has reasonable grounds for doing so.

6.2 For the purposes of this clause, the following are public holidays:

(a) 1 January (New Years Day), 26 January (Australia Day), Good Friday, Easter Monday, 25 April (Anzac Day), Queens Birthday, 25 December (Christmas Day), 26 December (Boxing Day), and

(b) any other day declared by or under the law of a state or territory as a public holiday, other than a day declared in substitution for a day in paragraph (a) above, a union picnic day or any other day excluded by the Workplace Relations Regulations 2006 (Cth) as amended from time to time.

7. ANNUAL LEAVE

7.1 The Managing Director is entitled to 4 weeks annual leave per year of service in accordance with Division 6 of Part 2-2 of the Act.

7.2 Annual leave accrues on a pro rata basis and is credited to the Managing Director on a monthly basis. Annual leave is cumulative.

7.3 Annual leave will be given and taken in periods agreed to between the Managing Director and the Company. The Company can direct the Managing Director to take an amount of annual leave (where at least the amount directed is credited to the Managing Director) during a period when the Company, or any part of the Company in which the Managing Director works, is shut down. The Company can also direct the Managing Director to take up to 2 weeks' annual leave during a particular period, where more than 8 weeks of annual leave has been accrued.

8. LONG SERVICE LEAVE

8.1 The Managing Director will be entitled to long service leave in accordance with the state or territory legislation dealing with long service leave.

9. PERSONAL LEAVE

9.1 The Managing Director is entitled to Personal Leave in accordance with Division 7 of Part 2-2 of the Act. Personal Leave includes Personal/carer's leave, unpaid carer's leave and compassionate leave.

Personal/Carer's Leave

9.2 The Managing Director is entitled to up to 10 days paid personal/carer's leave for each year of continuous service. Personal/carer's leave can be taken as sick leave (i.e. where the Managing Director suffers a personal illness or injury) or carer's leave (i.e. where the Managing Director needs to provide care or support to a member of his/her immediate family or a member of his/her household, who requires care or support due to personal illness, injury or an unexpected emergency).

9.3 Personal/carer's leave can be taken if the Managing Director has an amount of such leave credited. Where an amount of such leave is not credited, the Company may allow the Managing Director to take the leave in advance. Personal/carer's leave accrues every 4 weeks and accrues on a pro rata basis. The amount accrued each month must be credited to the Managing Director. Personal/carer's leave is cumulative.

Unpaid Carer's Leave

9.4 Provided the Managing Director cannot take an amount of paid personal/carer's leave, the Managing Director is entitled to up to 2 days unpaid carer's leave for each occasion when an immediate family member or a household member requires care or

support due to personal illness, injury or an unexpected emergency. The Company may provide additional unpaid carer's leave at its discretion.

Compassionate leave

- 9.5 Compassionate leave is paid leave taken by an Managing Director to spend time with a member of his/her immediate family or household who has a personal illness or injury which poses a serious threat to his/her life. Compassionate leave is also paid leave taken after the death of an immediate family or household member.
- 9.6 The Managing Director is entitled to up to 2 days compassionate leave for each occasion where an immediate family or household member dies, contracts or develops a personal illness which poses a serious threat to his/her life or sustains a personal injury which poses a serious threat to his/her life. The Company may require the Managing Director to provide any evidence that the Company reasonably requires of the illness, injury or death. The Company may provide additional compassionate leave at its discretion.

Administration

- 9.7 Where Personal/carer's leave or unpaid carer's leave was, is being or will be taken, the Managing Director must, as soon as reasonably practicable, provide the Company with notice that he/she;
- (a) in the case of sick leave, requires (or required) leave and is (or will be) absent from employment during a period because of a personal illness or injury, or
 - (b) in the case of carer's leave, requires (or required) leave to provide care or support to an immediate family member or member of the Managing Director's household, who requires care or support because of personal illness, injury or an unexpected emergency.
- 9.8 The Company can also require the Managing Director to provide certain documentation such as a medical certificate or a statutory declaration. This does not apply where the Managing Director cannot comply due to circumstances beyond his/her control.

10. PARENTAL LEAVE

- 10.1 The Managing Director is entitled to unpaid Parental Leave in accordance with Division 5 of Part 2-2 of the Act.

11. EXPENSES

- 11.1 The Managing Director will be reimbursed for all monies reasonably expended by the Managing Director on behalf of the Company in accordance with the Managing

Director's Duties where approval for the expenditure has been obtained from the Company.

11.2 The Managing Director may be required as a pre-condition to reimbursement to provide the Company with invoices or receipts for such expenses.

12. COMMUNITY SERVICE LEAVE

12.1 If the Employee is called up for jury service, he/she must immediately notify the Employer of the date upon which the Employee is required to attend for jury service. The Employee is required to forward all correspondence with respect to the Employee's attendance for jury service to the Employer.

12.2 The Employee is entitled to up to 10 days paid leave per year to perform jury service. If the employee receives payment for attending jury service from the Court, the amount that the employer is required to pay will be reduced by this amount.

12.3 The Employee is entitled to unlimited but reasonable unpaid leave to perform emergency management activities.

13. ALCOHOL AND DRUGS

13.1 As part of the Company's OH&S policy, alcohol consumption or drug use in the workplace is strictly prohibited. The Managing Director must not come to work intoxicated or under the influence of drugs.

14. TERMINATION OF EMPLOYMENT

14.1 Either the Managing Director or the Company may terminate the Managing Director's employment by giving to the other written notice to that effect. The periods of notice are:-

- (a) At least 1 week during the Managing Director's first year of employment; or
- (b) At least 2 weeks where the Managing Director has been employed for more than 1 year but less than 3 years; or
- (c) At least 3 weeks if the Managing Director has been employed for more than 3 years but less than 5 years; or
- (d) At least 4 weeks if the Managing Director has been employed for more than 5 years.

14.2 The Company may at its discretion pay the Managing Director for the period of notice together with other termination payment entitlements, not require the Managing Director to work in the notice period, and terminate this Employment Agreement forthwith. The Company may at its discretion require the Managing Director to work

only part of the notice period and pay the Managing Director for the whole notice period and terminate the Employment Agreement.

14.3 The Company may terminate the Managing Director's employment summarily and without notice if the Managing Director engages in serious or wilful misconduct.

14.4 Misconduct by the Managing Director includes any of the following:-

- (a) a deliberate and wilful failure to follow any lawful instruction or direction by the Company; or
- (b) serious negligence or incompetence in the performance of duties; or
- (c) any act of dishonesty or deceit by the Managing Director; or
- (d) any improper or unauthorised use of confidential information owned or used by the Company; or
- (e) any improper or unauthorised use of Company property; or
- (f) act in a way which in the reasonable opinion of the Company may injure or be likely to injure the business or reputation of the Company; or
- (g) any rude, abusive, violent, threatening or seriously inappropriate conduct including bullying towards employees, other Managing Directors or towards customers; or
- (h) any serious breach of the Company's computer policy; or
- (i) downloading pornography or viewing pornography on the internet; or
- (j) sending any message over the internet that is defamatory of any person, or is misleading or deceptive or likely to mislead or deceive any person; or
- (k) being intoxicated or under the influence of illicit drugs in the workplace, or
- (l) consuming alcohol or taking illicit drugs in the workplace; or
- (m) improper or inappropriate use of your position; or
- (n) any conduct that in the reasonable opinion of the Company constitutes a serious or potentially serious conflict of interest, including working for any competitor of the Company; or
- (o) any reckless or deliberate damage to any of the Company's property; or
- (p) any wilful or continued failure to observe the policies and procedures of the Company; or
- (q) being declared bankrupt.

14.5 In order to protect the goodwill of the Company's business, the Managing Director must not for a period of 9 months ("the Time") and within 500 kilometres of the Company's place of business where the Managing Director last worked for the

Company (“the Area”) work for any company that is a competitor of the Company or himself/herself directly or indirectly carry on or be involved in any business that is competitive to the Company’s business. If the Time or the Area are unreasonable then the Time shall be reduced by half (if the Time is unreasonable) and Area shall be reduced by half using the Company’s place of business where the Managing Director last worked for the Company as the centre of the Area so halved.

14.6 The Managing Director must not for 12 months after the termination of the employment solicit other employees or Managing Directors of the Company to resign and take up employment with the Managing Director.

14.7 The Managing Director must not for a period of 12 months from termination of his/her employment solicit, approach or induce any customer of the Company or supplier to the Company to become a customer of or supplier to any other person or company that competes with the Company.

14.8 The obligations in this clause survive termination of this Employment Agreement and shall continue to bind the Managing Director and be fully enforceable against the Managing Director by the Company.

15. OCCUPATIONAL HEALTH AND SAFETY

15.1 The Managing Director must comply with all Occupational Health and Safety (OH&S) laws. The Managing Director must also comply with the Company’s OH&S polices and procedures.

15.2 If the Managing Director becomes aware of any circumstance, hazard or conduct by any person that could give rise to a risk of injury or illness to any person then the Managing Director should immediately take steps to rectify the issue.

16. CONFIDENTIALITY AND TRUST

16.1 During the term of employment the Managing Director must not work for a competitor of the Company.

16.2 The Managing Director stands in a position of confidence and trust. The Managing Director must not provide any information about the Company’s business or its customers or suppliers to any competitor.

16.3 The Managing Director must not make disparaging remarks about the Company to its other employees or Managing Directors, to customers or to any other person. The Managing Director must not make disparaging remarks about the Company’s business, its products or services to any customers or any person.

- 16.4 The Company takes seriously its obligations under the *Privacy Act* 1988 (Cth). The Managing Director must not disclose or use any personal information the Managing Director has access to relating to any other Managing Director or any customer of the Company. The Managing Director is required to take all reasonable steps to protect all such personal information in the Managing Director's possession against wrongful disclosure or misuse by any other person.
- 16.5 For the purposes of this clause, "confidential information" means all:-
- (a) information contained in a document, or any software that is the property of our Company and which is by its nature confidential to us and/or our Business and/or to any of our customers; and
 - (b) documents or software that is marked or contained in a package or envelope that is marked "Private", "Strictly Confidential", "Confidential", "Secret" or "Not to be disclosed" or otherwise uses words which indicate that the Company regards the information as being of a confidential nature; or
 - (c) oral, written, recorded information and/or databases concerning us, our Business, any customer, our menus, systems and procedures.
- 16.6 The Managing Director must only use confidential information for the Company's benefit and in the proper performance of the Managing Director's obligations as a Managing Director.
- 16.7 The Managing Director must not, at any time either during his/her employment or following the Managing Director's resignation or termination, disclose or divulge any confidential information without the Company's prior written consent.
- 16.8 The Managing Director must not use or attempt to use any information which the Managing Director acquires in the course of his/her employment in any manner which may reasonably be expected to cause injury or loss or be calculated to injure or cause loss to the Company.
- 16.9 Upon the termination of the Managing Director's employment with the Company, the Managing Director will be required to return all confidential information to the Company.
17. **INTELLECTUAL PROPERTY**
- 17.1 For the purposes of this Agreement, "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.

- 17.2 The Managing Director acknowledges and agrees that all Intellectual Property created or discovered by the Managing Director during the term of the Managing Director'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 Managing Director will do all things for no fee or payment including assign all the Managing Director'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.
- 17.3 The Managing Director acknowledges that if the Company requests the Managing Director to do anything under this clause or assign any Intellectual Property, then the Company will bear all expenses associated therewith and the Company hereby undertakes to the Managing Director that it will bear all such expenses.
- 17.4 The Managing Director irrevocably appoints the Company as the Managing Director's lawful and authorised attorney to sign a document or do any thing and generally to use the Managing Director'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 Managing Director's attorney under this clause will be conclusive evidence thereof.
18. **INDEPENDENT LEGAL ADVICE**
- 18.1 The Managing Director has had the opportunity to obtain separate and independent legal advice before signing this Employment Agreement.
19. **WHOLE AGREEMENT**
- 19.1 This Employment Agreement represents the whole agreement between the Company and the Managing Director. Any prior representations by the Company or any person on its behalf are not relied on by the Managing Director and the Managing Director expressly acknowledges having read this Agreement and satisfied himself/herself as to its terms.

EXECUTED AS AN AGREEMENT

SIGNED BY)
Company Pty Ltd)
ACN 111 222 333 pursuant to)
Section 127 of the *Corporations Act 2001*)
(Cth) in the presence of:

Director

Print Name:

Signature of Witness
Print Name:

Director/Secretary

Print Name:

SIGNED BY)
Andrew Smith)
in the presence of:

Signature of Witness
Print Name:

Signature

Print Name:

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SCHEDULE 1

DUTIES

In addition to the Duties set out below, the Managing Director's Duties in this position include all those that would normally attach to a Managing Director. The Company may change these Duties during the course of the Managing Director's employment after consultation with the Managing Director.

The Managing Director's Duties include:

1. Managing the day to day operations of the Company, its people and resources.
2. Supervising the work of other managers, employees and Managing Directors.
3. Ensuring that the Company's structure and processes adequately fit the strategy and culture desired by the Board.
4. Ensuring the directors are provided with accurate and clear information in a timely manner to promote effective decision-making by the Board of Directors.
5. Ensuring that all material matters affecting the Company are brought to the attention of the Board of Directors.
6. Being accountable for planning, co-ordinating and directing the operation of the Company to achieve strategic, financial and operating objectives as agreed with the Board of Directors.
7. Formulating and recommending business and financial strategies and plans to develop the Company's business and to implement plans to achieve agreed performance targets.
8. Promoting the interests of the Company
9. Faithfully and diligently performing the duties and exercising the powers consistent with a managing director and as assigned by the Board of Directors.
10. Installation of air-conditioning unites
11. Transport of Air-conditioning units
12. Repairing units
13. Callouts to client premise to test temperature
14. Testing units
15. Quoting of new units
16. Adhere to OH & S procedure
17. Attend meetings when required

SCHEDULE 2 REMUNERATION

The Managing Director's remuneration whilst employed by the Company will consist of the following:

1. Yearly Salary: \$170 500 excluding superannuation to be paid on a Monthly basis.
2. Superannuation contributions pursuant to the *Superannuation Guarantee (Administration) Act* 1992 (Cth) to a superannuation fund selected by the Managing Director or, if no fund is chosen by the Managing Director, to an eligible fund nominated by the Company.
3. Bonus: Installation of air-conditioning unites Transport of Air-conditioning units Repairing units Callouts to client premise to test temperature Testing units Quoting of new units Adhere to OH & S procedure Attend meetings when required

Salary Sacrifice

4. The Managing Director may choose to engage in a separate salary sacrifice agreement on the following terms;
 - (b) The Managing Director may elect to sacrifice a proportion of their Salary for non-salary and superannuation benefits subject to compliance with any Australian Federal Legislation;
 - (c) Administrative costs incurred as a result of The Managing Director entering into or amending a salary sacrifice agreement will be met by The Employee;
 - (d) Salary for all purposes, including superannuation for The Managing Director entering into salary sacrifice agreement, will be determined as if a salary sacrifice agreement did not exist;
 - (e) Any Fringe Benefit Tax or direct administrative costs incurred as a result of a salary sacrifice arrangement will be met by The Managing Director;

- (f) 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.

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