

Restraint of Trade Deed #4

Employment

Date:

Contents

THIS AGREEMENT

dated

2020

PARTIES:

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (abbreviation)

OF THE FIRST PART
AND

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (abbreviation)

OF THE SECOND PART

Recitals

- A. The Company offers employment to the Employee.
- B. The Employee has agreed to enter into this deed to protect the goodwill of the Company.

Terms


1 DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed, unless otherwise indicated by the context:



- (a) Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the state in

which the subject matter of this agreement is to be performed[Sydney, Brisbane, Melbourne etc];

- (b) Business Hours means from 9.00 am to 5.00 pm on a Business Day;
- (c) Force Majeure Event means any:
 - (i) act of God;
 - (ii) 
 - (iii) industrial dispute;
 - (iv) restraint; or
 - (v) other event which is not within the reasonable control of the parties;
- (d) Person includes a natural person, body corporate, partnership, joint venture, association or other incorporated or unincorporated legal entity;
- (e) Ineffective means void, illegal or unenforceable;

1.2 Interpretation

In this Agreement, unless otherwise indicated by the context:

- (a) 
- (b) 
- (c) use of a term denoting subject matter which comprises more than one part or aspect includes a reference to each or any part or aspect of the subject matter;
- (d) a reference to a clause, part of a clause, schedule or annexure is a reference to that clause, part of a clause, schedule or annexure to this document and a

reference to this document includes its schedules and any annexures;

(e)

- (f) the word 'person' includes an individual, a firm, body corporate, unincorporated association, incorporated association or a Public Authority;
- (g) where a party comprises two or more persons an agreement or obligation binding that party binds those persons jointly and severally;
- (h) a reference to a party includes that party's successors and permitted assigns;

(i)

- (j) a reference to 'dollar', '\$', '\$A', 'A\$'; or 'AUD' is a reference to Australian currency; and
- (k) a reference to a specific time for the performance of an obligation is a reference to that time in the state or territory where the obligation is to be performed;
- (l) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under, the legislation;
- (m) a reference to a body,
 - (i) whether statutory or not;
 - (A) which ceases to exist; or
 - (B) whose powers or functions are transferred to another body


- (ii) is a reference to the body which replaces it or which substantially takes over its powers or functions.

2 NON-ENTICEMENT AND NON-SOLICITATION

The employee expressly agrees not to, at anytime during the



3 CONFLICT OF INTEREST

- (a) The employee must not, without the prior written consent of the Company, be directly or indirectly:
 - (i) Engaged or concerned in the conduct of any other business which would:
 - (ii) Conflict with;
 - (iii) Prevent The employee from carrying out; or
 - (iv) Otherwise detrimentally affect the employee in carrying out their duties as an employee; or
 - (b) interested in any business of a similar nature to or
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18. RESTRAINT OF TRADE

The employee must not as and from termination or resignation of his/her employment with the Company, in any manner whatsoever, either directly or indirectly, be concerned or interested in, either alone or in partnership or as manager,

agent, for any other person, company or corporation, in a business of a type undertaken by the company or any other business of a similar nature for a period of six (6) months within a radius of 5 kilometres from the employees designated place of employment.

4 GENERAL PROVISIONS

4.1 Counterparts

- (a) This Deed may be executed in any number of counterparts.

(b)

(c)

4.2 Further assurance

Each party will from time to time do all things necessary or desirable to give full effect to this Deed, including executing further documents.

4.3 Governing law and jurisdiction

This Deed is governed by the laws of [STATE] Each party irrevocably submits to the jurisdiction of the courts of [STATE]


4.4 Notices

A notice by one party to another must be in writing and:

- (a) delivered personally;
- (b) sent by registered mail to the address of the addressee specified in this Deed; or

(c)


4.5 Service of notices

- (a) For the purpose of the notice under this clause, a party's address is the address specified at the commencement of this Deed or as notified to each other party.
- (b) A notice may be served by:
 - (i) giving it to a party personally,
 - (ii) by posting it by registered post or
 - (iii) by faxing it.
- (c) **When a Notice is Received by Post**
 - (i) If the notice is posted by registered post it is deemed to be received by the receiving party two Business Days after posting.
 - (ii) **When a Notice is Received by Fax**
- (d) If the notice is faxed it is deemed to be received by the receiving party when the completed transmission report is received, unless:
 - (i) the sending party's machine indicates a 
 - (ii) the transmission is completed outside Business Hours at the receiver's address in which case the notice is regarded as received at the commencement of business on the following Business Day in that place.

4.6 Severability

If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Deed.

4.7 Survival & merger

- (a) The terms of this Deed survive its termination to the extent permitted by law.
- (b) Nothing in this Deed merges, extinguishes,
.

4.8 Variation

A variation or waiver of a provision of this Deed will be ineffective unless it is:

- (a) in writing and;
- (b) executed by the parties.

4.9 Waiver

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
 - (b) The exercise of a power or right does not preclude:
 - (i) its future exercise; or
 - (ii) the exercise of any other power or right.
- .

Executed as a deed

<p>EXECUTED for and on behalf of [COMPANY NAME] PTY LTD (ACN ### ##) in accordance with Section 127(1) of the <i>Corporations Act 2001</i> by authority of the Directors:</p>		
<p>..... Signature of Director</p> <p>..... Name of Director</p>		<p>..... Signature of Director/Secretary</p> <p>..... Name of Director/Secretary</p>

<p>SIGNED SEALED & DELIVERED by [NAME] in the presence of:</p>		
<p>..... Signature of Witness</p> <p>..... Name of Witness</p>		<p>..... Signature</p>