
SALARY SACRIFICE SERVICE AGREEMENT

BETWEEN:

The person named in the Salary Packaging Application (“**Employee**”);

and

The body named in the Salary Packaging Application (“**Service Provider**”)

WHEREAS:

This Salary Sacrifice Service Agreement creates the relationship between the Service Provider and the Employee in relation to the Employee’s Salary Sacrifice arrangements, and governs (in conjunction with the Principal Agreement) the administration of the Employee’s Salary Sacrifice arrangements.

THE PARTIES AGREE AS FOLLOWS:

- 1 The Employee nominates the Service Provider the agent of the Employer for the purposes of administering the Employee’s Salary Sacrifice on behalf of the Employer.
- 2 The Service Provider agrees to administer the Employee’s Salary Sacrifice arrangement in accordance with this Agreement and the Principal Agreement.

PERIOD OF OPERATION:

- 3 This Agreement shall, unless otherwise specified:
 - 3.1 start from the Commencement Date;
 - 3.2 expire on the Expiry Date; and
 - 3.3 expire if the Principal Agreement expires or terminates.
- 4 This Agreement overrides any prior agreement made between the parties and all such agreements are terminated as at the Commencement Date.
- 5 The Employee and the Service Provider agree that clause 13 survives this Agreement.

THE ACKNOWLEDGMENTS

- 6 The Parties acknowledge that:
 - 6.1 this Agreement contains the whole agreement between the Employee and the Service Provider; and
 - 6.2 the Service Provider is not able to act in respect of the sacrificed amounts and the Employee’s Salary Sacrifice except as authorised by the agreements constituting the Salary Sacrifice arrangement; and
 - 6.3 all amounts distributed by the Employer to the Service Provider pursuant to the Salary Sacrifice Agreement shall be held for the purpose of the Salary Sacrifice Agreement and shall not be mingled with any other monies or paid into any overdrawn or other Bank account, and, shall at all times be identifiable as the Employee’s money held for the sole purpose of the Salary Sacrifice Agreement.
- 7 The Service Provider hereby acknowledges that:
 - 7.1 all Books and Records provided by the Employee will always remain the property of the Employee

and undertakes that the Books and Records will not be used for any purpose other than the Salary Sacrifice arrangement,

- 7.2 that it stands in a fiduciary relationship to the Employee whilst performing the services.

THE EMPLOYEE’S OBLIGATIONS

- 8 In order to facilitate the proper administration of this Salary Sacrifice arrangement the Employee shall:
 - 8.1 provide to the Service Provider full details in respect of his/her Salary Sacrifice and as required under his/her Salary Packaging Confirmation Schedule;
 - 8.2 give the Service Provider not less than 7 days written notice of the Employee’s intention to terminate this Agreement;
 - 8.3 enter into no more than one Salary Sacrifice Service Agreement at any one time;
 - 8.4 terminate any existing Salary Sacrifice Service Agreement before entering into another new Salary Sacrifice Service Agreement;
 - 8.5 acknowledge that if more than one Salary Sacrifice Service Agreement is held by an Employee at any one time, the Salary Sacrifice Service Agreement executed at the earliest date shall have precedence over any co-existing Salary Sacrifice Service Agreement;
 - 8.6 complete the Financial Advice Certification Acknowledgement in the Salary Packaging Application in the manner specified in that acknowledgement, and provide a signed copy of that form to the Service Provider prior to the commencement of the Salary Sacrifice arrangement;
 - 8.7 comply with all reasonable directions and requests from the Service Provider.

THE SERVICE PROVIDER’S OBLIGATIONS

- 13 The Service Provider shall at all times whilst administering the Salary Sacrifice Agreement:

Business and Services

 - 13.1 act in all matters loyally and in good faith toward the Employee;
 - 13.2 exercise due care and skill;
 - 13.3 perform the Services pursuant to this Agreement:
 - 13.3.1 in an orderly and businesslike manner, and
 - 13.3.2 in compliance with all relevant laws (including statutes and by laws), regulations, Australian Taxation Office rulings or determinations which may in any way be relevant to the administration of the Salary Sacrifice Agreement;
 - 13.4 comply with all reasonable instructions of the Employee in respect of the performance by the Service Provider of its obligations under this Agreement, the Salary Sacrifice Agreement, and the Principal Agreement;
 - 13.5 not, without the prior written approval of the Minister’s Contract Manager, contract or enter

- into any arrangements with the Employee to provide any additional Services apart from the administration of the Salary Sacrifice Agreement;
- 13.6 distribute the sacrificed amount in accordance with the Employee's Salary Packaging Confirmation Schedule;
- 13.7 pay all expenses of and incidental to administration of the Employee's Salary Packaging Confirmation Schedule;
- 13.8 not raise any fees or charges against the Employee other than by means of the prescribed Provider Administration fees;
- 13.9 account to the Employee every quarter in respect of:
- 13.9.1 all amounts distributed by the Employer to the Service Provider such accounting to include an itemisation of the manner in which all sacrificed amounts in respect of the Employee have been distributed to the Recipient and all such amounts remaining with the Service Provider and not so applied;
- 13.9.2 the Provider Administration fees deducted by the Service Provider from the sacrificed amount pursuant to this Agreement;
- 13.9.3 all amounts distributed by the Service Provider pursuant to the Salary Sacrifice Agreement; and
- 13.10 give reasonable advice to Employees forewarning of potential future FBT deficit;

Access to Books and Records

- 13.11 permit the Employee at all reasonable times full and free access to inspect and take copies of all Books and Records in respect of the Employee's Salary Sacrifice Arrangement;
- 13.12 report to the Employee on demand and in any event report to the Employee on a quarterly basis as to the following:
- 13.12.1 the manner of the application of the sacrificed amounts in respect of the Employee; and
- 13.12.2 the balance outstanding in respect of the account;

Provision of reports, returns and financial or other information

- 13.13 provide to the Employee upon request reports, returns and other information relating to the Salary Sacrifice Agreement including but not limited to transactions with respect to the Employee's account or the business and the Services provided;
- 13.14 if requested by the Employee provide to the Employee statements, invoices and receipts received by the Service Provider in relation to all amounts distributed or to be distributed, including motor vehicle expenses;

Indemnity

- 13.15 indemnify and keep indemnified the Employee from and against any and all costs, losses,

damages, expenses (including legal expenses), liabilities or other outgoings of whatsoever kind or howsoever suffered or incurred by the Employee arising as a result of:

- 13.15.1 any act, neglect, default or omission, fraud or dishonesty of the Service Provider or the Service Provider's staff;
- 13.15.2 breaches resulting in any successful claim by any third party in respect of any matter associated with or related to the Salary Sacrifice Agreement;
- 13.15.3 any claim by any third party in respect of any matter arising from the provision of Services; and
- 13.15.4 the failure of the Service Provider to provide the Services;

Breach

- 13.16 forthwith notify the Employee of any suspected or actual contravention or breach of any provision of:
- 13.16.1 any legislation, regulation, by law or other such provision associated with or related to the establishment, administration, delivery or provision of Services; and
- 13.16.2 the Salary Sacrifice Agreement, this Agreement or any other agreement made between the Employee and the Service Provider;
- 13.17 take such reasonable actions as the Employee may direct at the expense of the Service Provider in relation to any contravention or breach described in the preceding clause;
- 13.18 comply with the terms of any default notice;

Confidentiality

- 13.19 not divulge any information to any person in respect of the Employee or the Employee's Salary Sacrifice Agreement unless specifically authorised by the Employee to do so and unless expressly provided to the contrary in this Agreement, or as set out in the Principal Agreement under the heading "Confidentiality" as if the same were set out herein.

BANK ACCOUNT

- 14 The Service Provider's obligations to open, own, maintain and operate a bank account for the purpose of the Salary Sacrifice Arrangement are as if the terms under the heading "Bank Account" in the Principal Agreement were set out herein.

PROVIDER ADMINISTRATION FEES

- 15 The Service Provider is entitled during the Term unless otherwise stated to receive the Provider Administration fees by way of a deduction from the sacrificed amount in the manner set out in the Salary Packaging Application in respect of the administration of the Employee Salary Sacrifice.
- 16 The Employee authorises the Service Provider to deduct the Provider Administration fees from the Employee's sacrificed amount that has been distributed by the Employer to the Service Provider.

EXPIRY DATE AND TERMINATION

- 17 This Agreement shall expire and terminate:
- 17.1 at any time by written agreement between the Parties;
 - 17.2 on the Expiry Date;
 - 17.3 if the Employee gives to the Service Provider not less than seven (7) days prior written notice terminating this Agreement at any time prior to the Expiry Date;
 - 17.4 but without prejudice to any right of action or remedy which shall have accrued or which shall accrue thereafter in favour of the Employee.

CONSEQUENCES ON EXPIRY DATE AND TERMINATION

- 18 On the Expiry Date or Termination of this Agreement, the Service Provider undertakes to finalise all aspects of the administration of the employee's Salary Sacrifice arrangements appropriately and in accordance with the requirements of the Principal Agreement:
- 18.1 redeliver any amount received from the Employer pursuant to the Salary Sacrifice Agreement which proceeds had not at the time of the Expiry Date been delivered to the Recipient to the Employer;
 - 18.2 deliver to the Employee on request, copies of all Books and Records provided by the Employee in respect of the Salary Sacrifice Agreement, this Agreement and any other agreement made between the Employee and the Service Provider;
 - 18.3 provide adequate and safe archive of all Books and Records not otherwise returned to the Employee in respect of the administration of the Salary Sacrifice Agreement;
 - 18.5 forthwith cease carrying on the business for or providing Services to the Employee;
 - 18.6 effect all reasonable requests and directions of the Employee associated with and in connection with the Salary Sacrifice Agreement;
 - 18.7 reconcile the Employee's account within five (5) clear business days after receipt of last known transactional data.
- 19 The Service Provider's right to possession of amounts distributed by the Employer shall cease on appointment of an administrator, or if the Service Provider enters into any form of insolvency.
- 20 Within seven (7) days after the Expiry Date or termination of this Agreement, the Service Provider shall:
- 20.1 provide to the Employee a complete and accurate up-to-date account of all transactions subsequent to those shown in accounts previously provided to the Employee, including a statement of expenditure and commitments made in carrying on the Business and providing the Services prior to the Expiry Date last submitted to the Employee calculated to the Expiry Date or Termination of this Agreement; and
 - 20.2 re-transfer any residual Salary Sacrifice funds to the Employer.

- 21 On the Expiry Date or termination of this Agreement, the Service Provider's authority to operate the Bank account in respect of the Employee is revoked, except for the purpose of re-transferring any residual Salary Sacrifice funds to the Employer.

WAIVER AND VARIATION

- 22 No right or obligation under this Agreement shall be waived or varied except in writing signed by each party.

NOTICES

- 23 A notice pursuant to this Agreement must be:
- 23.1 in writing and directed to the relevant party's address specified in this Agreement; and
 - 23.2 left at or sent by hand delivery, electronic mail, or pre-paid registered post to that address, and will be deemed to be duly given:
 - 23.3 on the day of delivery when hand delivered; or
 - 23.4 three (3) days after the date of posting by pre-paid registered post; or
 - 23.5 when the message confirmation is received when sent by electronic mail.
- 24 Each of the Parties shall give notice to the other of change of name, address, or telephone as soon as practicable and in any event within forty-eight (48) hours of such change.

DEFAULT NOTICE

- 25 In the event of a breach by the Service Provider of any of the provisions of this Agreement, the Employee may serve notice requiring the breach to be remedied within the time stipulated in that notice.

AUTHORISATION

- 26 The Employee irrevocably authorises the Service Provider for the purpose of the Salary Sacrifice Arrangement to give to the Employer full and free access to and copies of the Books and Records, written and verbal analysis, explanation and reports, in connection with any matter touching or concerning Salary Sacrifice arrangement if requested by the Employer.

SETTLEMENT OF DISPUTES AND COMPLAINTS

- 27 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.

GOVERNING LAW AND JURISDICTION

- 28 This Agreement shall be governed by the laws of the State of South Australia, and any proceedings arising out of this Agreement must be brought in a court in South Australia.

EXECUTION OF THIS AGREEMENT

29 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

- 30 In this Agreement, the following Terms have the following meanings:
- 30.1 **"Agreement"** means this Salary Sacrifice Service Agreement, the Schedules attached hereto, and the completed Salary Packaging Application;
- 30.2 **"Commencement Date"** means the date upon which this Agreement commences and which is specified in the Salary Packaging Application;
- 30.3 **"Employee"** means an employee being a person named in the Salary Packaging Application;
- 30.4 **"Employer"** means the employer named and described in the Salary Packaging Application and the includes its successors;
- 30.5 **"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;
- 30.6 **"Fees"** means the amount deductible by the Service Provider;
- 30.7 **"Minister's Contract Manager"** means the person appointed by the Minister for Industrial Relations to this role pursuant to the Principal Agreement;
- 30.8 **"Provider Administration fee"** is the fee set out and deducted by the Service Provider from the sacrificed amount;
- 30.9 **"Principal Agreement"** means an Agreement entered into between the Minister for Industrial Relations, Employer and Maxxia Pty Ltd regarding Salary Sacrifice arrangement;
- 30.10 **"Recipient"** means the body nominated by the Employee to receive Salary Sacrifice amounts under the Salary Packaging Confirmation Schedule;
- 30.11 **"Salary Sacrifice"** means the foregoing of salary in lieu of benefits by an employee under the SA Government Salary Sacrifice Arrangement;
- 30.12 **"Salary Sacrifice Agreement"** means the Salary Sacrifice Agreement entered into by the Employee and the Employer;
- 30.13 **"SA Government Salary Sacrifice arrangement"** or **"SAGSSA"** is the conduct of the salary sacrifice functions by the Service Provider on behalf of the

Employer as defined in the Principal Agreement;

- 30.14 **"Salary Sacrifice benefits"** means the items described in Schedule 1 to the Salary Sacrifice Agreement;
- 30.15 **"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;
- 30.16 **"Salary Packaging Application"** means the Application entered into by the employee to commence the salary sacrificing approval process;
- 30.17 **"Services"** means the Services provided by the Service Provider pursuant to this Agreement;
- 30.18 **"Service Provider"** means Maxxia Pty Ltd being the body named in this Agreement nominated by the Employee to administer the Salary Sacrifice Agreement and agent of the Employee;
- 30.19 **"Term"** means the period starting on the Commencement Date and ending on the Expiry Date unless earlier determined in accordance with this Agreement.