SAGSSA Salary Sacrifice Agreement

EMPLOYER AGREEMENT

BETWEEN:

The employer named in the Salary Packaging Application ("**employer**");

and

The employee named in the Salary Packaging Application ("**employee**").

WHEREAS:

A The parties agree that the employee electing to Salary Sacrifice will do so on the terms and conditions set out below.

B The parties agree that this Salary Sacrifice Agreement:

(a) will commence at the beginning of the first full pay period commencing on or after the day of this Salary Sacrifice Agreement's execution; and

(b) will cease on the on the expiry or termination of this agreement pursuant to clause 10.

IT IS FURTHER AGREED AS FOLLOWS:

1. INTERPRETATION

The definition of various terms used in this Salary Sacrifice Agreement is contained in the Definitions to this Agreement.

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. The sacrificed amount:

(a) must be specified in the employee's Payroll Reduction Advice form, issued to Shared Services SA or the relevant Agency Payroll staff where the agency is responsible for the processing their own payroll;

(b) may be varied by the employee during the period covered by this Salary Sacrifice Agreement by issuing further Payroll Reduction Advice/s to the Service Provider.

2.2 The employee may elect to take one or more of the Salary Sacrifice items described in the Attachment and such other Salary Sacrifice items that the Minister for the Public Sector may approve.

2.3 It is agreed between the parties that:

(a) Not Used;

(b) all liability including any FBT liability incurred by the employer, including outside of SAGSSA, in respect of the employee may be deducted by the employer from the employee's total annual earnings;

(c) each pay period the employer will distribute the sacrificed amount to the Service Provider;

(d) in order to Salary Sacrifice the employee must nominate the Service Provider in order to administer the Salary Sacrifice arrangement;

(e) prior to commencing salary sacrifice the employee must agree a Salary Sacrifice Administration Plan with the Service Provider for the administration of the employee's salary sacrifice arrangements for the period of this agreement. The employee agrees that it shall not change the template elements of the Salary Packaging Confirmation Schedule. The employee must comply with this plan unless amendments are agreed with the Service Provider;

(f) 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.

2.4 The employee shall immediately notify the Service Provider upon approval of any unpaid leave, greater than two (2) weeks, to allow any required changes to be made to the payroll deduction schedule.

3. TAXATION LIABILITIES

3.1 If the employer incurs any taxation or other liability in connection with the employee's Salary Sacrifice, which liability is not settled by the employee to the employer's satisfaction, the employer without incurring any liability to the employee may terminate this agreement forthwith.

3.2 The employee acknowledges and agrees that any failure to settle liabilities with an employer will disqualify him or her from further participating in salary sacrifice.

3.3 The employee shall comply with all Commonwealth and State laws (including but not limited to taxation laws) when participating in salary sacrifice.

4. ADMINISTRATION

4.1 The employee acknowledges that it will not require the Service Provider to deal with the amounts held by it in respect of the Salary Sacrifice in a manner other than in accordance with the Salary Packaging Confirmation Schedule and this Salary Sacrifice Agreement.

4.2 The employee consents to the employer disclosing any books, records, or other personal information to the Service Provider and to Commonwealth and State taxation authorities for the purpose of this Salary Sacrifice Agreement.

5. FINANCIAL ADVICE

5.1 The employee is required to acknowledge on the Salary Packaging Application that any financial advice required to inform or support their decision to salary package is their sole responsibility and any such advice must be obtained by them independently from their employer or the Service Provider.

6. NOT USED

7. ACKNOWLEDGMENTS

The employee acknowledges that:

(a) it is imperative that they promptly notify the Service Provider of any matter which may impact on the terms of his/her Salary Sacrifice Administration Plan, including any periods with no income (e.g. unpaid leave) or periods which he/she expects that his/her pay to be less than his/her usual pay amount for that period (e.g. leave at half-pay);

(b) in the case where the employee will be having periods of no income or periods which his/her pay received for that period would be less than his/her usual amount, he/she:

(i) must notify the Service Provider at least 7 days prior to the commencement of such period(s). Where it is not possible to provide prior notice to the Service Provider due to circumstances beyond the employee's control (e.g. unpaid leave period was not anticipated/ planned), the employee must promptly notify (which must not exceed 3 business days) the Service Provider after becoming aware of such period(s); and

(ii) continues to be responsible for their obligations under this Agreement and any payment obligations under the novated lease arrangement to which the employee and the employer, among others, are parties (if any); and

(c) if the employee is no longer employed by the employer, the novated lease arrangement to which the employee and employer are parties will terminate and any rights and obligations subsisting will be novated by the employer to the employee with immediate effect in accordance with the novated lease agreement.

8. DISPUTES AND COMPLAINTS

8.1 The employee acknowledges and agrees that if a dispute or complaint arises in respect of the Salary Sacrifice arrangements they will:

(a) notify and endeavour to resolve complaints and disputes only with the service provider (not the employer); and

(b) must first attempt to resolve any dispute or complaint arising out of this agreement through the SAGSSA Customer Complaint Process, the terms of which shall be advised by the Service Provider.

9. NATURE OF RELATIONSHIP BETWEEN THE PARTIES AND LIABILITY

9.1 The employee acknowledges that they participate in salary sacrifice as a public servant and will comply at all times with the Public Sector Code of Conduct.

9.2 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.

9.3 The employee acknowledges that the employer is not liable to the employee in respect of the selection of the Service Provider, or in any matter in respect of the Salary Sacrifice, including:

(a) any information supplied by the employer to any person, and

(b) any monies distributed to the Service Provider or the recipient.

9.4 The employee further acknowledges that the employer is not liable to the employee either directly or indirectly for any acts or omissions whatsoever (including without limitation any failure by the employer to comply with the employee's instructions in relation to salary sacrifice) of the employer, Service Provider or any other person howsoever described regarding the Salary Sacrifice arrangement.

9.5 The employee shall indemnify the employer in respect of the employee's Salary Sacrifice from and against:

(a) 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;

(b) any Provider Administration fee in respect of the employee's Salary Sacrifice; and

(c) all other liability howsoever described not otherwise covered by clauses 9.3 and 9.4 above.

9.6 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:

(a) misappropriation;

(b) failure to account;

(c) any other breach/es of this Salary Sacrifice Agreement or the Salary Sacrifice Service Agreement by the Service Provider of or in relation to any moneys it holds on behalf of the employer;

(d) failure by the Service Provider 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

(e) any other matter or thing done or omitted to be done by the Service Provider in relation to the employee.

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 This Salary Sacrifice Agreement shall expire and terminate:

(a) on the Expiry Date; or

(b) on the expiry or termination of the Principal Agreement;

(c) at any time by written agreement between the parties,

(d) on the date that the employee's employment with the employer ends;

(e) pursuant to the operation of clause 3.1 and/or 3.2 in this Salary Sacrifice Agreement;

(f) 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;

(g) at the discretion of the employer if the employee:

(i) fails in the opinion of the employer to comply with any provision of this Salary Sacrifice Agreement;

(ii) threatens to do or does any of the following:

(A) enters into bankruptcy either compulsorily or by virtue of Part X of the Bankruptcy Act;

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;

(B) has any judgment entered or made against it or any similar occurrence under any jurisdiction which affects the employer;

(C) engages in any conduct prejudicial to the interests of the employer in respect of this Salary Sacrifice Agreement;

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

10.2 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 shall be:

11.1 in writing addressed to by one party to the other party; and

11.2 be deemed to be duly given in the case of:

(a) delivery in person, when *delivered*; or

(b) delivery by post, the third day *after* posting; or

(c) in the case of electronic mail, when receipt of the notice or communication is acknowledged by *recipient* to sender of the same.

12. ENTIRE AGREEMENT AND MODIFICATIONS

12.1 The Schedules to this agreement, and the completed Salary Packaging Application, are incorporated into and form part of this agreement and are binding on the parties.

12.2 This 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. EXECUTION OF THIS AGREEMENT

The parties may execute this agreement by completing and signing a hard copy of a Salary Packaging Application or, by completing a Salary Packaging Application and indicating acceptance of the application and agreement terms by electronic means.

DEFINITIONS

14. In this Salary Sacrifice Agreement, including the above recitals, the following terms have the following meanings:

    14.1 Not Used;

    14.2 "Expiry Date" means the date upon which this agreement concludes, and which is the date of expiry of the Principal Agreement, or the earlier date specified in your Salary Packaging Application;

    14.3 "Principal Agreement" means an Agreement entered into between the Minister for the Public Sector and on behalf of the Crown in right of the State of South Australia and Smartsalary Pty Ltd in respect of the employee's Salary Sacrifice;

    14.4 "Salary Packaging Confirmation Schedule" means a schedule identifying the salary sacrifice activity agreed between the Service Provider and Employee which conforms with Commonwealth tax requirements;

    14.5 "SAGSSA" means South Australian Government Salary Sacrifice Arrangements;

    14.6 "Salary Packaging Application" means the Application entered into by the employee to commence the salary sacrificing approval process;

    14.7 "Service Provider" is the service provider nominated by the employee to administer the employee's Salary Sacrifice, namely Smartsalary Pty Ltd;

    14.8 "laws" means any legislation including but not limited to laws dealing with the imposition of and recovery of tax and includes, but is not limited to the:

    (a) Income *Tax Assessment Act 1936* and Regulations; and

    (b) Income *T*ax Assessment Act 1997 and Regulations; and

    (c) *Fringe* Benefits Tax Assessment Act 1986 and Regulations; and

    (d) *A* New *T*ax System (Goods and Services Tax) Act 1999 and Regulations;

    (e) A New *Tax System (Fringe Benefits) Act 2000* and Regulations;

    (A) Rulings and/or Draft Rulings from the Commissioner of Taxation.

    (f) Rulings and/or Draft Rulings from the Commissioner of Taxation

ATTACHMENT – APPROVED SAGSSA BENEFIT ITEMS

Salary Sacrifice items available to SA Public Sector employees who are eligible for FBT exemption under Section 57A of the FBTAA

Category 1 – Subject to FBT

Item 1.1 - Direct Debit: A recurrent periodic direct debit payment arranged by a SAGSSA Service Provider and transacted through a Financial Institution holding an Australian Banking Licence.

Item 1.2 – General Expenses: A payment through a SAGSSA approved, tax compliant credit card, arranged by a SAGSSA Service Provider and transacted through a Financial Institution hold an Australian Banking Licence.

Category 2 – Exempt from FBT

Item 2.1 – Meal Entertainment: A payment through a SAGSSA approved, tax compliant credit card, arranged by a SAGSSA Service Provider for the provision of entertainment by way of food, drink or recreation as defined by the ATO.

Salary Sacrifice items available to SA Public Sector employees generally.

Category 2 – Exempt from FBT

Item 2.3 – Taxi travel to and from work.

Item 2.4 - Work related items (portable electronic device, computer software, protective clothing, briefcase, tool of trade, home office expenses) - primarily for use in the employee's employment and does not apply where the employer otherwise provides the item.

Item 2.5 – Not used.

Item 2.6 – Airport lounge membership

Item 2.7 – Relocation Expenses

Item 2.8 – Not used.

Item 2.9 – Not used

Category 3 – Subject to FBT (Novated Lease)

Item 3.1 – Own motor vehicle through a novated car lease.

Category 4 – Subject to FBT (in house benefits)

Item 4.1 - Other (ATO approved) in-house benefits that may be approved by government or the Minister for the Public Sector from time to time for inclusion in SAGSSA.

Item 4.2 - Monthly car parking through an approved car park provider

Category 5 – Not subject to FBT (if employee could have claimed an income tax deduction)

Item 5.1 - Membership fees and subscriptions to professional associations

Item 5.2 - Financial counselling fees

Item 5.3 - Disability/income protection insurance

Item 5.4 - Self-education expenses

Item 5.5 – Workplace giving

Category 6 – Concessionally taxed benefits

Item 6.1 – Remote area housing (employer provided)

Item 6.2 – Remote area rental assistance

Item 6.3 – Remote area reimbursement of interest

Item 6.4 - Remote area reimbursement on purchasing or building a property

Item 6.5 – Remote area provision of gas and electricity.

OFFICIAL