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## SALARY SACRIFICE AGREEMENT

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### 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;
  - (b) may be varied by the employee during the period covered by this Salary Sacrifice Agreement by issuing further Payroll Reduction Advice/s to Shared Services SA.
- 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 Industrial Relations may approve.
- 2.3 It is agreed between the parties that:
- (a) the employee shall pay to the employer an “employer charge” in the amount and manner described in the Salary Packaging Application;
  - (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 except where permitted by the employer in instances where the employee sacrifices directly into South Australian Government superannuation schemes;

- (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.

#### 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 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. SUPERANNUATION

The employer shall make contributions in respect of the

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

## 7. ACKNOWLEDGMENTS

The employee acknowledges that it is imperative that he/she promptly notify the Service Provider of any matter which may impact on the terms of his/her Salary Sacrifice Administration Plan.

## 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 he/she 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 Advocate 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 he/she participates 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 any time and without notice (except as otherwise stated) by 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;

- (B) 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;
- (C) has any judgment entered or made against it or any similar occurrence under any jurisdiction which affects the employer;
- (D) 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 Packing 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 Packing Application or, by completing a Salary Packing 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 "employer charge" means the fee charged by the employer to the employee for the administration of the Salary Sacrifice arrangements;
  - 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 Industrial Relations for and on behalf of the Crown in right of the State of South Australia and Maxxia 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 Packing 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 Maxxia 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 Tax Assessment Act 1997* and Regulations; and
    - (c) *Fringe Benefits Tax Assessment Act 1986* and Regulations; and
    - (d) *A New Tax System (Goods and Services Tax) Act 1999* and Regulations;
    - (e) *A New Tax System (Fringe Benefits) Act 2000* and Regulations;
    - (f) Rulings and/or Draft Rulings from the Commissioner of Taxation.

**ATTACHMENT - APPROVED SAGSSA ITEMS FROM 1  
APRIL 2012**

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

*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 holding an Australian Banking Licence.

***Salary Sacrifice items available to SA Public Sector employees generally.***

*Category 2 - Exempt from FBT.*

Item 2.1 Contributions to a complying superannuation fund.

Item 2.2 Taxi Travel to and from work.

Item 2.3 Work related items (portable electronic device, computer software, protective clothing, briefcase, tool of trade) - primarily for use in the employee's employment and does not apply where the employer otherwise provides the item.

Item 2.4 Staff Fitness and Gym (in House)

*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 Industrial Relations from time to time for inclusion in SAGSSA.

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

- Membership fees and subscriptions to professional associations.
- Home office expenses.
- Financial counselling fees.
- Disability/income protection insurance.
- Self education expenses.