**Award Free Executive Employee**

**Contract of Employment (example only)**

|  |  |  |
| --- | --- | --- |
| This Employment Agreement is made and is effective from [insert date]. | | |
|  |  |  |
| Between: | [Name of Executive] whose main address is at [insert address of Employee] | |
|  |  |  |
| And: | [Company Name] an entity organized and existing under the laws of [insert relevant State, eg. NSW] with its head office located at: [insert address of Company] | |

# Recitals

In consideration of the covenants and agreement contained and the moneys to be paid hereunder, [insert name of Company] hereby employs [insert name of employee] and [insert name of employee] hereby agrees to perform services as [Executive/Managing Director/Director/Manager – insert as appropriate] of [insert name of Company] in accordance with the following terms and conditions:

1.1 Position

You will be employed as [insert position name] reporting to [insert supervisor name]. You will be based at [insert location address] or at any other location that the Company may specify from time to time.

1.2 Location of Work

In relation to your location of work, you acknowledge that the Company may require you to change the location of work on a temporary or permanent basis. The Company may only require you to change the location of work if you consent to that in writing. The consent must not be unreasonably withheld by you. The Company shall, at its discretion, pay all reasonable costs and expenses associated with any change of work location.

2. Duration of Contract

Your employment will commence on [insert commencement date] (“Start Date”), and will be for an initial period of [insert duration of the contract period, eg. three years]. Your employment shall continue in effect until the earlier of:

1. The effective date of any subsequent renewal of this Agreement between [insert name of Company] and [insert name of employee]
2. The effective date upon which this Agreement ceases being the Finish Date of [insert finish date](“Finish Date”), UNLESS:
   * terminated in accordance with clauses xx and xx of this Contract; or
   * otherwise terminated by agreement in writing between [insert name of Company] and [insert name of employee].

3. Type of Employment

This contract is for a contract of employment and [insert name of employee] is engaged as a Contract Employee.

4. Responsibilities and Duties

Your Responsibilities and Duties include:

* Completing projects and work as directed by the Company from time to time.

Your Duties further include, but are not limited to:

* implementing the Business Plan as determined by the Company.
* reporting to and being accountable to persons nominated from time to time by the Company.
* attending management meetings at the venues and times determined by the Company.
* providing input in the formulation of Company policy decisions.
* developing budgets and forecasts for [insert as required – the business and/or for the section under your control].
* ensuring that target Budgets are achieved (if any).
* assuming responsibility for the advertising and promotion of [insert as required – the business and/or for the section under your control].
* expanding and developing the business of the Company.
* hiring staff for the [insert as required – business and/or the section under your control]. The hiring of staff shall be done with the concurrence of [insert asappropriate, eg .the CEO, Managing Director, etc. of the Company].
* supervising all staff under your control and ensuring that the staff under your control both in terms of their conduct and work performance comply with Company policy requirements.
* Assuming responsibility for disciplinary matters in relation to the conduct and performance of the staff under your control which responsibility shall include counseling, holding disciplinary meetings, issuing verbal and written warnings and, in the case of serious breaches of Company policy and/or misconduct terminating the employment of such staff member. A decision to terminate the employment of a staff member shall always be done with the concurrence of [insert as appropriate, eg. the CEO, Managing Director, etc of the Company].
* Carrying out the duties as set out in the Duty Statement (if any).

[Alternative and/or Additional Clause]

Your duties and responsibilities will be in accordance with the attached “Job Description”. The “Job Description” forms part of the terms and conditions of your employment under this Contract.

5. Probation Period

Your appointment will be subject to the satisfactory completion of a probationary period of [insert length of probationary period, eg 3 months/6 months], during which period either party may terminate this Contract with [insert period of notice, eg, one, two, four weeks notice] without giving any reason for such termination. If at the conclusion of this period it is agreed to continue your employment this will be confirmed in writing. Your performance will be reviewed by [insert name of reviewing employee or employees of the Company and their respective titles] throughout this probationary period and the Company reserves the right to extend your probationary period, depending upon your satisfactory performance of the terms of this Contract.

6. Hours of Work

Your maximum ordinary hours of work are 38 per week to be averaged annually including no less than a thirty minute meal break to be taken no later than 5 hours have commencement of your daily shift. You will be required to work such reasonable additional hours as necessary to fulfil the duties of the position.

7. Remuneration

Your salary shall be $\_\_\_\_\_\_\_\_\_\_\_\_\_ per annum, exclusive of superannuation, payable [insert as relevant, weekly, fortnightly, monthly] in advance by direct bank deposit [or insert alternative payment details]. The payment is subject to PAYG tax at source.

Your salary will be reviewed [insert salary review date] and thereafter annually in accordance with company policy.

8. Superannuation

In addition to the salary referred to in Clause 7 of this Contract, the company will make superannuation contributions on your behalf in accordance with the Superannuation Guarantee Legislation to [insert name of superannuation fund] at the rate of 9%.

9. Leave Entitlements

9.1 Paid Personal/carer’s Leave

Subject to the production of a Medical Certificate you will be entitled to 10 days of paid personal/carers leave that may be taken for personal illness, or injury or when you need to provide care or support to a sick or injured immediate family member or in the case of an unexpected emergency affecting an immediate family member. This leave will be credited to you at 1/26th of the number of your nominal hours worked in each four week period.

9.2 Unpaid Carer’s Leave

You will be entitled to a period of up to 2 days unpaid carer’s leave for each occasion when an immediate family member requires care or support because of a personal illness, or injury or because of an unexpected emergency. This entitlement will apply for a particular occasion only if you have exhausted your paid personal/carer’s leave.

9.3 Compassionate Leave

You will be entitled to paid compassionate leave of up to two days on each occasion that an immediate family member dies or has a life threatening accident or illness. Additional time of may be granted at the discretion of the Company such leave to be granted as paid leave (out of your annual leave entitlement) or as leave without pay subject to mutual agreement between yourself and the Company. You may be required to provide satisfactory evidence of death.

9.4 Annual Leave

You will be entitled to 4 weeks annual leave in accordance with federal legislation. This annual leave entitlement will provide for the equivalent of four (4) weeks annual leave per annum. The four weeks annual leave per year will accrue at 11.6923 hours per each four week period. Annual leave shall be taken at a time convenient to the Company and the Company reserves the right to require you to take accrued annual leave by giving you one months notice. No leave loading is payable on annual leave.

9.5 Study Leave [This Clause is Optional]

You will be entitled to 5 days per annum study leave in order to pursue studies which in the opinion of the Company would be mutually beneficial to you and to the Company in relation to the furtherance of the Company’s business interests. Such leave will be granted at the discretion of the Company and will be taken as leave without pay if the leave is granted.

9.6 Other Leave

You are entitled to Long Service Leave in accordance with State legislation and parental leave in accordance with federal legislation.

10. Conduct

The Company expects all its employees to behave in a manner appropriate for business purposes in the conduct of their duties. Expected standards of behaviour are detailed in the attached [insert as appropriate, eg. Code of Conduct, Company Policy Manual]. In particular, in performing the duties specified in the attached Job Description you must:

* Serve the Company faithfully and diligently and exercise all due care.
* Act in the Company’s best interest.
* Refrain from acting or giving the appearance of acting contrary to the Company’s interest.
* Use your best endeavours to protect and promote the Company’s good name and reputation.
* Perform all such Duties to the best of your ability.

Should you ever be in doubt regarding acceptable conduct you should seek advice from [insert name of person from whom advice should be sought].

11. Conflict of Interest

You must not have any direct or indirect pecuniary or other interest that may in any way compromise the performance of your duties under this contract. In particular, you must not hold any position for monetary or other reward, which results or is likely to result in competition or conflict with your responsibilities to the Company. If such conflict arises, you must immediately notify [insert name of person to be notified].

12. Confidentiality

12.1 Definition

In this Agreement, the term “confidential information” means all confidential information and trade secrets of:

1. The Company or any related corporation or association of the Company
2. Suppliers and clients of the Company including employees and agents of such suppliers and clients.
3. Suppliers and clients of any related corporation or associate of the Company where you obtain such knowledge or control during the period of your employment.

Confidential Information includes:

* information relating to the business affairs, products, financial accounts and reports, costings, other accounting information, marketing plans, sales plans, prospects, price information supplier lists, research, financing, products, inventions, designs or processes of the Company and the aforementioned entities and persons;
* Computer data base and computer software belonging to the Company or to any of the aforementioned entities and persons;
* Any information (electronic, hard copy or otherwise) concerning the organization, business, finances, transactions or affairs of the Company or of the aforementioned entities and persons;
* data surveys, member and client lists, specifications, technical data, original samples, detail sheets, drawings, diagrams, records and reports, including any copies, which are not generally available to the public and to which you gain access or of which you become aware whether before, during or after your period of employment with the Company.

12.2 Confidentiality

Confidential information of which you become aware or generate in the course of your employment, is to be used solely for the purpose of performing your duties and except as authorized by the Company or required by your Duties for the benefit of the Company, or required by law, should not be directly or indirectly disclosed to third parties.

On termination of employment:

1. You must return to the Company, or delete or destroy, as directed, all Company property including all information that is the property of the Company, including but not limited to Confidential Information; and
2. Your rights and obligations regarding the disclosure of confidential information continue indefinitely.

For the purposes of this Clause property of the Company includes:

* All records, documents (electronic or otherwise) and other papers (and any copies or extracts) made or acquired by you in the course of employment.
* All private and other diaries and address books that contain client information, trade secrets and any other information relating to the Company. This includes all computers, lap top computers, electronic devises, electronic data such as electronic diaries and electronic address books and databases of all descriptions.

If you are the owner of the laptop, diary, mobile phone or all other methods of holding information, it is a sufficient discharge of your obligation under this Clause if you state in writing that all confidential information has been removed and destroyed from these devices.

The restrictions contained in this Clause cease to apply to any information that comes into the public domain (otherwise than by breach of this Agreement).

All parties agree that for any breach of confidentiality damages alone are an inadequate remedy. All parties consent to the Company obtaining injunctive relief or specific performance.

Nothing, however, is intended to stop you from using the non-confidential skills and experiences acquired in the service of the Company following termination of your employment with the Company.

13. Termination

Should either you or the Company intend to terminate your employment for any reason, [insert as appropriate - \_\_\_\_\_\_\_\_\_\_\_\_ weeks’/month’s notice] or in the case of the Company, notice or payment in lieu of notice is required. By mutual consent, which must be in writing and signed both by you and the Company, whole or part of the notice period may be waived, in which case liability for payment after such date will cease.

The Company may terminate your employment without notice in circumstances warranting summary dismissal. Such circumstances would include, but would not be limited to:

(a) you committing any act of dishonesty, fraud, gross misconduct, wilful breach of duty or company policy, or serious and wilful neglect in the performance of your duties;

(b) you being convicted of any offence precluding or inhibiting the further performance of your duties.

14. Company Policy

Your employment will also be governed by company policies which may change from time to time. It will be your responsibility to acquaint yourself with company policies, but should you ever be in doubt regarding such, you should seek advice from [insert as appropriate].

15. Post-Employment restraints

In this clause “termination of employment” means termination at the initiative of the Company, by you and by effluxion of time.

In consideration of the employment provided to you by the Company, you will not, while in the employ of the Company and for the period after employment described below:

1. within [insert as appropriate]

* Fifty kilo-meters of the Employer’s address as given in this agreement
* Thirty kilo-meters of the Employer’s address as given in this agreement
* Twenty kilometres of the Employer’s address as given in this agreement
* Ten kilometres of the Employer’s address as given in this agreement

1. for a period from commencement of your employment until [insert as appropriate]:
   1. 24 months after the date of termination of your employment
   2. 12 months after the date of termination of your employment
   3. 9 months after the date of termination of your employment
   4. 6 months after the date of termination of your employment
   5. 3 months after the date of termination of your employment
2. [insert as appropriate]
   1. solicit, canvass, induce or encourage any person or entity who is an employee or agent of the Company to leave the employment of the Company;
   2. solicit or canvass, approach any person or entity who was during the term of your employment a client of the firm, with a view to establishing a relationship with or obtaining the custom of that person or entity in a business which carries on the business or a similar or related nature to the Company;
   3. interfere or seek to interfere, directly or indirectly, with the relationship between the Company and its clients, employees or suppliers in the conduct of the Company’s business.

Clause 21 is construed and has effect as if the number of separate sub-clauses which results from combing the prohibition in the opening lines of Clause 21 with each sub-paragraph and combining each such combination with each sub-paragraph. If any such separate resulting sub-clauses are invalid or unenforceable for any reason, such invalidity or unenforceability does not produce or in any way affect the validity or enforceability of other such resulting sub-clauses.

16. Severability

If a Clause or part of a Clause, of this Agreement is void or voidable, that Clause or part of a Clause is severable and the remainder of the Agreement will continue to have full force and effect. A Clause or Clauses are severable by written agreement between the parties.

17. Privacy

You agree that the Company may collect and retain personal information concerning any aspect of your employment directly from you or a third party. Under the Privacy Act 1988 (Cth) you may have rights and obligations and in particular right of access to, and correction of, personal information (except in so far as it relates to any exception provided by the Act).

18. Interpretation

For the purposes of this Agreement, “the Company” includes all related Companies as defined by the Corporations Act 2001 (Cth) and all successors, assignees and transmittees of the business of the Company.

19. Variation of the Employment Agreement

The Company reserves the right to change any condition of employment contained in this Agreement subject to giving you a minimum of one months notice in writing.

This Agreement represents the entire Agreement of the Parties in relation to your employment by the Company and all previous negotiations, understandings or agreements are superseded by this Agreement. This Agreement may only be varied , amended or replaced by agreement in writing executed by both Parties to this Agreement.

20. Governing Law

This employment agreement takes effect under, is governed by and is to be interpreted according to applicable New South Wales and Federal laws.

21. Acceptance of offer

I [insert name of employee – as appropriate] and X [insert name of authorised officer of the Company – as appropriate] hereby agree to the above terms and conditions of this Agreement.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Employer |  | Employee |
|  |  |  |
| Print Name |  | Print Name |
|  |  |  |
| Position/Title |  |  |
|  |  |  |
| Date |  | Date |
|  |  |  |
| Witness |  | Witness |
|  |  |  |
| Print Name |  | Print Name |
|  |  |  |
| Date |  | Date |
|  |  |  |

Bonus – [This Clause is optional]

In addition you will be eligible for a payment of a discretionary performance-based bonus in accordance with the Company’s policy from time to time, details of which will be provided to you upon commencement of your employment. The maximum potential annual bonus payable under the bonus scheme will be equal to [insert $ \_\_\_\_\_ amount]. The Company reserves its right to change the targets or terms of the bonus scheme at any time.

Commission – [This Clause is optional]

In addition you will be eligible for payment of a commission. The basis of upon which you will be paid commission will be dependant upon you achieving certain target results in accordance with the Company’s commission structure. The Company’s current commission structure is: [insert Company’s commission structure]. The Company reserves its right to change the targets or terms upon which commissions shall be paid at any time upon providing you with reasonable written notice in advance of any change or changes to the Company’s commission structure.

Company Vehicle – [This Clause is optional]

You will be provided with a fully maintained company vehicle, in accordance with the Company’s vehicle policy, as amended from time to time. The type of vehicle will be at the Company’s discretion and may vary dependant upon availability, but as a maximum will have a value equivalent to [insert $\_\_\_\_\_\_\_\_\_ value]. Current policy is to replace vehicles before [insert \_\_\_\_\_\_\_\_\_\_kms] or [insert \_\_\_\_\_\_\_\_\_\_ months].

The vehicle with which you are supplied must be kept by you in a clean and serviceable condition. The vehicle must be returned to the Company whilst absent on leave greater than [insert \_\_\_\_\_\_\_\_\_\_\_\_weeks] (including annual leave, sick leave, workers compensation, long service leave and unpaid leave). The vehicle remains at all times the property of the Company. Consequently, if a termination of your employment with the Company is effected for any reason, whether by yourself or the Company, the vehicle must be returned to the Company in accordance with the Company’s Vehicle Policy.

[Optional insertion: You will be required to contribute to an expenses fund in relation to your use of the motor vehicle as determined by the Company from time to time. The current contribution rate is {insert $\_\_\_\_\_\_\_\_\_\_\_\_per week plus GST) which will be automatically deducted from your pay].

12. Mobile Phone [This Clause is optional]

The Company will supply you with a Mobile Telephone for business use or you may elect to use your own personal mobile telephone for business use, in which case the Company will meet the cost of monthly rental and telephone charges as deemed appropriate,

13. Expenses - [This Clause is optional]

You will be issued with a corporate credit card for use in the payment of work- related expenses. You will be reimbursed for expenses reasonably incurred by you in the proper performance of your duties, subject to the presentation of appropriate evidence satisfactory to the Company to verify your claims

[Alternative Clause]

Upon submission of itemized expense statements in the manner specified by the Company, you shall be entitled to reimbursement of all out-of-pocket expenses (including travel and other reasonable business expenses)duly incurred by you in the performance of your duties under this Contract.

15. Performance Development Program [This Clause is Optional]

You will be expected to participate in the Company’s Performance Development Program. The Program is conducted annually and involves a documented assessment of your performance, a feedback and development interview with [insert name(s) of Company representative(s) involved in the assessment review], and implementation of a development plan.