

# Annexure 3 - Salary Packaging Participation Agreement

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## State of Queensland

This Agreement is BETWEEN:

The STATE OF QUEENSLAND, through the relevant Queensland Government department or agency,

\_\_\_\_\_ (“the Employer”)

*If Employer is a statutory authority which is a separate legal entity from the State then insert full name of the statutory authority and delete ‘The STATE OF QUEENSLAND, through the relevant Queensland Government department or agency,’*

AND \_\_\_\_\_ (“the Employee”)

Print Employee name

## BACKGROUND

The Employer offers the Employee the option to participate in Salary Packaging Agreements.

The Queensland Government has appointed Suppliers to provide salary packaging services for Queensland Government agencies and statutory authorities through the Standing Offer Arrangement. The Standing Offer Arrangement will be administered in consultation with your Employer, Queensland Government Procurement (QGP) and the Department with responsibility for Industrial Relations .

The Employer and Employee agree on the following terms and conditions:

## **SALARY PACKAGE TERMS**

1.
  - (a) The Employee must make Salary Packaging Agreements only on a prospective basis. This means that the Employee may only agree to receive Benefits Items in lieu of salary in relation to salary the Employee has not yet become entitled to.
  - (b) The Employee must enter into a Salary Packaging Participation Agreement prior to applying for benefits under Salary Packaging Agreements (including for a novated lease).
2. *Supplier*
  - (a) The Supplier must provide salary packaging administration services in accordance with the Standing Offer Arrangement.
  - (b) The Employee may have Salary Packaging Agreements on foot with only one Supplier at any one time.
  - (c) The Employee must comply with the requirements about transition between Suppliers in clause 44.

3. ***Payment of the Relevant Salary Packaging Amount to the Trust Account***
  - (a) The Employer and the Employee agree to reduce each relevant fortnightly salary payment to the Employee by the Relevant Salary Packaging Amount.
  - (b) The Employee acknowledges that the Employer intends to pay each Relevant Salary Packaging Amount into the Trust Account on the basis that:
    - (i) for so long as those amounts remain in the Trust Account, they belong to the Employer; and
    - (ii) the Employee has no beneficial right or entitlement in or to any amounts in the Trust Account.
4. The Employee must satisfy himself or herself as to the benefits and risks associated with their Salary Packaging Agreements.
5. ***Benefit Items available***
  - (a) The Employee may, under a Salary Packaging Agreement, elect to avail of one or more of the Benefit Items approved by the Queensland Government for salary packaging purposes, providing the amount salary packaged to pay for Benefit Items (excluding superannuation, for which there is no packaging limit) does not exceed 50% of the Employee's total fortnightly salary payable.
  - (b) The Queensland Government (and not individual Employers, Departments or Agencies) may change the Benefit Items approved for salary packaging purposes at any time, including by adding, removing or amending Benefit Items.
  - (c) The Employee may salary package a Novated Lease only through the Novated Leasing SOA. For the avoidance of doubt, those novated leases that were on foot through a non-panel service provider prior to the commencement of the Novated Leasing SOA may continue until the novated lease cessation date.
6. The participation of the Employee in Salary Packaging Agreements is:
  - (a) at no cost to the Employer; and
  - (b) at the sole financial risk of the Employee.

## **TAXES, COSTS AND OTHER CHARGES**

7. All taxes, including FBT, charges, fees, administration fees or other costs associated with this Salary Packaging Participation Agreement and Salary Packaging Agreements, whether levied against the Employer or otherwise, are the responsibility of the Employee.
8. ***FBT***
  - (a) The risk that an FBT liability is incurred is solely the Employee's, regardless of the circumstances that result in FBT.
  - (b) The Employee must make provision for FBT in advance of the FBT liability being incurred.
  - (c) The Employee acknowledges that access to an FBT exemption cap or any other FBT concession is not an Employee entitlement. An FBT exemption cap is a tax concession made under the *Fringe Benefits Tax Assessment Act 1986* for limited categories of employers, not employees.
  - (d) Eligibility for an FBT exemption cap or the applicability of other FBT concessions is determined by the Employer having regard to the *Fringe Benefits Tax Assessment Act 1986*, ATO rulings, determinations and interpretative decisions.

- (e) The Employee, whether eligible for an FBT exemption cap or not, is liable for any FBT incurred, whether that FBT is incurred through the FBT exemption cap being exceeded or through the Employee salary packaging a Benefit Item that attracts FBT.

#### 9. *Payment of FBT Liability*

- (a) Where any FBT liability is identified by the Supplier during the FBT year, the FBT will be withheld by the Trustee from the Employee's Relevant Salary Packaging Balance at the time of the relevant transaction and will be transferred to or on behalf of the Employer.
- (b) The Supplier will notify the Employee of any FBT liability identified within a reasonable timeframe after the end of the FBT year. The Employee must notify the Supplier as soon as possible but within maximum of 28 days after receiving the notification if the Employee disagrees with the calculation. Failure to advise the Supplier within this timeframe, is taken to mean the Employee's acceptance of the FBT liability. If an Employee questions or disputes their FBT liability it must be in writing to the Supplier, who will consult with the Employer where required to facilitate a response to the Employee within a reasonable timeframe. Once the Employee has received a response from the Employer or the Supplier the matter is regarded as finalised. The Employer and the Supplier are not obligated to participate in further communication in the matter.
- (c) Any outstanding FBT liability has the first call on amounts in the Trust Account in relation to the Employee, and as such will be paid by the Trustee on behalf of the Employer in priority over any payment for further Benefit Items to be provided to the Employee.
- (d) The Employee acknowledges that the Supplier and the Trustee shall be authorised and directed by the Employer to transfer funds from amounts in the Trust Account in relation to the Employee to or on behalf of the Employer to meet any FBT liability outstanding and such payment will reduce the Relevant Salary Packaging Balance.
- (e) Where the Relevant Salary Packaging Balance is insufficient to meet any FBT liability outstanding, the Employee agrees to make arrangements with the Supplier to repay the total FBT liability outstanding to the Supplier by a single payment or by up to 10 fortnightly instalment payments. The Employee agrees to make the arrangement within 28 business days after the Employee receives written notice of the FBT liability from the Supplier. The arrangement may allow repayment by way of additional salary package deduction amounts or payments directly from the Employee. The Employee recognises that failure to repay any FBT liability may result in suspension of this agreement under clause 45(e), termination of this agreement under clause 45(f), withdrawal of the Employee's access to their Salary Packaging Agreements and the recovery of the FBT debt by the Supplier in accordance with the Standing Offer Arrangement.
- (f) Where a FBT liability remains outstanding as at the date of termination of the Employee's employment with the Employer, the Employee agrees for the Employer to deduct from any monies payable by the Employer to the Employee, the amount necessary to payout the FBT liability, including any relevant penalties imposed by the ATO. If after such deduction there still remains an FBT liability, the Employee agrees to make arrangements with the Supplier to repay the FBT liability within an agreed reasonable timeframe. The Employee recognises that failure to repay any FBT liability will result in the recovery of the FBT debt by the Supplier in accordance with the Standing Offer Arrangement.

10. *Priority for any non-salary packaging fringe benefits*

- (a) For an Employee not eligible for an FBT exemption cap, the Employer's FBT liability for taxable non-salary packaging fringe benefits, which are exclusive of those provided as part of the Employee's Salary Packaging Agreements, remain the responsibility of the Employer.
- (b) For an Employee eligible for an FBT exemption cap, all non-salary packaging taxable fringe benefits have first priority in the application of the FBT exemption cap. If this threshold is exceeded by the addition of the GUTV of salary packaging fringe benefits, the resultant FBT liability will be deemed to be arising because of Salary Packaging Agreements regardless of the circumstances, and is therefore the responsibility of the Employee.
- (c) For an Employee eligible for an FBT exemption cap and who has Salary Packaging Agreements, where a subsequent change in employment conditions or position incorporates the provision of a non-salary packaging taxable fringe benefit which results in the FBT exemption cap being exceeded, the resultant FBT liability will be deemed to be arising because of Employee's Salary Packaging Agreements, and is therefore the responsibility of the Employee.

11. *FBT exemption cap*

- (a) The Employee must provide reasonable estimates of the GUTV of taxable non-salary packaging fringe benefits each FBT Year to the Supplier for monitoring the Employee's position against the FBT exemption cap.
- (b) In the absence of more accurate information, the Supplier may use the prior FBT Year information as an estimate for the purposes of monitoring to ensure the FBT exemption cap is not exceeded. Where the Employee's circumstances have altered since the prior FBT Year, it will be the Employee's responsibility to provide the Supplier with a revised estimate and the reason why it is necessary.
- (c) Post-FBT Year adjustments in relation to any FBT liability which could occur inadvertently are the responsibility of the Employee, e.g. where the quantum of non-salary packaging fringe benefits was higher than estimated and/or factored into the Employee's Salary Packaging Agreements.
- (d) Conversely, where estimates of the GUTV of non-salary packaging fringe benefits were factored into the Supplier's monitoring of the FBT exemption cap and the actual GUTV calculation was lower than estimated, the residual of the threshold lapses and does not carry over to the next FBT Year, in accordance with the FBT legislation.
- (e) Where the Employee's conditions of employment or position changes during the FBT Year (temporarily or permanently) altering the FBT status of the Employee, it is the Employee's responsibility to formally advise the Supplier of the change within 7 days (failure to do so may result in the withdrawal of access to the Salary Packaging Agreements).
- (f) The FBT exemption cap applies only to benefits provided while the Employee is working in and for the designated eligible business area or agency. Where the Employee is seconded, promoted, transferred to or relieving in an ineligible business area or agency, whether permanently, temporarily or part-time, and whether or not the Employee's payroll processing site changes, regardless of which business area or agency bears the costs, the Employee will cease to be eligible for the relevant FBT exemption cap from the first day of the change.
- (g) Where the Employee's official duties, overall employment arrangements and reporting relationships are split between eligible and ineligible business areas or agencies, the Employee may no longer

qualify for an FBT exemption cap depending on the specific provision of the FBT legislation applicable as determined by the Employer.

- (h) Where the Employee's FBT status alters during an FBT Year, the relevant fringe benefits provided in relation to the periods the Employee was eligible and ineligible for the FBT exemption cap, require separate FBT treatment. To remove any doubt this means that all taxable fringe benefits provided while the Employee is ineligible for the FBT exemption cap, will be subject to FBT, and that the FBT exemption cap applies to those taxable fringe benefits provided while the Employee is eligible for the FBT exemption cap.
12. The Employer will be solely responsible for the interpretation and application of the *Fringe Benefits Tax Assessment Act 1986* to the Salary Packaging Agreements. Where an Employee questions or disputes their FBT liability it must be in writing to the Supplier, who will consult with the Employer where required to facilitate a response to the Employee within a reasonable timeframe. Once the Employee has received a response from the Employer or the Supplier the matter is regarded as finalised. The Employer and the Supplier are not obligated to participate in further communication in the matter.
13. *Required Information*
- (a) The Employee agrees to obtain and provide to the Supplier, the Employer, the ATO and/or any other relevant person or body, all necessary declaration forms, receipts, invoices, completed claim forms, and supporting documentation and other information reasonably required of the Employee by the Employer or Supplier or required to be provided for the purposes of taxation legislation in respect of any benefits provided to the Employee under their Salary Packaging Agreements (**Required Information**).
- (b) The Employee must maintain all records required for FBT purposes and keep the records for at least five years.
- (c) The Employee is responsible for all costs, losses, outgoings and liabilities of every description including, without limitation, any penalties, or general interest charge payable under any taxation legislation suffered or incurred by the Employer or the Supplier, arising out of any failure on the Employee's part to provide any Required Information or for any inaccuracies or omissions in any Required Information provided by the Employee.
14. Any additional costs incurred as a result of termination or cessation of the Employee's Salary Packaging Agreements shall be the responsibility of the Employee. The Employer and the Supplier may recover such costs from the Employee as a debt due.
15. If any amount for the provision of Benefit Items under Salary Packaging Agreements have been paid in advance by the Employer or the Supplier and this agreement is terminated for whatever reason, the amount which has been paid which is more than the entitlement at the date of termination, including any FBT liability outstanding (refer to clause 9(f)), shall be deducted from any monies payable by the Employer to the Employee. If after such deduction there still remains an amount outstanding, the Employee agrees to make arrangements with the Employer or Supplier to repay the amount within an agreed reasonable timeframe.
16. Where there is a statutory obligation on the Employee to repay entitlements to the Employer, the Employee undertakes to repay immediately the equivalent of such amounts to the Employer in reduction of any amount owing under this agreement.
17. On completion of the FBT Year any balance of the Relevant Salary Packaging Amount in the Trust Account will be rolled over to the next FBT Year.

## **SALARY PACKAGE COMPONENTS AND REVIEW**

### 18. *Change to Salary Packaging Agreements*

- (a) Salary Packaging Agreements may be changed as near as practical, but prior to, the end of the FBT Year, with the consent of the Employer.
- (b) However, under any of the following defined circumstances:
- separation;
  - divorce;
  - ill health;
  - extended leave including parental leave;
  - substantial change to the Employee's salary amount;
  - change of employment location which may affect FBT status,
- the Employee shall have the right to initiate a review of the components of the Salary Package prior to the completion of the FBT Year.
- (c) In the event of exceptional or unintended circumstances, the Employer may agree to prospectively vary the components of the Employee's Salary Package.

### 19. *FBT changes and liability*

- (a) In the event that there are changes relating to:
- (i) FBT legislation;
  - (ii) ATO rulings, determinations, or interpretive decisions;
  - (iii) the introduction of any State equivalent to FBT legislation; or
  - (iv) the way in which any FBT legislation is interpreted and applied;
- this agreement will be renegotiated in accordance with the provisions of the Standing Offer Arrangement.
- (b) Until such time as this agreement is renegotiated following any changes to the FBT exemption cap status of the Employer, or to the availability of other FBT concessions, any FBT liability from this agreement will be the responsibility of the Employee and the Employee indemnifies the Employer and the Supplier in respect of any FBT liability borne by the Employer arising out of this agreement.
- (c) The Employee is not and will not be entitled to any compensation for the loss of access to the FBT exemption cap or other FBT concessions whether permanently or temporarily, and whether fully or partially, howsoever caused. If the Employee relies on any financial benefit from the FBT exemption cap or other FBT concessions as part of their Salary Packaging Agreements they do so at their own risk.

## **FINANCIAL ADVICE**

20. The Employee acknowledges that it is a strong recommendation of the Queensland Government and the Employer that independent financial advice is sought prior to participation in Salary Packaging Agreements.
21. The Employee acknowledges that this agreement and all publications relating to the Salary Packaging Agreements have been prepared without consideration of the particular investment objectives, financial situation and needs of the Employee. The Employee acknowledges that they should not act on the basis of

any matter contained in this agreement without considering and, if necessary, taking appropriate legal, financial or other professional advice based upon the Employee's own particular circumstances.

22. The Employee acknowledges that it is the responsibility of the Employee to obtain independent legal, financial and other advice to enable the Employee to assess the appropriateness of the Salary Packaging Agreements.
23. The Employee acknowledges that the Employee has entered into this agreement solely in reliance on the independent legal, financial and other advice obtained by the Employee and not in reliance on any information provided by the Employer.
24. The Employee acknowledges that the Employer bears no responsibility in respect of any independent financial and/or taxation advice received. The Employee also acknowledges that no legal, taxation or financial advice has been given by the Queensland Government, the Employer or the Supplier in connection with this agreement or the decision to enter into Salary Packaging Agreements.

## **ADMINISTRATION**

25. The fees to be charged by the Supplier for administering salary package payments made under this agreement will be deducted from the individual Employee's Relevant Salary Packaging Balance that has been distributed and/or transferred by the Employer to the Supplier. The total fee amount includes SOA Management Fees.
26. The Employee must pay the fees for their Salary Packaging Agreements as specified in the Standing Offer Arrangement.
27. The Employee consents to the Employer deducting the Administration Fee from the Employee's salary and paying that fee into the Relevant Salary Packaging Balance. The Trustee is authorised to transfer funds from amounts in the Trust Account in relation to the Employee to the Supplier to meet any Administration Fees outstanding and such payment will reduce the Relevant Salary Packaging Balance.
28. The Supplier may debit the Employee's Relevant Salary Packaging Balance for the fees charged by the Supplier in priority to payments for Benefit Items but not in priority to any payment for FBT liability or any amount owing to the Employer.
29. The Employer may at any time direct the Supplier to return the whole or any part of the Relevant Salary Packaging Balance to the Employer to be paid to the Employee as salary after deduction of tax withholding payments. The Employer may do this in its discretion or in accordance with the Employer's policy, including, without limitation, where the Relevant Salary Packaging Balance has exceeded a maximum balance specified by the Employer or is otherwise too high having regard to the amount reasonably required for the Benefit Items to be provided to the Employee under Salary Packaging Agreements. In such circumstances the Employer may also direct the Supplier to suspend the receipt of further salary packaging payroll deductions for that Employee.

## **CONFIDENTIALITY AND ACKNOWLEDGEMENT**

30. *Confidentiality*
  - (a) The terms of this agreement replace all previous agreements between the Employee and the Employer in relation to Salary Packaging Agreements and are to remain confidential between the parties except that the terms may be disclosed:
    - (i) by either party to the Supplier; or



- (ii) if the disclosure is authorised or required under law.

### 31. *Use of Personal Information*

- (a) The Employee acknowledges that:
  - (i) the Employer will disclose the Employee's Personal Information to QGP for the purpose of managing the Standing Offer Arrangement and/or the Novated Leasing SOA;
  - (ii) in the course of managing the Standing Offer Arrangement and/or the Novated Leasing SOA, QGP may use the Employee's Personal Information for the purpose of conducting surveys and obtaining feedback regarding:
    1. the performance of Suppliers;
    2. the performance of Novated Leasing Service Providers;
    3. the performance of financial advisors;
    4. the performance of the Novated Leasing Service Provider's Finance; and/or
    5. the operation of the Standing Offer Arrangement, the Novated Leasing SOA and salary packaging arrangements generally; and
  - (iii) QGP may disclose the Employee's Personal Information to a third party for the purposes of undertaking any of the activities in 31(a)(ii) on QGP's behalf.

### 32. *Acknowledgments*

- (a) The terms and conditions agreed between the Employee and the Employer herein relate only to the Employee's Salary Packaging Agreements.
- (b) It is acknowledged and accepted by the Employee that the Employer is not liable for taxation or any other liabilities, judgments, penalties or outcomes suffered or incurred by the Employee as a result of entering into this agreement and the Salary Packaging Agreements.
- (c) The Employee indemnifies the Employer in respect of any taxation or any other liabilities, judgments, penalties or outcomes that the Employer may suffer or incur as a result of entering into this agreement and the Salary Packaging Agreements.
- (d) It is acknowledged and accepted by the Employee that the Supplier is not liable for taxation or any other liabilities, judgments, penalties or outcomes suffered or incurred by the Employee as a result of entering into this agreement and the Salary Packaging Agreements. The acknowledgment and acceptance in this clause does not include taxation or any other liabilities, judgments, penalties or outcomes suffered or incurred by the Employee in connection with any act or omission of the Supplier other than in the course of performing its obligations as Supplier under the Standing Offer Arrangement, or in connection with any negligent or wilful act or omission of the Supplier.
- (e) It is acknowledged and accepted by the Employee that all claims, damages, costs and expenses which may be paid, suffered or incurred by the Employer in respect of Employee's Salary Packaging Agreements, including FBT liabilities, and Administration Fees will be made good at the Employee's expense and may be deducted from any salary payable by the Employer to the Employee or other monies due or becoming due to the Employee.
- (f) It is acknowledged and accepted by the Employee that:
  - (i) the Employer and the Supplier do not assume any liability as a result of facilitating a payment to a third party, and are not acting as agents of the Employee or trustees for the Employee; and



- (ii) it is not the Employer's responsibility to inform the Employee regarding the FBT impact of any fringe benefit provided, nor to predict and/or advise Employees of any emerging issues which may give rise to the existence of, or changes in the value of, fringe benefits that may or may not affect the Employee's Salary Packaging Agreements.
33. In accepting this offer to enter into Salary Packaging Agreements the Employee confirms that the Benefit Items selected for the package are legitimate expense items.
34. In the event of appointment, promotion, assignment, redeployment, transfer or other process to another Queensland Government Department or Agency, the Employee:
- (a) shall be subject to any arrangements for salary packaging applying to that department or agency;
  - (b) undertakes to take all necessary steps to comply with those arrangements; and
  - (c) must immediately notify the Supplier.
35. In the event of cessation of employment with a Government Agency that participates in the Standing Offer Arrangement, the Employee will immediately notify the Supplier.

### **PARTICIPATION OBLIGATION AND CESSATION**

36. The Employee is under no obligation to participate in Salary Packaging Agreements, and entered into this agreement of his or her own free will.
37. Where the Employee elects to forego a portion of salary in order to receive the Benefit Items, the Employee must, prior to commencing such arrangements, enter into a Salary Packaging Agreement.
38. The Employee must:
- (a) comply with Salary Packaging Agreements;
  - (b) ensure that there are or will be sufficient amounts which might otherwise be taken as salary which can be paid into the Relevant Salary Packaging Balance for the provision of the Benefit Items; and
  - (c) ensure that the Relevant Salary Packaging Balance is not allowed to become too high having regard to the amount reasonably required for the Benefit Items to be provided to the Employee under Salary Packaging Agreements, as referred in clause 29.
39. The Employee acknowledges that the Supplier may receive commission from third party providers of Benefit Items. The Supplier must disclose the commission to the Employee before the relevant Salary Packaging Agreement is entered into.
40. The Employee must:
- (a) ensure that the information the Employee provides to the Supplier in connection with salary packaging is true, complete and accurate;
  - (b) inform the Supplier immediately of any changes to that information or if any of that information is incorrect or becomes incorrect;
  - (c) check confirmation reports and other communications which the Supplier gives the Employee and notify the Supplier of any errors or omissions as soon as possible;
  - (d) keep any passwords issued by the Supplier in connection with salary packaging secure. The Supplier and the Employer will not be liable for any loss or damage arising out of the Employee's failure to keep those passwords secure.

#### 41. *Relevant Salary Packaging Balance*

- (a) The Supplier will keep an account setting out the Relevant Salary Packaging Balance and any payments to and from that balance. The Supplier may debit the Relevant Salary Packaging Balance in accordance with this agreement, Salary Packaging Agreements, instructions from the Employer or to recover any amount the Employee owes in connection with this agreement. The Relevant Salary Packaging Balance does not accrue interest. The Supplier may retain any interest that does accrue on the Trust Account.
- (b) If the Relevant Salary Packaging Balance for the Employee is a negative/debit balance or a future transaction may cause it to have a negative/debit balance then the Supplier may:
  - (i) recover the negative/debit amount directly from the Employee as a debt due;
  - (ii) recover from the Employee as a debt due, the Supplier's expenses of recovering that amount from the Employee;
  - (iii) subject to agreement with the Employer, request the Employer to increase the amount of the Employee's salary package deduction amounts in order to avoid or satisfy a negative/debit balance on the Employee's account; or
  - (iv) if the Supplier does not receive payment to satisfy a negative/debit balance and subject to agreement with the Employer, the Supplier may suspend the provision of benefits until payment is received to satisfy the negative/debit balance.

#### 42. *Reimbursements*

- (a) The Employee will be able to make a claim for reimbursement for a Benefit Item only if that is agreed under relevant Salary Packaging Agreements.
  - (i) Reimbursements can be paid for a Benefit Item only where the associated costs are incurred from the commencement of the Employee's relevant Salary Packaging Agreements, and for which the Employee has not claimed an income tax deduction.
  - (ii) Where the Employee has transitioned between Suppliers, reimbursements will be paid by the previous Supplier until the Anniversary Date (**Anniversary Date**) or as otherwise agreed between the Suppliers as part of a transition process.
  - (iii) The Employee must not claim an income tax deduction for any items the subject of a reimbursement claim through any Salary Packaging Agreements.
- (b) Any reimbursement which may be made will be debited to the Employee's Relevant Salary Packaging Balance by the Supplier.
- (c) If the Employee sends a claim for reimbursement of expenses or other Required Documents the Employee must keep a copy of the claim or Required Documents submitted for their own records.

#### 43. *Novated Leases*

- (a) The Employee acknowledges that if the Employee salary packages a Novated Lease, a fuel card must be packaged through either:
  - (i) the Novated Leasing Services Provider under the Novated Leasing SOA; or
  - (ii) the the Novated Leasing Service Provider's Finance, a Novated Leasing Service Provider or with the Supplier, only for leases established prior to the commencement of the Novated Leasing SOA.

- (b) The only fuel purchases that the Employee may claim without using the fuel card are purchases while the Employee is awaiting the issue of the fuel card or where the fuel card was not able to be used and the purchase was urgent. This includes leases established under and prior to the commencement of the Novated Leasing SOA.
- (c) Clauses 43(a) and (b) do not apply where the car being packaged is a Battery Electric Vehicle and the employee does not wish to package a fuel card.

#### 44. *Transition*

- (a) The Employee must maintain Salary Packaging Agreements with only one Supplier at any one time under the Queensland Government Standing Offer Arrangement (QGP0065-21) or other similar arrangements).
- (b) The Employee may elect to transition between Suppliers at any time, with the transition to take effect during the designated transition periods. The QGP, at its entire discretion, reserves the right to issue and amend the transition period dates as required.
- (c) The Employer must allow the Employee to transition between Suppliers, subject to clause 44(d) and 44(e).
- (d) The Employee must pay any outstanding FBT liability to the previous Supplier before transitioning to the new Supplier. FBT debts incurred during a period immediately prior to a 1 April transition date, and not identified until post 31 March, will be recovered by the new Supplier in accordance with clause 9.
- (e) The Employee must pay any outstanding debt incurred before and/or during designated transition periods due to misuse and/or invalid bus travel (as part of the bus travel benefit) to the previous Supplier before transitioning to the new Supplier. The cost of misuse and/or invalid bus travel identified after designated transition periods, will be recovered by the new Supplier.
- (f) For the avoidance of doubt, this agreement stays on foot when an Employee transfers or is seconded to another Queensland Government department or agency which is part of the State of Queensland.
- (g) If the Employee transfers or is seconded to another Queensland Government agency which is not part of the State of Queensland, the Employer may assign its rights under this agreement to that agency and, if required by the Employer or that agency, the Employee must enter into a deed of assignment or novation containing terms required by the Employer or that agency or enter into a new Salary Packaging Participation Agreement with that agency.

#### 45. *Cessation*

- (a) The Employee may elect at any time to cease a Salary Packaging Agreement by giving written notice to the Supplier. The period of notice will be the period provided for in the Employee's relevant Certified Agreement, or if no period is provided for, then at least 21 days.
- (b) The Employee may be able to recommence their Salary Packaging Agreements. However, without limiting clause 2(a), if the Employee is ceasing and recommencing their Salary Packaging Agreements outside of the approved transition periods, then the Salary Packaging Agreements must be recommenced with the same Supplier. For the avoidance of doubt, the Employee cannot cease their Salary Packaging Agreements with one Supplier and commence Salary Packaging Agreements (whether in relation to the same or different Benefit Items) with a different Supplier outside of the approved transition periods.
- (c) The Relevant Salary Packaging Balance present on termination or cessation of participation in the Salary Packaging Agreement cannot be taken by the Employee as a cash payment. Such balance

must be utilised for Benefit Items or be returned to payroll as soon as practicable by the Trustee thereafter such event on the basis that an equivalent sum will be paid by the Employer as salary and taxed accordingly.

- (d) If the Salary Packaging Agreement has terminated or otherwise ended, the Employee may recommence their Salary Packaging Agreement only with the agreement of the Employer, but may only transition to another Supplier as set out in clause 44.
- (e) The Employer may, on the Supplier's request or otherwise, suspend this agreement and all Salary Packaging Agreements under this clause if the Employee fails to make an arrangement or fails to repay FBT liability in accordance with an arrangement made under clause 9(e). The Employer may suspend this agreement and all Salary Packaging Agreements for a period of up to three months by giving at least three months' notice in writing of the suspension to the Employee. During the suspension the Employer will suspend:
  - (i) payments of Relevant Salary Packaging Amounts under clause 3(a); and/or
  - (ii) provision of salary packaging Benefits Items.
- (f) The Employer may at any time without reason terminate this agreement by giving written notice to the Employee. The period of notice will be the period provided in the Employee's relevant Certified Agreement, or if no period is provided for, then at least 21 days. The Employee will not be able to continue participation in Salary Packaging Agreements after the agreement is brought to an end under this clause unless the Employee has entered into new Salary Packaging Agreements with the agreement of the Employer, as set out in clause 45(b).
- (g) The Employer may terminate:
  - (i) a Novated Lease; and
  - (ii) that part of this agreement which relates to a Novated Lease,
 at any time without reason by giving written notice to the Employee. The period of notice will be the period provided for in the Employee's relevant Certified Agreement, or if no period is provided for, then at least 21 days.
- (h) The Supplier may stop providing its services to the Employee at any time without notice if:
  - (i) the Employee becomes bankrupt;
  - (ii) uses a Benefit Item in a way that breaches any law or breaches this agreement;
  - (iii) the Supplier does not receive contributions from the Employer for two consecutive months or four consecutive fortnights and has not received advice from the Employee to cease or temporarily suspend the Benefit Item; or
  - (iv) if the Employer instructs the Supplier to stop providing its services.

#### 46. *Finalisation of Salary Packaging Account*

- (a) Termination of Salary Packaging Agreements for any reason does not affect any obligation of the Employee, or claim of the Employer or Supplier, arising on or before or in connection with termination or which is otherwise capable of having future operation, including any obligation to pay any amount to the Employer or Supplier arising on or before or in connection with termination of Salary Packaging Agreements or under any indemnity at any time.
- (b) Upon the termination of this agreement the Employee must immediately cease using any card issued as part of Salary Packaging Agreements (such as a fuel card or a go Bus Travel Benefit card). If the

Employee continues to use such card, the Employee must repay any amounts the Employee charges to the card as a debt due on demand and the Supplier may recover the amounts from the Employee including on behalf of the card supplier, where relevant.

- (c) If this agreement is terminated for any reason, the Salary Packaging Agreements under it are terminated and the Supplier will cease to collect Relevant Salary Packaging Amounts from the Employer and will cease to provide any Benefit Items.
- (d) If this agreement is suspended or terminated for any reason, the Employer or Supplier may give the Employee a notice requiring the Employee to pay the supplier of the Benefit Item for the Benefit Item and the amounts payable to the supplier will be debts due on demand to the supplier payable by the Employee and the Supplier may recover the amounts from the Employee on behalf of the supplier.
- (e) Upon termination of this agreement, the Supplier must complete the Employee Salary Packaging Account Reconciliation within the timeframes stipulated by the relevant arrangement and determine any amounts the Employee owes:
  - (i) in connection with this agreement, including costs in respect of tax liabilities; and
  - (ii) in connection with any Benefit Item that is due to be provided before termination.

Where necessary, the Supplier may recover any negative/debit balance in line with clause 41(b). Positive/credit balances will be returned to the Employer as set out in clause 29.

- (f) Once the Supplier is satisfied that all liabilities in connection with this agreement and the Benefits Items have been satisfied and the Employee's Relevant Salary Packaging Balance still has a positive/credit balance, the Supplier must make reasonable efforts to liaise with the Employee and pay the amount of the positive/credit balance to the Employer. The Employee acknowledges that if the Supplier cannot do this after making reasonable efforts, the Supplier may be required to pay the balance to the public trustee as unclaimed monies after the relevant dormancy period specified in relevant unclaimed monies legislation.

## **VARIATION AND GENERAL PROVISIONS**

- 47. The Employee and the Supplier acknowledge that:
  - (a) The Employer has a unilateral right to vary the terms and conditions of this agreement; and
  - (b) Such variations will take effect from the date specified in the variation, being a date not less than 5 business days after the variation details are published by the QGP on a Queensland Government website.
- 48. The obligations of the Employee in favour of the Supplier are intended to create duties enforceable by the Supplier directly against the Employee in accordance with section 55 of the *Property Law Act 1974*. The Supplier's acceptance of Relevant Salary Packaging Amounts is acceptance by the Supplier for the purposes of section 55 of the *Property Law Act 1974*. On acceptance, the Supplier is intended to be bound by the obligations imposed on the Supplier under this agreement and that those obligations will be enforceable by the Employee against the Supplier under section 55 of the *Property Law Act 1974*.
- 49. This agreement will be governed by and construed under the law of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of the State of Queensland.

## **INTERPRETATION**

50. In this agreement, unless the context otherwise indicates:

**Administration Fee** means the fees to be charged from time to time as detailed in clause 25, by the Supplier for administering salary packaging payments.

**Anniversary Date** means the date the Employee's Salary Packaging Agreement starts with the Supplier, whether through establishing a new Salary Packaging Agreement or transitioning their Salary Packaging Agreement from another supplier. For example, if an Employee's Salary Packaging Agreement with the Supplier starts on 1 October 2022, their Salary Packaging Anniversary Date will be 1 October 2022 and if the employee transitions to the Supplier on 1 April 2023, their Salary Packaging Anniversary Date will be 1 April 2023.

**ATO** means the Australian Taxation Office.

**Battery Electric Vehicle** means a car that exclusively uses an electric motor and battery that is powered by plugging into a power outlet or charging station.

**Benefit Items** means benefits permitted by the Employer to be paid for by the Employer in lieu of salary.

**Business day** means a day other than a Saturday, Sunday or public holiday in Brisbane.

**Certified Agreement** means an agreement made in accordance with Chapter 6 of the *Industrial Relations Act 1999 (Qld)* or *Part 2-4 of the Fair Work Act 2009 (Cth)*.

**OIR** means the department or other agency responsible for whole-of-Government industrial relations.

**FBT** means Fringe Benefits Tax.

**FBT exemption cap** means a capped FBT exemption which allows for concessional FBT treatment under the respective provisions of the *Fringe Benefits Tax Assessment Act 1986* and includes those FBT exemption caps for public hospitals (currently \$17,000 grossed-up), ambulance services (currently \$17,000 grossed-up), and Legal Aid Queensland (currently \$30,000 grossed-up).

**FBT Year** means each year beginning on 1 April.

**GUTV** means grossed up taxable value.

**Non-salary packaging fringe benefits** means any fringe benefit that the Employer provides or result from means other than via a Salary Packaging Agreement administered by the Supplier. Non-salary packaging fringe benefits may include, but are not limited to, home garaging of a pool car, private use of a work car, housing assistance, remote area holiday travel, living away from home allowances and salary overpayment loan fringe benefits.

**Novated Lease** means an Employee's lease of a car from a finance company novated by the finance company to the Employer for the Employer to provide as a Benefit Item to the Employee, including arrangements associated with that lease, such as fully maintained novated lease arrangements.

**Novated Leasing Service Provider** means a supplier engaged by the Employer under a standing offer arrangement for the provision of novated leasing services.

**Novated Leasing SOA** means Standing Offer Arrangement QGP0066-23 or and any replacement Novated Leasing Services arrangement(s) for the supply of Novated Leasing Services, as amended from time to time.

**Personal Information** has the meaning given by the *Information Privacy Act 2009 (Qld)*.

**QGP** means that part of the Department of Energy and Public Works known as the Queensland Government Procurement or other department or agency responsible for whole-of-Government procurement.

**Relevant Salary Packaging Amount** means the amount which the Employer is to contribute into the Trust Account for the Employee to participate in salary packaging.

**Relevant Salary Packaging Balance** means the aggregate of Relevant Salary Packaging Amounts within the Trust Account from time to time in relation to the Employee (reduced by amounts paid out to provide benefits to the Employee or otherwise reduced upon return to the Employer or otherwise adjusted as contemplated by this agreement).

**Required Information** has the meaning defined in clause 13(a).

**Salary Packaging Agreement** means an agreement or arrangement under which the Employee agrees to take, as Benefit Items, amounts which the Employee might otherwise have taken as salary.

**Salary packaging fringe benefits** means those fringe benefits that are provided via the Salary Packaging Agreements administered by the Suppliers.

**Salary Packaging Participation Agreement (SPPA)** means an agreement between the Employee and the State of Queensland, through the relevant Queensland Government department or agency; so that the Employee can commence salary packaging under the SOA.

**SOA Management Fees** means parts of the administration fees charged by a Supplier which are payable to the QGP and the Employer under the Standing Offer Arrangement.

**Standing Offer Arrangement (SOA)** means Standing Offer Arrangement SOA QGP0065-21, as amended by QGP to the Supplier from time to time.

**Supplier** means any person, business, corporation or other entity which enters into the Standing Offer Arrangement with the State of Queensland to be a provider of salary packaging administration services for Queensland Government departments and agencies.

**Taxation legislation** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Taxation Administration Act 1953* (Cth), the *Fringe Benefits Tax Assessment Act 1986* (Cth) and the *A New Tax System (Goods and Services) Act 1999* (Cth) and any other relevant taxation legislation enacted from time to time. References to any statute include that state as amended or substituted from time to time and any regulations made pursuant to the statute.

**Total salary** ordinarily means the total gross remuneration including salaries, wages and permanent allowances but excluding overtime, however is subject to any provisions to the contrary as contained in a certified agreement or ruling issued under part 3 of chapter 3 of the *Public Service Act 2008*.

**Trust Account** means the trust account held by the Trustee for the purpose of salary packaging for the Employee.

**Trustee** means the Trustee to whom the Employer shall from time to time make the payments contemplated by this Deed.



**EMPLOYEE**

**I have read and understood and accept the offer of salary packaging on the terms and conditions herein.**

Name: .....  
(please print)

Signed: ..... Date: ..... / ..... / .....

**EMPLOYER**

**Signed for and on behalf of the Employer by** Danielle Crawford .....  
**a duly authorised person.** (please insert name of the person signing)

Title: General Manager Client Success .....

Signed:  ..... Date: ..... / ..... / .....