

TAFE MODEL EXECUTIVE CONTRACT JANUARY 2010

CONFIDENTIAL

This **CONTRACT OF EMPLOYMENT** is made on the [] day of [],
.....

BETWEEN: Sunraysia Institute of TAFE AND the
Executive.

1. INTERPRETATION

- 1.1 In this Contract, unless otherwise stated or the context otherwise indicates:
“Month” - means a calendar month.
- 1.2 A reference in the Contract to a Schedule refers to the Schedule then in force whether or not the Schedule has been physically attached to all or any counterparts of the Contract.
- 1.3 This Contract shall be governed by the law of the State of Victoria and shall be deemed to be made in Victoria.
- 1.4 This contract must be read and interpreted in conjunction with and comply with the *‘Ministerial Directions to Councils of TAFE Institutes on employment staff’* (as amended from time to time); the Victorian *‘Executive Officer Handbook’* (as amended from time to time) and Government Sector Executive Remuneration Panel Remuneration Guidelines (as amended from time to time).
- 1.5 This Contract supersedes and replaces all other Contracts, understandings or arrangements in existence prior to the execution of the Contract.
- 1.6 In this contract “Employment Benefit” means:
- (a) contributions payable to a superannuation scheme by an executive’s employer in respect of the executive, including any liability of that employer to make any such contributions or to pay costs associated with that scheme; or
 - (b) the provision by an executive’s employer of a motor vehicle for private use by the executive; or
 - (c) the entitlement of an officer to approved leave with pay; or
 - (d) any other approved benefit of a private nature provided to an executive at the cost of the executive’s employer

but does not include:

- (a) performance related incentive payments of the kind referred to in section 5; or
- (b) remuneration or benefits to which an executive officer is otherwise entitled by law (such as fees for attendance at meetings); or
- (c) allowances payable under the contract of employment or a determination by the Council.

2. APPOINTMENT

- 2.1 The position to which the Executive is appointed is set out in Schedule “A”.
- 2.2 The period of this Contract is the period commencing on the [] day of [] , and ending on the [] day of [] unless sooner terminated.

3. DUTIES OF THE EMPLOYEE

- 3.1 The Executive shall carry out any and all duties as directed from time to time and shall comply with any statutory obligations applicable to the position. Specific duties shall include those set out in Schedule A.
- 3.2 In addition, the Executive shall:
- (a) undertake such duties and exercise such powers, authority and discretion in relation to the business of the Employer as may from time to time be delegated to the Executive;
 - (b) undertake such other responsibilities and perform such other duties from time to time as the Employer may reasonably require to meet the operating needs of the Employer;
 - (c) in the discharge of such duties and the exercise of such powers, authority and discretion, conform to, observe and comply with the directions, restrictions and regulation of the Employer, made or given from time to time;
 - (d) comply with all legal requirements, statutory or otherwise pertaining to the position and responsibility of the Executive;
 - (e) at all times comply with all lawful orders and instructions given to the Executive by the Employer or an authorised delegate of the Employer; and comply in all respects with all or any rules and regulations, Code of Conduct which may have been or which may hereafter be established governing the employment of the Executive which rules, regulations and provisions are specifically incorporated into this Contract; and
 - (f) faithfully serve the Employer and at all times use the Executive's best endeavours to promote the interest of the Employer.

4. REMUNERATION OF THE EMPLOYEE

- 4.1 Subject to and in compensation of the Executive at all times being ready, willing and able to perform and performing the duties of the Executive Position, the Executive shall be entitled to the monetary remuneration and to the employment benefits specified in Schedule C.
- 4.2 The combined total of the annual amount of monetary remuneration and the annual cost to the Employer of the employment benefits set out in Schedule C must equal the amount of the Remuneration Package also set out in Schedule C.
- 4.3 The Executive may enter into a remuneration packaging arrangement with the Employer in respect of monetary remuneration component of the Remuneration Package. The amount that is sacrificed forms part of the Executive’s Remuneration Package provided that the Executive must meet within his/her Remuneration Package, any Fringe Benefit Tax liability that arises under their salary packaging arrangement.

- 4.4 (a) The amount of remuneration specified in Schedule C is to be reviewed every 12 months of the Contract, and, where the Employer considers appropriate, increased by the Employer.
- (b) The Executive may request in writing at any time that the monetary remuneration and employment benefits specified in Schedule C be varied. After full discussion and proper investigation the Employer may agree to the variation in the monetary remuneration and/or the arrangement of the employment benefits reached in the Agreement with the Executive.
- (c) In the event that there is a change in the cost of the employment benefits being provided to the Executive, arising from any cause whatsoever, the Employer shall have the right after notification to the Employee to alter Schedules B and C to reflect such changes in the cost of the employment benefits.
- (d) Should an Executive make a request for variation, the Employer shall not unreasonably refuse that request. However, it shall not be unreasonable for such a refusal where the request is made sooner than six months after an earlier agreement has been reached between the parties regarding Schedule C.
- 4.5 If the executive is a member of a statutory superannuation scheme the executive hereby elects to either continue or cease to be a member of that scheme by specifying the election in Schedule B.
- 4.6 Where the executive has elected to cease to be a member of a statutory superannuation scheme:
- (a) the Executive shall specify in Schedule B the name of an alternative superannuation scheme which must be a complying fund in accordance with the occupational superannuation standards and to which employer contributions must not be less than the minimum requirement under the Superannuation Guarantee Administration Act 1992 of the Commonwealth;
- (b) the Employer must certify to the administrator of the statutory superannuation scheme that the Executive is an exempt officer in accordance with the provisions of s.7 of the Superannuation (Public Sector) Act 1992.
- 4.7 If the executive was not a member of a statutory superannuation scheme prior to the execution of this contract the executive shall become a member of or continue to be a member of a superannuation scheme which must be a complying fund in accordance with the occupational superannuation standards and to which employer contributions must not be less than the minimum requirement under the Superannuation Guarantee Administration Act 1992 of the Commonwealth and specified in Schedule B.
- 4.8 In this contract
- (a) For the purpose of calculating contributions and benefits under a statutory superannuation scheme the executive's salary for the purpose of that scheme must be taken to be the amount specified for that purpose in Schedule B.
- (b) Subject to sub-clause (c) that amount -
- (i) must not be less than the executive's salary for the purposes of that scheme immediately before entering into this contract; and
- (ii) must not be more than 70% of the Executive's Remuneration Package.
- (c) If the amount of the Executive's salary for the purposes of the statutory

superannuation scheme immediately before entering into this contract was more than the amount equivalent to 70 per cent of the Executive's Remuneration Package under this contract, the executive must elect in writing by specifying in Schedule B which of those amounts is to be the executive's salary for the purpose of that scheme under this contract.

- (d) The Employer must give notice in writing to the administrator of that scheme of the amount specified in Schedule B as the executive's salary for the purposes of that scheme.
- (e) It is acknowledged and agreed that an amount set out in Schedule C as the employment benefit being the cost of the contribution by the Employer to a statutory Superannuation Scheme other than 'VIC SUPER' is and may continue to be after any alteration is made to Schedule B as a result of clause 4.4 (b), a notional and fixed amount based on actuarial assessment and may not represent the precise amount required to be contributed by the Employer.

5. PERFORMANCE-RELATED INCENTIVE PAYMENT

5.1 An approved performance-related incentive payment based on work performance and determined by the Employer annually under Clause 6 as percentage of the remuneration package specified in Schedule A shall be payable within one month, or as soon as is practicable thereafter, of the provision to the Executive of the statement referred to in clause 6.4.

5.2 If this Contract:

- (a) is terminated for the purpose of enabling the Executive to enter into a new contract of employment with the Employer;
- (b) is terminated or otherwise comes to an end by reason of the age, ill health, retirement or death of the Executive;
- (c) is terminated by the Employer due to the abolition of the position.

a performance review shall be conducted in accordance with Clause 6 for the final period of the Contract and the Executive or the legal personal representative of the Executive, as the case may be, shall be entitled to receive a performance-related incentive payment (if any) as a result of that assessment.

5.3 If this Contract is terminated prior to its expiration for any reason other than for the reasons specified in clause 5.2 no performance related incentive payment shall be payable in relation to final period of the Contract.

5.4 For the purposes of this clause "the final period of the Contract" is the period commencing on the later of:

- (i) the commencement day of the Contract; or
- (ii) the day following the last day of the period concerned in the Executive's previous performance review under the Contract

and ending on the day of the termination of the Contract.

6. PERFORMANCE REVIEW

- 6.1 The performance criteria agreed to by the Executive and the Employer shall be those specified in Schedule A and may be varied by agreement between the Executive and the Employer.
- 6.2 The performance of the Executive shall be subject to periodic review by the Employer but in any event no less than once every 12 months of the Contract.
- 6.3 The Employer shall give the Executive at least 7 days notice in writing of the date when a performance review is to be conducted and the review shall be concluded within 2 months from that date.
- 6.4 Within one month of the conclusion of a performance review, or as soon as is practicable thereafter, the Employer shall prepare and send to the Executive a statement which sets out:
- (a) the Employer's conclusions about the Executive's performance during the period the subject of the performance review;
 - (b) any directions or recommendations made by the Employer to the Executive in relation to the Executive's future performance of the duties of the position;
 - (c) any proposal by the Employer to vary the performance criteria as a consequence of the performance review; and
 - (d) the figure, (if any), within the percentage limit specified in Schedule A which will constitute the amount calculated for the purposes of Clause 5.

7. TERMINATION OF CONTRACT

- 7.1 This clause applies notwithstanding any other provision in this contract.
- 7.2 The Executive may terminate this contract by providing the Employer with four weeks notice in writing.
- 7.3 Except in a case where clause 7.4 or clause 7.7 apply, the Employer may terminate this contract by providing the Executive with four months notice in writing. In such circumstances, the Employer shall make available to the Executive up to four months of reasonable outplacement support and counselling during the notice period.
- 7.4 Except in a case where clause 7.7 applies, the Employer may terminate this contract by providing the Executive with four weeks notice in writing where the reason for the termination is based on a significant failure by the executive in fulfilling his or her duties and obligations under this contract.
- 7.5 The Employer shall have the right to make payment in lieu of notice for a termination under clauses 7.3 or 7.4.
- 7.6 In the event of a termination neither party will be entitled to any compensation for such termination including compensation for any unexpired period of this contract except as set out in this clause. Such termination shall be without prejudice to any accrued rights of the Executive with respect to recreation leave, long service leave or superannuation.

- 7.7 The employer has the right to summarily dismiss the Executive at any time without the requirement to give notice, counselling or warning if the executive is guilty of serious misconduct.

8. RE-APPOINTMENT

- 8.1 Subject to Clause 8.2:
- (a) at least 6 months prior to the expiration of the period of appointment, the Employer and the Executive shall confer with the view to reaching agreement as to whether the Executive shall be re-appointed for a further period and, if so, on what terms;
 - (b) each party shall advise the other no later than 4 months (or such other period as they may agree in writing) prior to the expiration of the period of appointment of their decision regarding the matters referred to in Clause 8.1(a).
- 8.2 Where the period of appointment is not more than one year, the period of months referred to in Clause 8.1(a) shall be 3 and the period of months referred to in Clause 8.1(b) shall be 2.
- 8.3 In the event that agreement is reached that the Executive shall enter a further Contract on termination or completion of this Contract, the continued service of the Executive will be recognised under the new Contract so as to avoid any break of service and any accrued or pro-rata entitlements will be carried forward into the new Contract.

9. EXPENSES

- 9.1 Subject to obtaining the appropriate prior authority, the Executive will be reimbursed for such expenses as are reasonably incurred in the performance of the Executive's duties including relocation expenses.

10. TRAINING

- 10.1 Where appropriate, the Executive may be required to undertake training as arranged by the Employer for the acquisition of a broader range of skills and competence and the better performance of the duties and provision of service by the Employer.

11. MEDICAL CHECK

- 11.1 The Employer reserves the right to require the Executive at any time prior to entering into the Contract or during the period of the Contract to undergo and satisfactorily pass a medical examination by a qualified medical practitioner selected by the Employer at the Employer's expense. Any medical reports provided to the Employer for this purpose will be treated on a strictly confidential basis and a copy will be released to the Executive if requested.
- 11.2 Apart from any requirement to undergo a medical check, the Executive shall be entitled to receive up to \$500 (inclusive of fringe benefits tax) repayment each year for an annual medical check to review the overall health of the Executive provided that the Employer is satisfied, at the Employer's absolute discretion, that the repayment is for an annual medical check.

12. LEAVE

(Note: when using this pro forma, the leave provisions below should be reviewed to ensure consistency with the Employer's policies and delete this note before preparing for signature.)

12.1 The Executive shall be entitled to the following leave entitlements:

- (a) **Annual Recreation Leave**
Four weeks paid leave for each year of employment provided that the Executive may not carry in excess of six weeks recreation leave into a subsequent year. Any recreation leave in excess of the six weeks is forfeited unless the employer otherwise agrees.
- (b) **Sick Leave**
Three weeks paid leave for each year of employment with the entitlement to sick leave being cumulative. The accrual of sick leave does not carry the right to be paid for any untaken sick leave on the termination of this Contract for any reason.
- (c) **Parental Leave**
This leave will be granted as provided in the Federal Fair Work Act 2009 as amended from time to time. However, after 12 months continuous service with the Employer, the first 14 weeks of Maternity Leave or 14 weeks of Adoption Leave under those provisions will be paid leave.
- (d) **Special Leave, Leave of Absence**
This leave will be granted at the discretion of the employer.
- (e) **Long Service Leave and Public Holidays**
Entitlements for long service leave and Public Holidays will be the same as those applying in the Victorian TAFE Sector.
- (f) **Family / Carers Leave**
This leave will be granted in accordance with the Employer's family leave policy as it applies to Executive officers.

12.2 **Accident Compensation Leave (WorkCover)**

12.2.1 In the case of a WorkCover claim, the Employer will pay the difference between compensation benefits under the Accident Compensation Act 1985 and the Executive's remuneration package for a period of up to 52 weeks. The Executive may utilise accrued leave credits for absences beyond the period for which compensation is made. Leave without pay may be granted where entitlements to paid leave have ceased.

12.2.2 Payments made under Clause 12.2.1 will cease:

- (a) on the date on which the Executive is fit to resume duty;
 - (b) on the date the Executive receives a disability benefit from a superannuation scheme; or
 - (c) on the date on which a lump sum redemption is received;
- whichever comes first.

12.2.3 The Executive is obliged to refund the make-up pay received if a settlement is received in a civil claim which specifically compensates the employee for make-up payments.

13. STAND DOWN

13.1 The Employer may deduct payment for any part of a day during which an Executive cannot usefully be employed because of any strike, breakdown of machinery or any stoppage of work for any cause which the Employer cannot reasonably be held responsible. This does not break the continuity of employment of the Executive for the purpose of any entitlements.

14. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURE

- 14.1 The parties agree that in the event a dispute or grievance arises out of this Contract it will be dealt with by the matter first being discussed by the Executive and the Employer. The parties will endeavour to resolve the problem to the mutual satisfaction of both.
- 14.2 If the matter is not resolved, the Employer and the Executive may seek to appoint an external party as a mediator or conciliator, acceptable to both the Employer and the Executive, to consider the matter and make a recommendation to the Institute Board.

15. CONFLICT OF INTEREST

- 15.1 The Executive will disclose any financial, legal, professional or personal interest that may conflict with the conduct of their official duties or with the business of the Institute. Disclosure should be made to the Institute Board at the earliest opportunity.
- 15.2 Subject to obtaining the prior written approval of the Institute Board, the executive may engage in outside employment where:
 - (a) it does not affect the executive in performing their official duties;
 - (b) there is no conflict of interest;
 - (c) there is no inconvenience to the Institute; and
 - (d) no Institute property or resources are used for private business, without express permission.

16. CONFIDENTIAL INFORMATION

- 16.1 Information other than that generally published and available regarding the Employer's business, operations and systems, financial affairs and structures (ie. "confidential information") is of value to the Employer and is of a restricted and confidential nature. During the period of this Contract and for any time thereafter, the Executive will not use or disclose any such confidential information to any other person, firm or corporation without the previous consent in writing of the Employer.
- 16.2 On completion or termination of this Contract, the Executive will immediately deliver to the Employer all books, documents, papers, materials, credit cards, keys, computer software or other property relating to the business of the Employer which belongs to the Employer or relates to the duties of the Executive during the period of the Contract.
- 16.3 Any intellectual property invented or created by the Executive as a result of the employment during the period of this Contract shall remain the property of the Employer unless otherwise agreed in writing between the Employer and Executive.

17. VARIATION

17.1 This Contract shall not be changed or modified in any way after its execution except in writing signed by both the Employer and the Executive.

This Contract is executed on the [] day of []

SIGNED by the Employer)

in the presence of)

SIGNED by the Executive Officer)

in the presence of)

SCHEDULE A

1. POSITION:

2. DUTIES:

3. PERFORMANCE CRITERIA:

4. PERFORMANCE-RELATED INCENTIVE PAYMENT

SCHEDULE B

1. SUPERANNUATION:

Insert name of scheme or fund specified in accordance with Clause 4.5 of this Contract.

SCHEDULE C

REMUNERATION PACKAGE

1. The Remuneration Package is: \$

2. The annual rate of Monetary Remuneration is: \$

3. The Employment Benefits are:

Annual Cost to employer \$