

AND

EMPLOYMENT AGREEMENT

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THIS AGREEMENT dated day of 2019

BETWEEN of (**Employer**)

AND of (**Employee**)

RECITALS

- A.** The employer conducts the business known as .
- B.** The employer has agreed to utilise the services of the employee and the employee has agreed to provide those services to the employer in the business on the terms set out in this agreement.

OPERATIVE PART

1. Interpretation

This agreement is governed by the law of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) References to a party are intended to bind their executors, administrators and permitted transferees;

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- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Definitions

In this agreement, unless the context otherwise requires:

- (a) Competing business means any business that is the same or substantially similar to the business of the employer;
- (b) Confidential information means all information in whatever form be it oral, in writing or electronic concerning the business of the employer or any related entity that is likely to damage the business of the employer or related entity if disclosed to a third party but does not include information that is in the public domain or was known to the third party;
- (c) Duties means the duties set out herein, any other duties that the employer may delegate from time to time, those otherwise implied at law or in equity and statutory duties. Examples of the employee's duty to provide faithful service and to act in good faith include the:
 - (i) Employee must not use their position to derive secret profits or benefits during the term of the employment;
 - (ii) Employee must account to the employer for all money and property received in the course of their employment;
 - (iii) Employee must not solicit the employer's customers or clients or potential customers or clients while they are employed; and
 - (iv) Employee must not divulge or abuse trade secrets or the intellectual property of the employer;
- (d) Intellectual property means copyright, trademark, patent, design and any other intellectual property rights arising by law;
- (e) Performance objectives means those targets and goals developed by the employer having reference to the company's mission and annual business plan that further delineate the employee's duties that must be specific, measurable, attainable, realistic and timely and agreed upon by both parties. These goals can identify any changes the employer requires to the attitude, knowledge or behaviour of the employee and address the necessary personal development that may be required particularly if the business undergoes any major changes;
- (f) Prospective client or customer means a person, entity or company with whom the employer had engaged in negotiations to do business during the:
 - (i) 24 months preceding the date of termination of the employment contract, unless that period is in the

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- circumstances found not to be enforceable at law or in equity, in which case;
- (ii) 18 months preceding the date of termination of the employment contract, unless that period is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (iii) 12 months preceding the date of termination of the employment contract, unless that period is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (iv) 6 months preceding the date of termination of the employment contract.
- (g) Restraint area means:
- (i) Within a km radius of the business premises, unless that area is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (ii) Within a km radius of the business premises, unless that area is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (iii) The area in which the company is located and conducts its business and from which it receives the majority of its custom;
- (h) Restraint period means the period during employment and from the date of termination of employment for:
- (i) 24 months, unless that period is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (ii) 18 months, unless that period is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (iii) 12 months, unless that period is in the circumstances found not to be enforceable at law or in equity, in which case;
 - (iv) 6 months.
- (i) Restricted way means that the employee must not act, participate, assist, work or in any way be directly or indirectly involved in a competing business in any of the capacities of employee, contractor, director, employer, consultant, adviser (formal or informal), principal, agent, manager, equity holder, partner, associate, franchisee, franchisor, unit holder, member, shareholder, beneficial owner, beneficiary, trustee, joint venturer or financier, such that would entitle them or any of their respective associates or nominees to receive any benefit or reward because of their association with the competing business or would confer any benefit or reward upon the competing business itself;

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- (j) The terms and conditions herein replace any other terms and conditions of employment that may have applied prior to the date of this agreement; and
 - (k) Nothing in this agreement shall prevent the parties agreeing in writing to vary any or all of the provisions contained in this agreement; provided however existing employees cannot be required to complete a probationary period. Additionally the parties cannot agree to conditions of employment that are less than the minimum prescribed by any relevant law or award.

3. Term

This agreement shall come into force on _____ and shall remain in force until renegotiated or terminated pursuant to any provision of this agreement.

4. Award coverage

- (a) Award coverage and applicable legislation is set out in Schedule 1.
- (b) A Fair Work Information Statement which summarises the entitlements under the National Employment Standards and also other matters concerning the federal industrial relations system is included in Schedule 2.

5. Title and duties

- (a) The employee's title and details are contained in the Schedule.
- (b) It shall be the duty of the employee to carry out all reasonable instructions and to undertake any work reasonably required by the employer. From time to time performance objectives will be agreed upon by the employer and employee that must be clearly defined and the employee must achieve the targets established by them.
- (c) The employer may, after consultation with the employee, amend the employee's duties from time to time.
- (d) The employee acknowledges that they owe duties to the employer as implied by law or in equity or by statute including to:
 - (i) Faithfully serve the employer;
 - (ii) Work in a skilful and competent manner;
 - (iii) Obey all lawful requests, directions and restrictions of the employer;
 - (iv) Not intentionally do anything that is or may be harmful to the employer or its business; and
 - (v) Comply with all applicable legal obligations.

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- (e) The employer acknowledges that it owes duties to the employee as implied by law or in equity or by statute including to:
 - (i) Act fairly and in good faith;
 - (ii) Provide a safe system of work;
 - (iii) Comply with statutory obligations; and
 - (iv) Indemnify the employee for expenses legitimately incurred by the employee in carrying out the work as instructed by the employer.

6. Policies and procedures

- (a) The employee will comply with employer's policies and procedures, as may be varied from time to time. Such policies and procedures take effect as reasonable and lawful instructions but do not form part of this agreement.
- (b) A breach of the employee's policies and procedures may result in disciplinary action, including termination of employment.

7. Hours of work

- (a) The hours of work are set out in the schedule.
- (b) The employer may, following consultation with the employee concerned, alter the employee's hours of work by the giving of one week's notice.
- (c) It is recognised there are times when the hours of work must be flexible and the employee may be required to work outside of normal work hours.
- (d) No extra payment will be made where an employee is required to work reasonable overtime. [Delete if this is covered in the award]
- (e) Punctuality is important in discharging the employee's duties to the employer. Accordingly, the employee is to be prepared and ready to commence work at the starting time on each day.
- (f) If the employee is unable to attend at work on any day, or if the employee will be late for work, then they must personally advise their supervisor as soon as practicable, which may be a time after the absence has started, including advising the period or expected period of the leave.

8. Warranties

The employee warrants that:

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- (a) All representations, whether oral or in writing, made by the employee as to qualifications and experience in applying for this position are true and complete;
 - (b) There are no liabilities, encumbrances, debts, attachments or other matters that would interfere with the employee's ability to discharge any obligations under this agreement;
 - (c) The employee has disclosed to the employer any injuries and/or illnesses previously suffered that may affect an employee's ability to effectively carry out their functions and responsibilities within the employment; and
 - (d) This agreement may be terminated in the event that either the employee, or other persons or bodies, do not supply the information requested by the employer, or the information supplied is found to be incorrect, deliberately insufficient or misleading.

9. Probationary period [If applicable]

- (a) Employment is subject to a probationary period of three months during which time the employee's performance and conduct will be appraised and monitored. During this period the employee's performance will be monitored and should the performance not meet the required standards the employee's employment may be terminated.
- (b) The employee may have their employment terminated with or without cause during the probationary period.
- (c) If the employer terminates the employment under this clause they may elect to pay the employee in lieu or part or all of the notice period or provide the employee with altered duties during the notice period.
- (d) Upon successful completion of the probationary period, the employee will be advised in writing, and their employment confirmed.
- (e) The employee's minimum employment period is unaffected by this clause.

10. Remuneration

- (a) All wages shall be paid [weekly OR fortnightly OR monthly] [in arrears OR in advance OR half in arrears, half in advance] by direct credit to the employee's bank account.
- (b) The employee shall be supplied with a payslip containing details of their wage.
- (c) The remuneration may be reviewed annually on or about the anniversary date of the commencement of the employee's employment. Reviews are based on the employee's position, the employee's performance and their contribution to the effective

functioning of employer's business, and the market generally. In no event will the employer be obliged to increase the remuneration as a result of such review.

11. Superannuation

- (a) The employer will make superannuation contributions for the employee into a superannuation fund nominated by the employee, or in the event of the Employee failing to nominate a fund, a complying fund under superannuation guarantee legislation.
- (b) These superannuation contributions shall be equal to the minimum level of superannuation contributions required under superannuation guarantee legislation.
- (c) The employee may increase the superannuation contribution beyond the minimum amount, by agreement with the employer.

12. Performance appraisal

The employee agrees to participate fully in any formal performance appraisal program that shall be conducted by the employer. The employee's performance will be reviewed on an ongoing basis against clearly defined and agreed performance objectives.

13. Expenses

- (a) The employer shall reimburse the employee for all approved travel, accommodation and other expenses that the employee properly incurs in the exercise of their duties. The employer requires claims for such expenses to be supported by receipts.
- (b) In respect of approved travel costs involving the employee's car, the employer shall use the current Australian Taxation Office scale of motor vehicle rates.
- (c) Entertainment expenses may only be incurred for the legitimate entertainment of clients or approved suppliers, and must be with the prior approval of the employer. The employee must provide full supporting documentation including the name of the customer or supplier, the nature of the entertainment and the reasons for the expenditure.

14. Training

- (a) During their employment, the employee may be requested to attend training, tuition or accreditation courses (training course).
- (b) The cost of approved training courses will be paid by the employer.

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- (c) Attendance at a training course during working hours will be paid at the employee's usual rate of pay. Attendance at a training course outside of usual working hours will not be paid unless required by an applicable award.
 - (d) In the event of termination of employment, the employee will be required to reimburse the employer the cost of such training courses in accordance with the following scale:

Period from the end of the employment	Percentage of training expenses to be repaid
Up to and including 6 months	100%
More than 6 months and up to and including 12 months	75%
More than 12 months and up to and including 18 months	50%
More than 18 months and up to and including 24 months	25%

- (e) The employee authorises the employer to deduct from their termination pay (including remuneration or accrued entitlements), the value of any debt owed for attendance at a training course, to the maximum permitted by the relevant legislation.

15. Refund of tuition expenses by employee

Where:

- (a) The employer has, during the employment period, assisted the employee in a study or training course undertaken by the employee; and
- (b) This agreement is terminated either by the employer under clause [insert number] or for any reason by the employee or the study or training course is still running within six months following the end of such course,

the employee shall immediately on demand by the employer refund to the employer:

- (c) All fees and expenses relating to such calls or reasonably incidental to such cause are paid by the employer:
 - (i) Where the employee was granted study leave or leave from employment to attend a study or training course, an amount equal to the wage payable to the employee the number of days of such leave; and

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- (ii) Where the employee was granted use of the employer's facilities in relation to such course, including but not restricted to library, word processing, secretarial services and stationery, an amount which the employer considers reasonable, having regard to the nature and extent of facilities used by the employee.

16. Uniforms

- (a) If required, the employee will be supplied with the appropriate uniform as determined by the employer.
- (b) The employee shall wear the complete uniform as supplied and shall maintain the uniform in a clean and presentable condition at all times.

17. Public holidays

- (a) Public holidays will be allowed in accordance with the National Employment Standards.
- (b) The employee shall work on such public holidays as the employer requires.
- (c) Payment for work on public holidays shall be at normal rates of pay unless otherwise required by the applicable award.
- (d) The following days shall be public holidays;
 - (i) 1 January (New Years Day);
 - (ii) 26 January (Australia Day);
 - (iii) Good Friday;
 - (iv) Easter Monday;
 - (v) 25 April (ANZAC Day);
 - (vi) The Queen's birthday holiday, as observed in New South Wales;
 - (vii) 25 December (Christmas Day);
 - (viii) 26 December (Boxing Day); and
 - (ix) Any other day declared a public holiday under a law of the state or territory in which the employee works.

18. Annual leave

- (a) The employee will be entitled to four weeks of paid annual leave per year of service, which accrues progressively, in accordance with the relevant legislation.
- (b) Annual leave shall be taken at a time to be agreed by the employer and the employee and, in the absence of agreement, as reasonably directed by the employer.
- (c) The employer must not unreasonably refuse an employee's request to take annual leave.
- (d) Upon termination of the employee's employment the employee will be paid for any unused annual leave.

19. Sick leave

- (a) The employee is entitled to _____ personal OR sick leave days per year when the employee is incapacitated from carrying out the duties because of personal illness, accident or injury.
- (b) The employee is not entitled to payment for unused sick leave on termination or expiration of this agreement.
- (c) If required by the employer, the employee must produce a medical certificate from a qualified medical practitioner evidencing the incapacity of the employee to carry out the duties.
- (d) The employee may be required to be examined by a medical practitioner nominated by the employer, in order to provide a report to the employer about the employee's capacity to perform their duties and role.

20. Jury service

Where an employee is obliged to undertake jury service or is subpoenaed to appear before the court as a witness, the difference between the fees or witness expenses, excluding reimbursing payments, paid by the court and the employee's normal daily pay shall be made up by the employer provided:

- (a) The employee produces the court expenses voucher to the employer; and
- (b) The employee returns to work immediately on any day they are not actually serving on a jury or required as a witness.

Such payments shall be made up to a maximum of 10 days in respect of each separate period of jury service.

21. Long service leave

The employee's entitlement to long service leave will be in accordance with the provisions of the relevant legislation.

22. Parental leave

The employee's entitlement to parental leave will be in accordance with the National Employment Standards.

23. Study leave

Where the employee is engaged in a course of study that has been approved by the employer, time off shall be allowed as follows:

- (a) To attend lectures or tutorials in the subject, up to ;
- (b) To prepare for examinations, up to ; and
- (c) To attend final examinations, the day of the examinations.

24. Compassionate leave

The employee's entitlement to compassionate leave will be in accordance with the National Employment Standards.

25. Tools

- (a) The employer may provide the employee with tools and equipment necessary to perform the duties for which the employee is employed.
- (b) All care shall be taken by the employee to keep the tools and equipment in good order.
- (c) No tools or equipment belonging to the employer shall be removed from the premises without the employer's permission.
- (d) Any tools and equipment provided to an employee remain the property of the employer, and must be returned on the termination of employment.

26. Employee obligations

- (a) During normal working hours the employee shall devote the whole of their time, attention and abilities in carrying out their duties.
- (b) The employee shall use their best endeavours to promote, develop and extend the employer's business interests and reputation, and not do anything to its detriment.

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- (c) The employee must not engage in any paid or unpaid employment that might, in the opinion of the employer, adversely affect the performance of the duties of their position with the employer.
 - (d) The employee must declare any interest, in any business of any kind, in which the employee may potentially be in conflict or in competition with the business of the employer. Further, an employee may not, whilst in the employ of the employer, invest personal money, obtain an interest in, or establish any other business that may be deemed to be in competition with the employer or its principals.

27. General standards

- (a) The employee must report to work in such a condition that they are able to perform their duties properly and safely.
- (b) Under no circumstances shall an employee report for work under the influence of alcohol or drugs.
- (c) The employee must not bring any drugs into the employer's premises unless those drugs are prescribed by a medical practitioner with respect to a medical condition. The employee will inform the employer of any prescribed medicines being taken which may affect or impair the employee's ability to work safely.
- (d) The employee must not bring alcohol into the employer's premises unless it is expressly approved in accordance with an authorised workplace function.
- (e) All working areas are to be totally smoke free.
- (f) Unlawful discrimination and, in particular, sexual harassment of any sort is prohibited and constitutes misconduct.

28. Professionalism

- (a) The employee is required, at all times, to behave in a professional, businesslike and courteous manner.
- (b) The employee must dress in a professional and businesslike manner appropriate to their employment.

29. Breaks

- (a) Breaks will be in accordance with the intervals stated in an applicable award and applicable policies and procedures.
- (b) The timing of breaks should reflect the employer's commitment to customer service and be taken at reasonable intervals during the daily work period.

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- (c) The employer retains the right to arrange breaks so as to minimise disruption to clients, other staff, or the employer's operations.

30. Technological change

The methods used to perform certain tasks may change and the employer reserves the right to introduce new work methods or equipment from time to time.

31. Services performed outside the company

- (a) The employee will be expected to devote their full time and energy to their position at the company.
- (b) The employee must not claim or accept any fee, gratuity, commission or other benefit from any person or persons other than the company in payment for any services concerned with duties performed for the employer.
- (c) The employee shall not enter into any other agreement of employment or agreement for services without the prior consent of the employer.

32. Confidential information

During the course of employment or after termination of employment, the employee shall not for their own benefit or for the benefit of a third party use, make a record of or disclose to any person any confidential information relating to information or trade secrets of the employer for any reason except so far as may be reasonably necessary to enable the employee to fulfil their obligations under this agreement. The employee hereby indemnifies the employer and any related entity against any loss or damage they may suffer as a result of the breach of confidentiality.

33. Intellectual property

- (a) The employee acknowledges that the intellectual property in all works of the employee in the course of the fulfilment of the employee's obligations hereunder are the absolute property of the company and that the employee shall do all things and sign all documents that may be necessary to vest such intellectual property in the company.
- (b) The employee irrevocably appoints the employer to be the employee's attorney to do all things and sign all documents that may be necessary to vest such intellectual property in the employer.

34. Suspension

The employer may suspend the employee from their duties prior to a full investigation of any allegations of misconduct or unsatisfactory performance against the employee. The employee will be paid a normal wages entitlement whilst suspended.

35. Redundancy

- (a) A 'redundancy' occurs where the employer decides they no longer want the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour.
- (b) Where a termination of employment occurs due to a redundancy, any entitlement to redundancy pay will be in accordance with the National Employment Standards.

36. Termination of employment

- (a) In order to terminate the employment of an employee, the employer will give the following notice, or equivalent payment in lieu of notice:

Period of continuous service with employer	Period of notice
Up to 1 year	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, where the employee is over the age of 45 years and has at least two years service, the employer will give an additional week's notice or payment in lieu.
- (c) Where the employer elects to terminate the employment of the employee, and fails to provide the required period of notice, payment in lieu of notice must be made. In calculating any payment in lieu of notice, the ordinary time rate of pay for the employee concerned will be used.
- (d) The period of notice in this clause does not apply in the case of dismissal for serious misconduct.
- (e) Where the employee elects to terminate their employment with the employer, the employee will give a minimum of [insert relevant amount] weeks notice to the employer. Where the employee fails to give the required period of notice, the employer may withhold money due to the employee equal to the pay for the period of the notice.

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- (f) Upon termination the employee shall immediately deliver up to the employer all records, equipment, credit cards and any other property belonging to the employer to the satisfaction of the employer. The employee shall return the employer's vehicle and any keys, in good condition, fair wear and tear excepted, and must settle in full any staff or credit accounts with the employer.

37. Summary termination for serious misconduct

The employer may terminate this agreement, at any time without prior notice, if the employee:

- (a) Commits any serious or persistent breach of the employee's obligations under this agreement; or
- (b) Is subject to a finding of guilt for a criminal or civil offence other than an offence which, in the reasonable opinion only of the employer, does not affect the employee's ability to perform their duties; or
- (c) Engages in wilful or deliberate behaviour that is inconsistent with the continuation of the agreement of employment; or
- (d) Conducts themselves in a manner that causes imminent, and serious, risk to the health, or safety, of a person or the reputation, viability or profitability of the employer's business; or
- (e) Engages in theft, fraud or assault; or
- (f) Is intoxicated at work; or
- (g) Refuses to carry out a lawful and reasonable instruction.

If this agreement is terminated under this clause, the employer will make no further payments of any kind to the employee other than payments for the employee's accrued entitlements.

38. Medical incapacity

- (a) Subject to any applicable legislation, the employee's employment may also be terminated if the employee is declared medically unfit to perform their duties.
- (b) Where the employer has reasonable cause to be concerned about the employee's capacity to safely discharge the inherent requirements of their job, the employee may be directed to undergo a medical examination by a medical specialist nominated by the employer in order to assess ongoing suitability for work and/or to enable an informed decision to be made about the employee's continued employment.

39. Restraint of trade

- (a) Nothing in this agreement will be construed to limit the duty or duties owed by the employee to the employer at law, in equity or by statute.
- (b) During the restraint period the employee must not within the restraint area:
 - (i) Prepare to be, or be, involved in any competing business; or
 - (ii) Canvass, solicit, induce or encourage any person who was an employee or contractor of the employer to leave the employer; or
 - (iii) Canvass, solicit, approach or accept any approach from any person who was at any time an existing or prospective client or customer of the employer; or any person who refers business to the employer on a regular or ongoing basis, with a view to obtaining custom or any business introduction from that person in a competing business; or
 - (iv) Interfere in any way with the relationship between the employer and its employees, clients, customers, contractors, or suppliers; or
 - (v) Act in any restricted way as defined above.
- (c) The employee acknowledges that:
 - (i) Each agreed restraint specified above is, in the circumstances, reasonable and necessary to protect the genuine business interests of the employer;
 - (ii) Damages are not necessarily an adequate remedy if the employee breaches this restraint clause; and
 - (iii) The employer may apply for injunctive relief if the employee breaches or threatens to breach this restraint clause or the employer believes the employee is likely to breach this restraint clause.
- (d) Each party agrees that if:
 - (i) A court of competent jurisdiction finds that any provision of this restraint clause is an unenforceable provision not enforceable at law or in equity; and
 - (ii) The unenforceable provision would be enforceable if:
 - (1) One or more restricted ways included in the definition of restricted way were deleted; or
 - (2) One or more of the alternate periods referred to in the definition of restraint period were deleted; or

(3) One or more of the alternate areas referred to in the definition of restraint area were deleted,

then the unenforceable provision must be made enforceable by making those deletions.

40. Severance

If any clause or any part of any clause in this agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) of this agreement, which will continue in full force and effect.

41. Governing law

This agreement shall be governed and interpreted in accordance with the laws of the State of New South Wales and both parties submit to the non-exclusive jurisdiction of the courts of that state.

42. Variation clause

This agreement may only be amended or varied by written agreement signed by both parties.

SCHEDULE 1 – Employment particulars

Employee name address and private contact details

Employment status

Permanent full time

Location of work

or such other place of work as advised

Hours of work

9 am – 5 pm Monday to Friday, including allowed meal and refreshment breaks

Position description

Position title:

Reports to:

Position summary:

Key responsibilities:

Competencies and experience required:

Qualifications required:

[Include full details and particulars of any relevant award.]

Award coverage (if relevant)

and National Employment Standards in the Fair Work Act 2009.

Remuneration

As per the above award

OR

\$ per annum gross.

SCHEDULE 2 – Fair Work Information Statement

Execution page

SIGNED AS AN AGREEMENT

SIGNED BY in the presence of:)
)
..... Signature of witness Signature
..... Print name of witness	

SIGNED BY in the presence of:)
)
..... Signature of witness Signature
..... Print name of witness	